A Guide to the Judicial Management of Bankruptcy Mega-Cases

Second Edition

Laura B. Bartell
Professor of Law
Wayne State University Law School
Detroit, Michigan

Based on the first edition by
S. Elizabeth Gibson
Burton Craige Professor of Law
University of North Carolina at Chapel Hill
School of Law
Chapel Hill, North Carolina

Federal Judicial Center
2009

Blank pages included to preserve pagination for double-sided printing.

Contents

Introduction

In 1992, the Federal Judicial Center published the first edition of this Guide. Its target audience was bankruptcy judges assigned and confronted with a large Chapter 11 case for the first time. The Guide aimed to pool the knowledge of bankruptcy judges and clerks experienced in handling such mega-cases.

In 1992, the United States bankruptcy courts were in the midst of a sharp increase in filings. That calendar year there were 19,436 business Chapter 11 case filings in the United States bankruptcy courts. In 2006, there were only 5,345 business Chapter 11 case filings.[1] Given the dramatic decline in Chapter 11 cases over the past fourteen years, why is there a need for a new edition of this Guide?

First, although many of the very large Chapter 11 cases continue to be geographically concentrated in the District of Delaware and the Southern District of New York, many such cases are being filed in other districts across the country. In 1999, 84% of the 319 Chapter 11 cases with assets exceeding $100 million were filed in either the District of Delaware or the Southern District of New York, with at least one such case being filed in just fourteen other districts. In 2006, although 73% of the 424 Chapter 11 cases with assets exceeding $100 million were filed in the District of Delaware and the Southern District of New York, at least one such case was filed in twenty-nine other districts. Between 1999 and 2006, up to forty-five districts received at least one such case in any given year. Thus, bankruptcy judges outside the District of Delaware and the Southern District of New York are more likely now than in 1992 to see a very large Chapter 11 case, but these judges probably do not have extensive experience with such cases, and therefore have more need for a resource to help them.[2]

Second, technological advances have made many of the administrative procedures suggested in the first edition of the Guide obsolete. The Case Management/Electronic Case Filing system is eliminating the mounds of paper that required filing, indexing, service on other parties, and storage. Almost all parties in interest now have e-mail and Internet access, so communications have become instantaneous and inexpensive. Almost all bankruptcy courts have websites. Long distance participation in confer-

1. "Business filings" are defined as cases involving predominantly business debts rather than consumer debts. The statistics in this paragraph are from the Administrative Office of the U.S. Courts, Judicial Business of the United States Courts, table F-2 (1992 & 2006).

2. These statistics were provided by the Bankruptcy Judges Division of the Administrative Office of the U.S. Courts.

ences and even court hearings is no longer a rarity. The Guide had to reflect these changes.

Third, in 2005, Congress enacted the most sweeping changes to the Bankruptcy Code since the Code was adopted in 1978. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("the 2005 Amendments") made many substantive changes to the Code that not only dramatically changed consumer bankruptcy, but also affected the landscape for the mega-case. In addition, a number of amendments to the Bankruptcy Rules that took effect December 1, 2007, regulate activities central to mega-cases. Revisions to the Guide were necessary to highlight these changes.

In 2003, the Judicial Conference of the United States Committee on the Administration of the Bankruptcy System, with the assistance of the Federal Judicial Center, held a conference on large Chapter 11 cases attended by invited judges, attorneys, and academics. The purpose of the conference was to look at the factors that bear on selection of a venue for filing a mega-case and to examine the procedures courts have adopted for handling such cases inasmuch as they bear on venue selection. Those attending the conference agreed that, among other reasons, large Chapter 11 cases are filed in those districts in which the bankruptcy judges are perceived to be experts at handling these cases in a timely and predictable way.

Expertise is acquired both by experience and by study. The participants at the 2003 conference recommended that the Guide be updated and made available online. The topics covered in this Guide are those identified by judges who have confronted them in many mega-cases, and for each topic the Guide provides model orders, rules, or suggested approaches that may be helpful for the newcomer.

Not surprisingly, this Guide does not have all the answers. Other publications may also provide useful suggestions (*see, e.g.*, Conference on Large Chapter 11 Cases (Federal Judicial Center 2004); Elizabeth Warren, Business Bankruptcy (Federal Judicial Center 1993, under revision); Case Management Manual for United States Bankruptcy Judges (Federal Judicial Center and Administrative Office of the U.S. Courts 1995); Manual for Complex Litigation, Fourth (Federal Judicial Center 2004); and S. Elizabeth Gibson, Judicial Management of Mass Tort Bankruptcy Cases (Federal Judicial Center 2005)). Nor is this Guide relevant only to a mega-case; although this Guide's focus is the large Chapter 11 case, some of the discussion is also applicable to smaller and other types of cases. The Guide is intended to provide only a starting point for the consideration and creativity of each individual judge. Each case presents its own unique challenges to

the presiding judge, and standard procedures cannot be followed in every situation. But the Guide is intended to be a resource for judges (and practitioners) confronting a mega-case perhaps for the first time. It describes the general timeline of a case, the issues that are likely to arise, and how others have approached those issues. Users of this Guide may themselves become contributors to the next edition, as they increase their expertise and gain experience in handling the large Chapter 11 case.

The exhibits referenced in this Guide are available electronically in both PDF and Microsoft Word versions on the Federal Judicial Center's World Wide Web site (http://www.fjc.gov) and on its intranet site, FJC Online (http://cwn.fjc.dcn).

A couple of stylistic notes:

- this Guide uses the term "debtor" to include not only the "person or municipality concerning which a case under [title 11] has been commenced," 11 U.S.C. § 101(13) (2006), but also a Chapter 11 debtor acting as debtor in possession pursuant to 11 U.S.C. § 1101(1) and exercising the rights of a trustee in bankruptcy under 11 U.S.C. § 1107(a); and
- whenever this Guide uses the term "U.S. trustee," it also intends to refer to a bankruptcy administrator in the judicial districts of North Carolina and Alabama.

Blank pages included to preserve pagination for double-sided printing.

I. The Case Begins

Identifying the Mega-Case

Although many of the procedures described in this Guide are case-management tools that may be applied to any Chapter 11 case, they are particularly useful when the case is a mega-case. The Administrative Office's working definition of a mega-case is "an extremely large case with: (1) at least 1,000 creditors; (2) $100 million or more in assets; (3) a great amount of court activity as evidenced by a large number of docket entries; (4) a large number of attorneys who have made an appearance of record; and (5) regional and/or national media attention" (Guide to Judiciary Policies and Procedures, section 19.01). In addition, some courts have adopted definitions of mega-cases in their local rules setting forth procedures for identifying and managing complex or large Chapter 11 cases.

Under some of these local rules, any party in interest may seek to designate a case as one to which these special procedures should apply by filing a motion. The factors to be considered by the bankruptcy judge in determining whether to label the case as complex or large generally include:

- the large number of parties in interest;
- the size of the case in terms of assets and liabilities (some courts use a threshold figure of total debt of $5 million or more than $2 million in unsecured nonpriority debt; others have much higher thresholds);
- whether claims against the debtor or equity interests in the debtor, or both, are publicly traded;
- the need for "first day" emergency hearings; and
- the need for simplified notice and hearing procedures.

After reviewing the motion, the bankruptcy judge may agree that the case qualifies for the special procedures or may deny mega-case treatment. A sample motion for complex Chapter 11 case treatment and a sample order granting such treatment can be found at Exhibits I-1A and I-1B.

Before the Filing

Both the court and counsel need to begin to plan for the management of the large Chapter 11 case before the case is even filed. Counsel should be encouraged to meet or otherwise communicate with the U.S. trustee and the clerk of the bankruptcy court in the district in which a filing is contemplated to alert them to the imminent filing of a mega-case.

Having been alerted to the proposed filing, the clerk can take steps to prepare for the increased demands on the clerk's office; some of these steps can be implemented even before the case is filed and the identity of the debtor becomes known. For example, if existing personnel are inadequate to meet the anticipated needs of the case, the clerk can discuss with counsel for the debtor and others ways of obtaining additional assistance (at the expense of the estate), such as hiring notice-processing professionals and copy services, establishing a webpage for public information, or undertaking other special tasks. The clerk's office may make plans to amend its automated telephone message to direct callers with inquiries about the new case to debtor's counsel, a public relations firm (if one has been retained), or a website. The clerk might ask the approximate time the case filing is likely to occur so that the clerk's office can be prepared to make an immediate assignment of the case to a judge, if quick action is necessary. The clerk will also want to know if multiple cases will be filed and whether a joint administration will be requested. If there are going to be requests for first day orders, the clerk can advise counsel on the appropriate procedure to be followed so that the judge and the judge's law clerk(s) can deal with them expeditiously. The clerk should ensure that the debtor's attorneys and their staffs have been trained in the Case Management/Electronic Case Filing (CM/ECF) system. The clerk might also ask if counsel has communicated with the office of the U.S. trustee.

The U.S. trustee also may wish to know if any first day orders will be requested, and the substance of any such proposed orders, so that the U.S. trustee can be prepared to participate meaningfully and provide consent to noncontroversial motions (e.g., extensions of time to file schedules and wage and benefit payments up to statutory limitations). Some U.S. trustee offices may have established guidelines for what they will approve and what they will oppose. In some districts, the U.S. trustee may also request information about the debtor, its debt and equity structure, and types of creditors (including any involvement by federal entities, such as the Internal Revenue Service or the Pension Benefit Guaranty Corporation)—this information is necessary to enable the U.S. trustee to form an appropriate committee or committees as soon as possible after the case is filed. In particular, the U.S. trustee may seek to obtain accurate contact information for the persons representing the debtor's principal creditors who would be making decisions with respect to participation in the case. Sometimes the debtor has worked extensively with an informal committee prior to the filing; information about this relationship might be important to the U.S. trustee. Advance notice of the case filing also will assist the U.S. trustee in

scheduling, which will allow the clerk's office to allocate personnel appropriately to serve the needs of existing cases while handling the demands of the mega-case in the most efficient and timely way possible.

Filing the Petition

A bankruptcy judge should not accept a petition for filing or act on any matter in connection with a case prior to its filing. If court assistance is needed in connection with the filing of a mega-case, the lawyers should be directed to communicate with the clerk's office to obtain such assistance. After consulting with the bankruptcy clerk, counsel for a debtor that is a public company should consider filing the petition through the CM/ECF system during the night or on a weekend in order to avoid disrupting the financial markets. Bankruptcy Rule 5001(a) states that the "courts shall be deemed always open for the purpose of filing any pleading or other proper paper," even if the clerk's office is not physically open. In other cases, counsel might file the case shortly before a Friday payday and request expedited treatment of a motion to pay employees from postpetition financing or use of cash collateral.

Case Assignment

Districts that have more than one judge use various methods of assigning cases, although most methods share the feature of being random. The CM/ECF system contains an automated judicial-assignment feature, but not all districts employ it. Whatever system is used, the selection of the assigned judge should not be subject to manipulation by the debtor's counsel, the clerk's office, or anyone else in order to choose (or to avoid) a particular judge. After the case is assigned, any necessary or appropriate recusals can be made.

If a mega-case consists of several related case filings, as it often does, courts may choose different approaches. In some districts, each of the affiliated cases is randomly assigned like any other bankruptcy case. Then, once the cases have been filed, counsel may seek a joint administration by filing a motion to that effect under Bankruptcy Rule 1015(b) with the presiding judge (generally the judge assigned the first of the affiliated cases filed). If the motion for joint administration is granted, the affiliated cases are transferred to the presiding judge. An alternative approach is for all the affiliated cases to be assigned to a single randomly selected judge if a motion for a joint administration is being made. Then if the motion is granted, the affiliated cases need not be reassigned. For a local rule on joint administration of cases, see Exhibit I-2.

Venue

Even if the mega-case has been filed in a district in which venue is proper under 28 U.S.C. § 1408, the district may not be the most appropriate forum for the case. The liberality of the bankruptcy case venue provisions—which allow a filing in the jurisdiction in which the debtor is incorporated or in which a case is pending concerning an affiliate of the debtor, as well as the location of the debtor's principal place of business or principal assets in the United States—have been controversial, particularly in large cases in which there are significant numbers of parties who may be located hundreds of miles away from the court where the filing is made. These provisions cover filings by companies that are incorporated in one jurisdiction, but whose headquarters, operations, employees, and creditors are located in other parts of the country. The change-of-venue provisions in 28 U.S.C. § 1412 allow the court to transfer a case or proceeding under title 11 to another district "in the interest of justice or for the convenience of the parties." Federal Rule of Bankruptcy Procedure 1014, as amended December 1, 2007, provides that case venue can be transferred on the court's own motion or on motion of a party in interest, after hearing on notice. In addition, the Bankruptcy Committee and the Judicial Conference have approved a recommendation to amend 28 U.S.C. § 1412 to explicitly authorize a bankruptcy judge to consider venue sua sponte. The Judicial Conference will forward the recommendation to Congress at an appropriate time.

If the court decides to retain a case in which venue causes substantial hardship to distant parties, it can help ameliorate the impact of the chosen venue by improving access to information about the case through websites, allowing out-of-town counsel to appear *pro hac vice* without the necessity of hiring local counsel, allowing appearances by telephone and teleconferencing in appropriate situations, and requiring counsel to prepare periodic status reports.

A frequent complaint about distant venues has been that adversary proceedings to recover preferences and fraudulent conveyances have been commenced in venues inconvenient for the defendants, allegedly coercing settlement by increasing the costs of defense. The 2005 amendments to 28 U.S.C. § 1409(b) limit the venue in which the debtor in possession or trustee can commence a proceeding to recover preferences, fraudulent transfers, and other claims. Venue of a proceeding to recover a money judgment of or property worth less than $1,000 is proper only in the district court for the district in which the defendant resides. If the proceeding is to recover less than $10,000 from a noninsider, venue is also limited to the district court in which the defendant resides.

First Day Motions

As soon as a mega-case is filed, the debtor will typically ask the bankruptcy judge to rule on various motions affecting the debtor's ability to administer the bankruptcy estate and continue to operate its business. Often called first day motions, these motions may or may not be made on the first day of a bankruptcy case, but they are usually the first motions to be presented to the court for resolution. Motions that are frequently made at an early stage in the case relate to both administrative matters and substantive issues. Administrative matters may include the following:

- motion for a joint administration (discussed in more detail in Part II, *infra*);
- motion to establish noticing procedures;
- motion to authorize retention of a claims and noticing agent;
- motion to extend time to file required schedules and statements of financial affairs;
- motion to authorize maintenance of existing bank accounts and cash-management system; and
- motion to establish regularly scheduled hearing dates.

Other first day motions seek resolution of substantive issues:

- motion to provide or establish procedures for determining adequate assurance to utilities pursuant to section 366 (discussed in more detail in Part II, *infra*);
- motion to retain professionals (discussed in more detail in Part II, *infra*);
- motion to pay prepetition employee wage and benefit claims (discussed in more detail in Part II, *infra*);
- motion to pay critical vendors (discussed in more detail in Part II, *infra*);
- motion to pay prepetition sales, use, payroll, and other taxes that constitute priority claims under section 507;
- motion to honor customer obligations and deposits to the extent provided by section 507; and
- motion for emergency interim use of cash collateral or postpetition financing and scheduling of a final hearing relating thereto (discussed in more detail in Part II, *infra*).

Courts differ on what motions they are willing to consider on the first day and may employ different procedures depending on whether the motion is administrative or substantive in nature. In addition, to alleviate some

of the time pressure at the start of the case and to ensure that important matters are given full and close consideration, Bankruptcy Rule 6003, effective December 1, 2007, prohibits granting relief within twenty days after the petition is filed on applications for the employment of professional persons, motions (other than those under Rule 4001) to use, sell, lease, or otherwise encumber estate property, and motions to assume or assign executory contracts or unexpired leases. Relief may be granted if necessary to avoid immediate and irreparable harm.

Motions with respect to first day orders should be heard promptly. How promptly they should be heard depends on the circumstances, and debtor's counsel might address that issue with the clerk prior to filing the case. Courts are encouraged to develop routine procedures, including using standard timeframes, for handling first day motions so attorneys can plan accordingly.

First day motions and all related papers should be served on the U.S. trustee, all secured creditors, the twenty largest creditors of the debtor, all taxing authorities, and any other party who would reasonably be expected by the debtor to oppose the motion. Service should be initiated even before a hearing date and time have been established; after the hearing is scheduled, each party served with the motion should be served with a notice of hearing by the most expeditious manner available (electronically, hand delivered, or overnight mail). At the hearing, counsel should be prepared to present to the court a declaration as to the efforts made to serve all required parties.

Because the bankruptcy judge is asked to rule on first day motions before other parties in interest may have received effective notice, the judge needs to carefully consider not only whether the relief sought is justified and authorized by the Bankruptcy Code, but also whether the relief is sufficiently important to the initial stages of the case that it should be granted before greater notice and opportunity for a hearing are provided to other parties. Even if expedited treatment is necessary, the judge might place time limits on the duration of any order entered, making it an interim order only (subject to later objection and modification at the final hearing); make the order subject to objection by any interested party within a specified period after its entry (perhaps forty-five days); or delay its implementation so that notice can first be given to all interested parties. Many courts act only on those motions and applications that are truly essential and delay consideration of other motions for a short period to allow adequate notice and opportunity to be heard. Notice of the entry of any order

should be given to all parties on whom service of the first day motions was made as described above.

Courts might consider requiring by local rule, general order, or specific case-management order that all first day motions (1) be designated as such and be accompanied by a separate motion for an expedited hearing, and (2) begin with a brief summary setting forth what relief is requested and explaining the reasons why granting such relief is appropriate.

Although some first day motions seek relief that is clearly authorized by existing law—such as an extension of time to file various schedules or lists of information or a requested waiver of the requirements of Bankruptcy Code § 345(b)—in other instances the debtor may seek to engage in conduct not directly authorized under the Bankruptcy Code or Rules in order to avoid disruptions to its business operations. The court should be cautious about ruling on motions of this type on an ex parte or limited-notice basis. Motions that may give rise to such concerns are motions to pay so-called "critical" vendors' prepetition claims to encourage continued shipments of needed goods; cash-management motions (authorizing the continued consolidation of cash management among related companies); motions for approval of the debtor's investment guidelines; motions to permit immediate payment of prepetition wages and benefits out of estate assets; and motions to permit the debtor to maintain its prepetition bank accounts and to continue to use its existing checks and business forms. In ruling on such a motion, the bankruptcy judge needs to consider the interests of all parties in interest; the amount of notice that parties in interest have had and whether it is sufficient to allow them to be heard effectively; whether a creditors' committee has been formed and has obtained counsel; and the position of the U.S. trustee. The court must balance the needs of the court and other parties against the practical difficulties inevitably encountered in a mega-case, including, among other things, the amount of prefiling preparation time available to the debtor.

The court has several options when such motions are presented. First, the court can limit its emergency ruling to what is absolutely necessary to allow the debtor to operate until adequate notice and opportunity to be heard can be achieved. For example, if the debtor is requesting authority to pay certain prepetition claims and the court finds that it has authority to grant such a request, the court might grant the request only as to those claims that are truly emergency matters, reserving a ruling on the others to a later hearing. Second, the court can authorize emergency relief pending a hearing given after appropriate notice to all interested parties. Third, some courts enter an order that does not become final until a certain number of

days (perhaps 30–60) during which all parties have the opportunity to file an objection to the order, in which event a hearing will be held.

Organizational Meeting

Whether or not counsel has met with the clerk's office and the U.S. trustee prior to filing the mega-case, shortly after the filing it would be useful for debtor's counsel to arrange a meeting of representatives of the clerk's office, the U.S. trustee, the official committee of unsecured creditors (if one has been established), major unsecured creditors (if no official committee has yet been designated), major secured creditors, and debtor's counsel to discuss the administration of the case. This meeting will provide an opportunity for the clerk's office to discuss ways in which the debtor could provide outside assistance to the bankruptcy court pursuant to 28 U.S.C. § 156(c), if the subject has not previously been discussed. The parties also can work together to prepare a procedural order (if the court does not have a standing order or procedures for mega-cases, or the parties can supplement or modify the court's standing order or procedures, as appropriate) to deal with such matters as notices, hearings, handling claims, and other special procedures.

Use of Outside Facilities and Services

A bankruptcy court is authorized by 28 U.S.C. § 156(c) to use additional "facilities or services, either on or off the court's premise, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties" in bankruptcy cases "where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States." The Judicial Conference issued guidelines for implementing 28 U.S.C. § 156(c) in March 1989. They are included as Exhibit I-3.

These guidelines describe the type of assistance that may be useful to the court and the procedures required to obtain such assistance. Although many of the observations have been rendered obsolete by the implementation of the CM/ECF system and the availability of publicly filed documents through the PACER system, certain types of assistance may still be useful in individual cases.

Personnel. Generally, courts have found that keeping mega-cases separate from the regular flow of the clerk's office promotes efficiency. Ideally, one person in the clerk's office should be placed in charge of the case. This person, who may be a regular employee or someone hired by the debtor specially for the case, will become familiar with the case and its history, the

lawyers involved, and the current status of the docket, and can respond to questions and provide guidance more quickly than someone without that background.

If the clerk's office is not able to provide these additional services, such services may be provided by personnel employed by the estate to assist the clerk's office. Such special employees are selected by the debtor (with the concurrence of the clerk or bankruptcy judge) and work under the supervision of the clerk, ideally in the clerk's office. Although special employees are selected by the debtor, such personnel should not receive directions from or perform special services for the debtor or the U.S. trustee. To avoid any appearance of favoritism, it would be best if former employees of the debtor are not retained to act in this capacity.

Special employees are not paid by the government and do not constitute government employees. The guidelines explicitly provide that special employees should not be administered an oath of office because that may create the erroneous impression that they have a government position. Instead, all such employees should be asked to sign written waivers acknowledging their nongovernmental status, waiving any right to receive compensation from the government, and setting forth their work obligations, including their obligation of confidentiality. (Exhibit I-4 is a sample waiver form for these special employees.) Because they are not governmental employees and are paid by the estate, special employees should not perform services for any other case or for the clerk's office generally.

Filing and Claims Processing. Under 28 U.S.C. § 156(e), the bankruptcy clerk is the official custodian of the records and dockets of the bankruptcy court. Bankruptcy Rules 3002(b) and 5005(a) require that proofs of claim and interest be filed with the clerk's office in the district where the case is pending (unless the bankruptcy judge permits them to be filed directly with the judge). Electronic filing of proofs of claim and interest is increasing, and it may become the norm. Until that time, the court may consider requiring the debtor to rent a special post office box for receipt of proofs of claim or interest and to provide special employees to transport the mail to the court. Once the proof of claim or interest has been duly filed with the court, the task of maintaining any physical documents may be delegated to a third-party claims agent, operating under the direction of the clerk of court and paid from the estate under 28 U.S.C. § 156(c). The guidelines of the Judicial Conference of the United States also permit the court to require that claims be filed directly with the third-party claims agent rather than the court.

The clerk must institute a system to ensure the integrity and security of the records in the hands of any claims agent before any claims are filed. The clerk also should establish mechanisms for monitoring the implementation of the agreed safeguards. For example, the guidelines suggest that the outside claims agent be required to provide an acknowledgment when a proof of claim or interest is filed, and that creditors be informed that they should contact the clerk's office if they do not receive such an acknowledgment within a specified time after filing. The clerk can also perform random checks at the claims-processing facility, pulling claims and checking to make sure appropriate records are maintained. The clerk should have unfettered access to the database of the claims agent so that the clerk's office can search the claims register at any time.

Bankruptcy Code § 107 specifies that papers filed in a bankruptcy case are public records and requires that they be open to examination at reasonable times without charge unless the bankruptcy court provides otherwise. If the proofs of claim and interest are maintained by an outside claims agent, the clerk must ensure that the requirements of section 107 are fulfilled. Therefore, the filed documents must be available at the third-party location for public examination during normal business hours. Ideally, the claims agent should maintain a website through which interested parties can review filed claims. In addition, the guidelines suggest that the clerk should "attempt to make as much information available as is possible" at the clerk's office.

After a mega-case is concluded, the clerk is responsible for the proper disposition of the papers filed in the case, including those maintained by an outside claims agent. The clerk must give appropriate instructions to the claims agent with respect to final disposition of those documents, either in an initial memorandum or at the conclusion of the case. Most experienced claims agents are familiar with this final disposition process and can provide suggestions.

Noticing. Because a mega-case involves large numbers of parties, the clerk's office will probably not be able to provide notices, except to the extent that the court utilizes e-mail notices in connection with the CM/ECF system or transmits notices by the Bankruptcy Noticing Center (BNC). Bankruptcy Rules 2002(a) and 2002(b) provide that notice be given by "the clerk, or some other person as the court may direct." In a mega-case, when notices outside the CM/ECF and BNC systems are necessary, the court would be well advised to place the burden of providing notices on the debtor or an outside firm hired by the debtor for that purpose. This

designation should be made by court order, specifying the exact duties imposed. (Exhibit I-6 is a sample order directing the debtor to give notices.)

The costs to the estate of providing notices is payable as an administrative expense. Therefore, it is in the interest of all parties that the required notices be minimized to the extent practicable and permissible under the Bankruptcy Rules. Certain notices are required to be served upon all parties in interest under the Bankruptcy Rules. However, the court may order that a special service list (sometimes called the "Short List" or the "Special Notice List") be established for a mega-case for all matters that are not required to be noticed to all creditors and other parties in interest. All creditors and other parties in interest should receive notice of that order.

The Short List should initially include the U.S. trustee, the debtor, the debtor's counsel, the twenty largest unsecured creditors (until appointment of a creditors' committee), any official committees and their counsel, any secured creditors, any indenture trustee, any large equity holders, all taxing authorities, and (if the debtor is a public company) the Securities and Exchange Commission. Any party (or counsel for any party) should be added to or deleted from the Short List upon written request filed and served upon the debtor and the debtor's counsel.

Counsel for the debtor should be responsible for maintaining both the Short List and a list of all parties who are entitled to receive service when service is not made pursuant to the Short List, and should be required to furnish it, upon demand, to any party in interest. Current versions of the Short List and full service list should be accessible to the court and interested parties on the case website, if one exists. Otherwise, the debtor should be required to file and serve upon all parties on the applicable list updated versions of the list whenever a party is added or deleted and even in the absence of any change, on a regular periodic basis, perhaps monthly (a shorter period may be appropriate early in the case).

All parties should be encouraged to authorize service by fax or e-mail pursuant to Bankruptcy Rule 9036; such authorization can be included in a party's notice of appearance and request for service. Many courts in connection with mandating filings under the CM/ECF system have included a provision authorizing electronic service whenever service is made pursuant to Bankruptcy Rule 7005.

If the debtor or the debtor's agent is required to provide notices, the clerk should take steps to ensure that this is done properly. The Judicial Conference guidelines provide that the bankruptcy court or clerk should approve the form and content of any notice not provided by the clerk's office and should require for each notice served that a certificate of service be

filed, including a copy of the notice and a list of persons served. The local rules often provide the appropriate form of notice that should be used, in which case prior approval is not necessary. Some courts also do not require prior approval of routine notices of hearings required under local rules or under the court's standard operating procedures.

Interested parties in a case who are not on the Short List may review the docket and any electronically filed documents at the clerk's office without charge, or may review the documents electronically through the Public Access to Court Electronic Records (PACER) system at a nominal per-page charge by becoming a registered user. Members of the public may review the docket and documents in the same way. Some courts require the debtor to establish and to maintain a website that may include all, or all significant, pleadings. Professionals are available to create and maintain websites at a reasonable cost. In addition, some courts have a special website for all of the district's mega-cases from which users can link to pages for each case listing case-management orders, the docket, and other information. The media finds this type of website to be particularly useful in cases with significant public interest because members of the media generally do not have PACER accounts.

Additional Equipment and Facilities. A mega-case may impose extraordinary burdens on the physical equipment of the bankruptcy court. As authorized by 28 U.S.C. § 156(c), the court may require that the estate provide or pay for additional equipment needed by the clerk's office to handle the case. For example, the estate may be asked to provide computer hardware or software, filing cabinets, or a special work station in the public area of the clerk's office where the public can access documents filed electronically and can download them for a reasonable fee. The court might also require the estate to install additional telephone lines dedicated exclusively to the mega-case, to set up a special toll-free number, or to create a special website for the case linked to the debtor's website or to that of the bankruptcy court. When a mega-case requires additional work or storage space offsite, the estate may be ordered to pay for the rental of additional facilities.

If the clerk's office purchases any additional equipment or rents facilities under 28 U.S.C. § 156(c), the guidelines of the Judicial Conference state that the clerk should inform the seller or lessor that the estate, not the bankruptcy court, is responsible for payment. The guidelines state that any "equipment, furniture, or other facilities leased or purchased at the estate's expense for the court's use in a bankruptcy case is property of the estate and will be returned to the estate after its use by the bankruptcy court."

Procedural Guidelines

Once a case is designated as a "complex" or "large" Chapter 11 case, it may become subject to certain procedures by local rule or standing order of the applicable bankruptcy court. Among the bankruptcy courts that have administrative orders implementing procedures for complex Chapter 11 cases are the District of Maryland, the District of New Jersey, the Central District of California, the Southern District of Indiana, the Eastern District of Michigan, the District of South Carolina, the Northern District of Texas, and the Southern District of Texas. See Exhibit I-7 for the general order regarding procedures for complex Chapter 11 cases for the bankruptcy court for the Northern District of Texas.

If the local rules or administrative orders do not fully specify the applicable procedures to be followed in a mega-case, after holding an initial status conference, as contemplated by 11 U.S.C. § 105(d), the bankruptcy judge should consider entering a case-management order to establish the procedures that will apply to the case. In any event, because a mega-case will involve large numbers of lawyers, many of whom may be unfamiliar with the procedures and practices of the local bankruptcy court, the judge may want to consider holding an initial hearing or status conference early in the case to discuss administrative matters and the judge's procedures and expectations. A record of this hearing or conference, or the case-management order that results from it, should be readily available on the case website because many out-of-town attorneys do not get directly involved in the case until later.

Among the topics that can be covered at the status conference and in the case-management order are

- noticing and filing requirements (discussed above);
- procedures for scheduling and hearing motions and related adversary proceedings;
- rules governing local counsel and *pro hac vice* admission;
- the setting of appropriate deadlines, including, for example, deadlines for assuming or rejecting executory contracts, filing the disclosure statement and plan, and soliciting acceptances of the plan;
- methods of appearing at hearings and presenting evidence (including telephone appearances and videoconferencing);
- contacts with the court; and
- which electronic devices (e.g., cell phones, laptops, personal digital assistants) may or may not come into the courtroom.

Examples of case-management and administrative procedures that might be incorporated into an order in a specific case can be found at Exhibit I-8. For examples of an initial order with respect to administrative matters in jurisdictions without a standing general order specifying those procedures, see Exhibit I-9.

As the case progresses, the judge may find it necessary to hold additional conferences and supplement or amend the case-management order to further the expeditious and economical resolution of the case.

Scheduling and Hearing Motions. The mega-case tends to produce a large number of motions. If such motions are scheduled through the normal court procedures, the burden on the court and the clerk's office could become severe. Therefore, many courts find it useful to set aside certain days each week or each month exclusively for hearings in the mega-case (called omnibus hearing dates). Because the lawyers know in advance when such hearing days are available, they can schedule motions themselves in accordance with the procedures established in the initial case-management order. For example, the procedures might allow the movant to choose any hearing day that is at least twenty-five days after the date of service of the motion and allow any objection to be filed within twenty days after the date of service. On the applicable hearing date, the court then hears all motions timely filed by any party in interest in the case and noticed for that date. Exhibits I-7 through I-9 include provisions relating to omnibus hearing dates. Each motion should be accompanied by a proposed form of order.

The procedures may direct that if no objection to a motion is filed by the date by which objections are due, the movant may file and serve a certification of no objection with the court stating that no objection has been filed. If such a certification is filed and served, the court may enter the proposed order accompanying the motion without further hearing and, once the motion is entered, the hearing scheduled on the motion or application is cancelled without further notice. For a form of certification of no objection, see Exhibit I-10.

The court may wish to consider requiring that debtor's counsel prepare and serve a proposed hearing agenda at least two business days before each omnibus hearing date. Such an agenda could include the following items:

- the docket number and title of each matter scheduled for hearing on that hearing date;

- a list of the papers filed in support or in opposition and their docket numbers;
- whether the matter is contested or uncontested;
- an estimate of the time required to hear each matter;
- other comments that will assist the court in organizing the docket for the day (such as whether a request for a continuance or withdrawal because of settlement is expected); and
- a suggested order in which the matters will be addressed.

For a form for a notice of agenda, see Exhibit I-11. The proposed hearing agenda is merely a proposal for the convenience of the court and counsel and is not intended to determine all matters to be heard on that day or whether any matters will be settled or continued. On the hearing date, the court may or may not accept the proposed hearing agenda suggested by counsel. However, absent an order allowing an expedited hearing as to matters not previously listed, the court may decide not to permit belated additions to the agenda.

It is useful to post the agenda on the court's website. This gives all interested parties notice of what will be heard on the next omnibus hearing date and an estimate of the time required. If the notice is posted on the website one or two business days prior to the omnibus hearing date, it is most likely to provide the desired notice while reflecting agreements that occur shortly before the hearing. It is even possible in some districts to have debtor's counsel post the agenda on the court's website directly so that court personnel need not be involved. This posting of the agenda on the website is not a substitute for the usual forms of notice of motions and hearings, but serves only as an informal guide to what will occur at the omnibus hearing.

If a matter is properly noticed for hearing and the parties reach agreement on a settlement prior to the hearing date, the parties may announce the settlement at the scheduled hearing. If the court determines that the notice of the motion and the hearing adequately informed interested parties of the potential effects of the settlement, the court may approve the settlement at the hearing without further notice of the terms of the settlement itself.

The location of the motion hearings can present problems because of the large number of lawyers and parties frequently in attendance. If the regular courtroom of the bankruptcy judge is not adequate to accommodate the crowd, the district court may be willing to make a larger courtroom available. The judge may wish to specify where the debtor and com-

mittees will sit and where the parties addressing the court should stand. Certain sections of the courtroom may be reserved for counsel, the media, and the public.

Some courts permit the use of telephonic or videoconference appearances at conferences and hearings. Courts follow different procedures and use different technologies (e.g., traditional telephone services vs. Voice over Internet Protocol (VoIP) technology), and some set forth their procedures in local rules. Some courts allow telephonic or videoconference appearances by counsel or witnesses only in nonevidentiary matters, and other courts allow such appearances only in uncontested matters. Most courts allow counsel to "listen in" on court proceedings so that they can keep up with progress in the case without attending if they do not intend to participate. The Federal Judicial Center held a roundtable in 2005 and published a report on different methods of allowing participation by telephone, including VoIP and videoconferencing (*see* Roundtable on the Use of Technology to Facilitate Appearances in Bankruptcy Proceedings (Federal Judicial Center 2006)). Several different kinds of equipment and several vendors are available. The Administrative Office of the U.S. Courts has negotiated national contracts for some of these vendors to provide telephone conferencing services for court proceedings. Detailed information concerning these services is located on the J-Net at http://jnet.ao.dcn/Procurement/Judiciary_Wide_Contracts.html#7a.

Courts use essentially two different methods for setting emergency and expedited hearings. Some courts allow the movant to set an expedited or emergency hearing on an omnibus hearing date without first seeking permission from the court. The local rule or administrative order usually requires the movant to set the hearing on the latest hearing date that will accommodate the emergency. In those courts, the first order of business in addressing the motion is to determine whether adequate notice of the motion and hearing has been given. Other courts require a separate motion for an emergency or expedited hearing, describing in detail why there is a need for expedited treatment and stating the time by which a hearing is required. The motion for an emergency or expedited hearing may be granted or denied by the bankruptcy judge without a hearing, although local practice often requires notice be provided. If the motion for an expedited hearing is granted, the judge may issue an order setting a hearing date. The order may briefly describe the relief requested, set the last date for objections to be filed, and state on whom objections should be served. At the emergency or expedited hearing, the movant should file a certificate with respect to service of the order.

Rules with Respect to Local Counsel. Many bankruptcy courts permit only members of the bar of the district court of which they are adjuncts to appear as counsel. Attorneys seeking to represent parties in interest in a bankruptcy case who are not admitted to the bar of the relevant district should seek admission *pro hac vice* in compliance with the local rules (which may require payment of a fee). Some districts do not require admission if counsel does not appear in person.

The Judge's Office. The bankruptcy judge may wish to consider designating one law clerk (if the judge has more than one) and one courtroom deputy clerk as having primary responsibility for the mega-case and may make that designation known on the court's website. Interested parties then know whom they should (and should not) call with questions about the case. If the demands of the case are too heavy for the judge's existing staff, the judge might consider hiring an additional law clerk and courtroom deputy to work exclusively on the mega-case so long as the workload justifies their full-time assistance. The circuit executive may be able to make funds available to hire additional personnel. Some judges have successfully used law school interns to assist in mega-cases, often without pay. The Administrative Office has a program to assist in the authorization of a temporary courtroom deputy clerk or in the temporary assignment of a law clerk serving another judge (even one in a different district) to a bankruptcy judge in need of additional assistance.

Transcripts and Docketing. Counsel in a mega-case frequently wish to obtain transcripts of court proceedings promptly. Some courts have arranged for all hearings, conferences, and adversary proceedings to be transcribed promptly by having the court recorder send the tapes and notes to a transcribing agency by hand delivery or by overnight courier. The completed transcript is then returned to the court by the same method within a short period of time. The estate should pay for all transcripts. Lawyers for various parties may have a standing order with the transcribing agency for a transcript of every proceeding in the mega-case. Some courts use digital recordings so a recorded copy of the record can be obtained on compact disc quickly and inexpensively.

Prompt docketing of filings in a mega-case is also essential to smooth case management. All documents are readily available on the CM/ECF and PACER systems, and the docket text is searchable so that any interested party should be able to locate a specific document without difficulty.

Relations with the Press and Public. A bankruptcy mega-case tends to generate wide public interest. As a result, the court may receive many in-

quiries about the case from the media and from members of the public. Codes of conduct prohibit judges and clerks from commenting on pending cases. Therefore, such inquiries should generally be directed to the debtor's attorney or to the debtor's public relations firm (if one has been retained). If the judge wishes to make sure that the public understands a particular action taken in a mega-case, an explanation can be given on the record in open court.

The clerk's office can provide information about matters of public record and can provide information about how to access the docket and filed documents through the court's website or the PACER system. The court also can have the debtor set up a dedicated website with information about the case, including upcoming hearing dates. The clerk's office may also designate someone to coordinate with the media as to release of decisions and to provide a location for interviews with counsel.

The court also may find it useful to provide the media with general background information about bankruptcy cases. For example, the court may distribute fact sheets or post on its website information describing the general nature of Chapter 11 proceedings and how Chapter 11 differs from the more familiar Chapter 7.

Various parties may request that certain information filed in connection with the mega-case be excluded from public access by protective order. Generally, all papers filed in a bankruptcy case are public records and should be available for inspection. Bankruptcy Code § 107(a). However, under Bankruptcy Code § 107(b) and Bankruptcy Rule 9018, on request of a party in interest the court must "protect an entity with respect to a trade secret or confidential research, development, or commercial information" or "protect a person with respect to scandalous or defamatory matter" contained in a paper filed in the bankruptcy case. The court may also choose to enter a protective order on its own motion. The sealing of records should be rare and should be ordered only upon satisfaction of the standards set forth in the Code and the Rule.

The 2005 Amendments also permit the bankruptcy court, for cause, to protect an individual with respect to information contained in filed papers the disclosure of which "would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." However, such information may be made available to a governmental unit acting pursuant to its policy or regulatory powers on an ex parte application.

II. Early Issues

Dealing with Special Interest Groups

One of the key factors leading to the designation of a case as a mega-case is the large number of parties in interest. Although the specific parties involved in mega-cases vary, certain categories of parties are involved in many mega-cases, and each type has distinct issues that are frequently presented.

Governmental Units. In most respects, governmental units are treated as any other party in interest in a bankruptcy case. Nevertheless, the Bankruptcy Code affords governmental units a preferred status for some purposes. For example, certain taxes incurred by the estate and other amounts related thereto are defined as "administrative expenses" under Bankruptcy Code §§ 503(b)(1)(B) and (C), and many unsecured claims of governmental units for taxes (income, property, withholding, employment, excise, customs duties, and penalties) are given priority treatment in distribution of the property of the estate under sections 507(a)(8) and 507(c). Perhaps the most significant provision favoring the government at the early stages of a bankruptcy case is Bankruptcy Code § 362(b)(4), which excludes from the scope of the automatic stay created by the filing of the bankruptcy petition the commencement or continuation of actions or proceedings by governmental units to enforce their police or regulatory power.

The "police or regulatory power" exception allows the enforcement of laws affecting health, welfare, morals, and safety despite the pendency of the bankruptcy proceeding. The exception applies, for example, to suits to determine a federal income tax exemption, to enforce federal labor laws, to enforce state bar disciplinary rules, to enforce federal employment discrimination laws, and to enforce state consumer protection laws. In determining whether the governmental action falls within the exception, bankruptcy courts generally look at whether the government action was related primarily to the protection of the government's pecuniary interest in the debtor's property or if it related to matters of public health and safety. *See, e.g.*, City & County of San Francisco v. PG & E Corp., 433 F.3d 1115, 1124 (9th Cir. 2006); *In re* McMullen, 386 F.3d 320, 325 (1st Cir. 2004). If the action seeks to protect the government's pecuniary interest, the section 362(b)(4) exception does not apply. On the other hand, if the suit seeks to protect public safety and welfare, the exception does apply. The purpose of the "pecuniary purpose" test is to prevent actions that would allow a

governmental unit in its capacity as a creditor of the estate to obtain an advantage over competing creditors or potential creditors in the bankruptcy proceeding.

Even if the bankruptcy court concludes that the regulatory action is not barred by the automatic stay because it falls within the scope of section 364(b)(4), some courts have recognized that the bankruptcy court still has the inherent power to enjoin the action under Bankruptcy Code § 105. *See, e.g.*, *In re* Corporacion de Servicios Medicos Hospitalarios de Fajardo, 805 F.2d 440, 449 n.14 (1st Cir. 1986); *In re* First Alliance Mortgage Co., 264 B.R. 634, 651–52 (C.D. Cal. 2001). However, the Bankruptcy Code clearly contemplates that governmental regulatory actions may proceed during the typical bankruptcy case. Therefore, the authority to enjoin a governmental unit from pursuing an action that Congress has not automatically barred should be exercised only in extraordinary circumstances and only after considering all relevant factors, including the possible damage that may result from the granting of a stay, the hardship or inequity that a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law that could be expected to result from a stay. The burden of establishing that such an injunction should be granted rests with the debtor, and the debtor will have to show that the usual standards for issuance of an injunction are satisfied under Rule 65 of the Federal Rules of Civil Procedure (made applicable to adversary proceedings in bankruptcy cases by Bankruptcy Rule 7065), including likelihood of success on the merits, irreparable harm without the injunction, balance of the harms favoring the moving party, and public interest favoring injunctive relief. The burden is more likely to be met when there is a clear reorganization goal that is threatened by the government action.

When the governmental unit seeks to enforce regulatory powers conferred by state law, the bankruptcy court must consider the impact of 28 U.S.C. § 959, which requires a trustee or debtor in possession to "manage and operate the property in his possession . . . according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." This means that the debtor has to comply with all applicable health and safety codes, building codes, business license requirements, and environmental and other regulatory obligations of business or property operations if it conducts business during the reorganization. The pending bankruptcy case does not relieve a debtor (or the trustee) from the obligation to comply with state law, and that obligation

can generally be enforced through regulatory proceedings notwithstanding the automatic stay. If a state regulatory proceeding seeks to enforce an obligation described in section 959(b), the proceeding should be permitted to go on.

If the Chapter 11 case involves a debtor that operates a business that is subject to pervasive federal or state regulation, the bankruptcy judge must have an adequate understanding of the applicable regulatory scheme. If the regulatory law is particularly complicated and a specific issue arises in connection with an adversary proceeding or contested matter for which the judge needs independent expert assistance, the judge may wish to appoint an examiner or court expert in the area to provide that assistance. The cost of such an examiner or expert is borne by the estate.

Unions. When the business enterprise involved in a mega-case has collective bargaining agreements, the labor unions subject to such agreements are likely to become significant players in the case. Among the issues the court may have to confront are whether the court should grant a motion under Bankruptcy Code § 1102(a)(2) to appoint a separate committee to represent employees or, if not, whether the union is eligible to sit on the creditors' committee, *see In re* Altair Airlines, Inc., 727 F.2d 88 (3d Cir. 1984), and whether the union may assert claims on behalf of its membership, *see* Office & Professional Employees International Union, Local 2 v. F.D.I.C., 962 F.2d 63 (D.C. Cir. 1992).

The existence of collective bargaining agreements also may give rise to substantive issues with respect to their possible modification or termination. Bankruptcy Code § 1113 provides that a Chapter 11 debtor (or trustee) may reject a collective bargaining agreement "only in accordance with the provisions of this section." If the debtor believes that its obligations under a collective bargaining agreement would inhibit its effective reorganization, it must first make a good-faith effort to negotiate a modification of the contract with an authorized representative of its employees. If they cannot agree, the bankruptcy court may, after notice and a hearing, permit the debtor to reject the collective bargaining agreement under section 1113 only if (1) the debtor's proposal provided for "necessary modifications . . . that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably"; (2) the employees' authorized representative has refused to accept the debtor's proposal "without good cause"; and (3) "the balance of the equities clearly favors rejection" of the collective bargaining agreement.

Another issue that may arise is a request by the debtor to enjoin collective bargaining job actions. Section 4 of the Norris-LaGuardia Act explicitly withdraws jurisdiction from all courts of the United States, including bankruptcy courts, to issue injunctions against strikes "in any case involving or growing out of a labor dispute." 29 U.S.C. § 104 (2006). If the bankruptcy court determines that the strike involves a "labor dispute" as defined in the Norris-LaGuardia Act, it has no power to enjoin the action unless the collective bargaining agreement contains a mandatory grievance adjustment or arbitration provision. *See* Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970).

The bankruptcy court has jurisdiction under Bankruptcy Code § 105 to enjoin proceedings by the National Labor Relations Board involving alleged unfair labor practices, at least where those proceedings threaten estate assets. *See* N.L.R.B. v. Superior Forwarding, Inc., 762 F.2d 695 (8th Cir. 1985). However, as discussed above with respect to other governmental units, the court's power to enjoin proceedings should be exercised sparingly.

Pension Plans. Many mega-cases involve employers who are facing significant obligations to retired employees for health, disability, or death benefits under pension plans.

Bankruptcy Code § 1114(e) requires the debtor in possession or the trustee to timely pay—and bars them from modifying—retiree benefits unless "necessary to permit the reorganization of the debtor" and after rejection "without good cause" by an "authorized representative" of the retirees of a proposal that provides for necessary modifications. Section 1114 does not, however, preclude termination of benefits in accordance with the contractual provisions of the plan, nor does it guarantee that the debtor will have adequate resources to meet its obligations under the plan.

Under the 2005 Amendments, if the debtor modified retiree benefits during the 180-day period ending on the date of the filing of the petition and was insolvent at the time of such modification, the court is directed, upon motion of a party in interest, to reinstate the benefits as of the date of the modification to their preexisting status "unless the court finds that the balance of the equities clearly favors such modifications." Bankruptcy Code § 1114(*l*).

When the debtor is unable to satisfy its pension obligations, the Pension Benefit Guaranty Corporation (PBGC) may become active in the case. The PBGC is a federal corporation that was established by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1301–1461 (2006), for the purpose of administering the single-employer pension plan

termination insurance program. Under this insurance program, the PBGC guarantees the payment of certain minimum pension benefits to plan beneficiaries in the event that a covered plan terminates with insufficient assets to pay the benefits in full. If a plan terminates with insufficient assets to pay the minimum guaranteed level of benefits (either by voluntary action of the plan administrator or by involuntary procedures instituted by the PBGC), the PBGC typically becomes trustee of the plan, takes over the assets and liabilities of the plan, and pays the guaranteed benefits to plan participants out of funds remaining in the plan and out of its own funds to cover any insufficiency. ERISA provides that the PBGC may bring involuntary termination procedures when the plan is unable to pay benefits when due and when the PBGC faces an unreasonable increase in liabilities with respect to the plan if the plan is not terminated. Upon termination of the plan, benefits for plan participants cease to accrue.

Issues that arise when the PBGC becomes involved in the mega-case include the amount of its claim against the estate, the priority of that claim, the date of termination of the plan, and the calculation of benefits due to the participating employees. The PBGC can be one of the largest creditors of a debtor in a mega-case.

Committees. The U.S. trustee is directed by Bankruptcy Code § 1102(a)(1) to "appoint a committee of creditors holding unsecured claims" and is authorized to "appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate." Upon request of a party in interest, the bankruptcy court may also order the appointment of additional committees "if necessary to assure adequate representation of creditors or of equity security holders." Bankruptcy Code § 1102(a)(2). Representation by an official committee provides significant benefits to the creditors or equity holders involved, as committees are provided the powers conferred by Bankruptcy Code § 1103(c), as well as the right to employ attorneys, accountants, or other advisers under Bankruptcy Code § 1103(a) at the expense of the estate. Bankruptcy Code §§ 330(a), 503(b)(2).

Because a mega-case involves large numbers of interested parties, many with disparate interests, the bankruptcy judge may be asked to direct the U.S. trustee to appoint additional committees composed of their constituents. Requesting parties may include subordinated debt holders, trade creditors, preferred stockholders, and holders of common shares, among others. In considering whether to appoint additional committees, courts have to balance the administrative expense of such committees and the possibility that they may make it more difficult to achieve a consensual plan against the possibility that adequate representation is not avail-

able otherwise. The inquiry is case-specific, but courts generally consider (1) the number of persons in the group requesting committee designation; (2) the complexity of the case; (3) whether the cost of the additional committee outweighs the concern for adequate representation; and (4) whether the proposed class is likely to receive a meaningful distribution under a strict application of the absolute priority rule. *See, e.g.*, *In re* Enron Corp., 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002); *In re* Williams Communications Group, Inc., 281 B.R. 216, 220, 223 (Bankr. S.D.N.Y. 2002). As to additional committees, particularly equity committees where the debtor's solvency is doubtful, the court may wish to consider capping the fees of the committee's professionals. *See In re* Federal Mogul-Global, Inc., 348 F.3d 390 (3d Cir. 2003).

Many courts have found it beneficial to limit the number of committees appointed or to set a deadline for requesting the appointment of an official committee to prevent disruptive motions on the eve of plan confirmation. Exhibit II-1 is a sample order denying a motion to appoint a committee of equity holders.

Even after appointing committees initially, under Bankruptcy Code § 1102(a)(4) the court may order the U.S. trustee to change the membership of an appointed committee if the court "determines that the change is necessary to ensure adequate representation of creditors or equity security holders."

Under the 2005 Amendments, any appointed committee is required to provide access to information to the creditors represented by the committee but not serving on the committee itself, and the committee must solicit and receive comments from such creditors. Bankruptcy Code § 1102(b)(3). The committee might be encouraged to create its own website to post and receive information with a link from the official case website, if one exists. In a mega-case involving a public company, the committee's obligation to provide information to creditors may cause problems with the dissemination of nonpublic, confidential information concerning the debtor. Consequently, a motion may be filed by the debtor or committee seeking to restrict the information that the committee may disseminate notwithstanding Bankruptcy Code § 1102(b)(3).

Patients. If the debtor is a "health care business" (defined in Bankruptcy Code § 101(27A)), the 2005 Amendments include new provisions to protect the rights of patients. Under Bankruptcy Code § 333, not later than 30 days after the commencement of the case the court must order the appointment of an "ombudsman to monitor the quality of patient care and to represent the interests of the patients" unless the court finds that the

appointment "is not necessary for the protection of patients under the specific facts of the case." Bankruptcy Code § 333(a)(1). The ombudsman is a disinterested person appointed by the U.S. trustee. *Id*. § 333(a)(2)(A). The ombudsman is required to report to the court regarding the quality of patient care provided to patients of the debtor not later than sixty days after appointment, and not less frequently than at sixty-day intervals thereafter. *Id*. § 333(b)(2). The ombudsman is also required to file a report with the court if he or she determines "that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised." *Id*. § 333(b)(3).

Executives and Employees. Early in the mega-case the debtor will frequently file a motion seeking court approval under Bankruptcy Code § 363(b) for key employee retention plans under which the debtor offers incentive compensation and severance payments to certain executives and employees in order to boost morale and retain their services during the reorganization. Such plans typically provide increased compensation to a limited number of key employees during the case and guarantee these employees an "emergence bonus" if they are still employed when the case is confirmed and severance payments if they are terminated without cause.

Under the 2005 Amendments, Congress has limited the discretion of the bankruptcy courts to approve such arrangements. Bankruptcy Code § 503(c)(1) precludes transfers to or obligations incurred for the benefit of insiders as retention inducements unless they have a "bona fide job offer from another business at the same or greater rate of compensation" and "the services provided by the person are essential to the survival of the business." Even in such cases, the amount of the transfer or obligation is capped at "an amount equal to ten times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred"; if there were no such similar transfers or obligations for nonmanagement employees during the calendar year, the cap is 25% of any transfers made or obligations incurred for the benefit of the insider for any purpose during the prior calendar year.

Severance payments to insiders are also limited by Bankruptcy Code § 503(c)(2). Such payments may not be made unless both "the payment is part of a program that is generally applicable to all full-time employees" and "the amount of the payment is not greater than ten times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made." Bankruptcy Code § 503(c)(2).

Section 503(c)(3) allows other payments to senior management so long as those payments are justified by the facts and circumstances of the case. The court may, therefore, get a motion to approve a "success fee" to senior management payable on confirmation of a plan, consummation of a sale, or the achievement of specified operating results.

In light of the strict statutory limits on such payments and obligations, the court needs to ensure that the debtor meets the requirements for any incentive plan. Motions should be supported by evidence with respect to the following: the identities of the covered employees; their present positions and responsibilities; any claims or interests they hold in the case; their length of service and work experience; their present compensation (including bonuses, commissions, and benefits); the requested compensation (including bonuses, commissions, and benefits); the total cost to the debtor of the requested incentives; how the requested incentives compare to incentives given to nonmanagement employees and to the affected management employees in the past year; and the benefits to the estate of approving the motion and the costs of its denial.

Because many parties in interest may have objections to such a plan, a motion for approval should not be handled as a first day order or on an expedited basis with limited notice and opportunity to be heard.

Handling Early Issues

In the early days of a complex Chapter 11 case, the bankruptcy judge will be asked to rule on many substantive and procedural issues. Although some of those issues will be the same as those presented in a routine Chapter 11 case, in some cases the issues are different, and even when they are not, the size of the case may affect the impact of the court's rulings and the urgency with which they are sought. This section of the Guide covers some of these issues. The court's ruling with respect to any of these issues will, of course, be dictated by the facts of the case, the governing law, and local rules in the jurisdiction, and no attempt is made here to suggest preferred outcomes.

Joint Administration. Debtors in related bankruptcy cases typically seek joint administration of their cases under Bankruptcy Rule 1015(b). The Rule requires that prior to entering an order providing for joint administration, the court consider "protecting creditors of different estates against potential conflicts of interest." Therefore, before ruling on the motion, the court may wish to receive detailed information about the equity ownership of each of the debtors, the existence of any inter-debtor claims or obligations, any guaranties by one debtor of obligations owed by a related debtor

or equity holder, and any inter-debtor transfers within one year before the order for relief, to the extent such information is available.

Bankruptcy Rule 1015(b) does not specify the effects of granting joint administration. The joint administration of a mega-case consisting of related cases can be relatively benign if limited to procedural matters and generally allows the case to be administered more expeditiously and at less cost than separate administration of each related case. Joint administration would include such efficiencies as a single mailing matrix and joint hearings. More extensive joint administration might have a more serious impact on case prosecution, such as having a single debtor's counsel, a single creditors' committee, a single disclosure statement and plan of reorganization, and a single claims docket. Some courts grant limited procedural joint administration at the first day hearings and defer more substantive issues.

It is important to distinguish joint administration from consolidation. Consolidation of cases implies a unitary administration of the estate. Bankruptcy Rule 1015(a) permits consolidation if two or more petitions are pending against the same debtor, but the rule neither authorizes nor prohibits the consolidation of cases involving two or more separate debtors. In contrast, Bankruptcy Rule 1015(b) allows joint administration of "a husband and wife," "a partnership and one or more of its general partners," "two or more general partners," or "a debtor and an affiliate." Whatever the court decides, the order providing for joint administration or consolidation should spell out clearly what "joint administration" or "consolidation" means in that case.

For ease of administration, jointly administered cases might be docketed in the name of any publicly traded debtor.

Prepackaged or Prenegotiated Plans. For some debtors, the filing of a bankruptcy petition is the culmination of a reorganization process rather than the beginning. In contrast to typical Chapter 11 cases where a plan and disclosure statement are filed many months, sometimes years, after the cases are filed, some mega-cases are "prepackaged bankruptcies," or "prepacks," where the plan and disclosure statement are prepared and sufficient favorable votes on the plan are solicited and obtained before the Chapter 11 case begins, leading to a prompt plan confirmation. A closely related structure is the "prenegotiated" plan, in which the details of a plan are negotiated prior to the filing of the petition but solicitation does not occur until after the filing.

Prepackaged plans are specifically contemplated in the Code as is evidenced by

- Bankruptcy Code § 341(e), which allows the court to order the U.S. trustee not to convene a section 341 meeting if the debtor has filed a plan as to which acceptances have been solicited prior to commencement of the case;
- section 1102(b)(1), which allows a prepetition creditors' committee to act as the creditors' committee in bankruptcy if it was fairly chosen and is representative of the different kinds of claims in the case;
- section 1121(a), which allows the debtor to file a plan with its voluntary Chapter 11 petition;
- section 1125(g), which provides for acceptance or rejection of a plan pursuant to a prepetition solicitation complying with applicable nonbankruptcy law; and
- section 1126(b), which provides for prepetition solicitation in accordance with any applicable nonbankruptcy law or otherwise after disclosure of adequate information as defined in section 1125(a)(1).

Consistent with the Code's recognition of prepacks, some courts have established expedited procedures for the early approval of disclosure statements, solicitation of acceptances, and confirmation of such plans. For an example of a general order with respect to procedures relating to prepackaged Chapter 11 cases, see Exhibit II-2.

The central feature of the judicial role in a prepackaged bankruptcy is a combined hearing to deal with both disclosure requirements and confirmation of the plan, generally within ninety days after the filing of the petition. For a sample order for a disclosure and confirmation hearing on a prepackaged plan, see Exhibit II-3. With a prepackaged bankruptcy, creditors and other parties in interest are denied the opportunity to address the adequacy of the proposed disclosure statement and the solicitation process until after the solicitation has already occurred. Although the bankruptcy court may feel more pressure under these circumstances to conclude that the process meets the requirements of the Code, the court must review the proposed disclosure statement and the completed solicitation process with the same care as it would have done in advance to verify that the solicitation either meets the requirements of applicable nonbankruptcy law or that the disclosure statement contains adequate information.

The court also must ensure that substantially all impaired creditors received adequate notice of the plan and the disclosure statement and had an opportunity to object to the disclosure statement and to vote on and object to the plan. At the confirmation stage of a prepackaged bankruptcy, the court evaluates the process of solicitation in determining whether the acceptances obtained are valid. Bankruptcy Rule 3018(b) requires that holders of claims or interests who accept or reject the plan before the case commences must be record holders of their positions on the date specified in the solicitation, and the rule disallows their votes if "the court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code." The court may wish to require a detailed description of all communications between the debtor and creditors and/or holders of equity interests during the prepetition reorganization process and the dates of such communications.

Prenegotiated or prearranged plans differ from prepackaged plans only insofar as actual solicitation of votes has not occurred prior to filing. However, the prospective debtor negotiates with the major creditor constituencies about the terms of a proposed plan of reorganization and obtains their agreement that the terms are acceptable. Their agreement may be embodied in a "lock-up" or "plan-support" agreement that commits them to support the proposed plan, perhaps by using their "best efforts" to obtain confirmation, or by not voting to reject it or by not supporting a competing plan. Although such prepetition lock-up agreements have been challenged under Bankruptcy Code §§ 1125(b) and 1126(e), they have been upheld. *See In re* Bush Industries, Inc., 315 B.R. 292 (Bankr. W.D.N.Y. 2004); *In re* Texaco Inc., 81 B.R. 813 (Bankr. S.D.N.Y. 1988). Lock-up agreements executed after the filing of the petition but prior to approval and dissemination of a disclosure statement may not be permissible. *See, e.g.*, *In re* Stations Holding Co., 2002 WL 31947022 (Bankr. D. Del. 2002); *In re* NII Holdings, Inc., 288 B.R. 356 (Bankr. D. Del. 2002). Lock-up agreements may become less common with the enactment of Bankruptcy Code § 1125(g), which recognizes the validity of prepetition solicitation of votes on a prenegotiated plan.

Prepackaged and prenegotiated plans are perceived to have significant advantages over traditional plans of reorganization because they offer more certainty and control to the debtor and tend to reduce the time and expense of the case, therefore allowing the debtor to commence its reor-

ganized operations as soon as possible. However, such plans create heightened concerns about the due process rights of the creditors and interest holders of the debtor. The court must protect these rights even at the risk that the plan proponent must begin the process again after the filing.

Sale of All or Substantially All Assets Under Section 363. Increasingly, Chapter 11 is being used as a mechanism for consummating a sale of all or substantially all of the assets of the debtor free and clear of prepetition claims. Although such a sale may be the subject of a prepackaged plan of reorganization, it also may be sought through motion under Bankruptcy Code § 363 early in the case but before a plan of reorganization has been filed. There are different views about whether the sale of all assets, outside of a plan of reorganization in a nonemergency situation, is authorized by the Bankruptcy Code. *Compare In re* White Motor Credit Corp., 14 B.R. 584 (Bankr. N.D. Ohio 1981), *with* Stephens Industries, Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986); *In re* Lionel Corp., 722 F.2d 1063 (2d Cir. 1983); *In re* Engineering Products Co., Inc., 121 B.R. 246 (Bankr. E.D. Wis. 1990); *In re* Naron & Wagner, Chartered, 88 B.R. 85 (Bankr. D. Md. 1988). In jurisdictions that approve such sales, however, such a sale effectively ends the reorganization and transforms the bankruptcy case into a negotiation over allocation of proceeds. Therefore, the bankruptcy court has an obligation to ensure that any such sale is conducted in a manner that protects the interests of all creditors and equity holders.

Exhibit II-4 contains sample guidelines adopted with respect to early dispositions of all or substantially all of the debtor's assets under section 363.

Three major issues are presented by a contemplated sale of the debtor's assets. First, the court should ensure that the motion for the order authorizing the debtor to sell contains adequate information with respect to the proposed sale to enable all interested parties to file meaningful objections. Any proposed sale agreement should be attached, and among the issues that might be specifically addressed in the motion are:

- any contingencies to the sale;
- an estimate of administrative expenses relating to the sale and the source of payment of those expenses;
- an estimate of the gross and net proceeds of the sale, with an itemization and explanation of all deductions;
- a description of the debtor's debt structure, including the amount of debtor's secured debt, priority debt, and general unsecured claims;

- an explanation of why the assets must be sold on an expedited basis and a discussion of alternatives to the sale;
- a description of the negotiations leading up to the sale agreement and efforts made to obtain offers from other parties, including a description of any other offers;
- a description of the methods and length of time used for marketing the assets;
- identification of the proposed buyer and description of any relationships between the buyer and its insiders and the debtor, the creditors, and any other party in interest and their respective insiders, attorneys, financial advisers, and accountants;
- any post-sale relationship or connection with the debtor or its insiders contemplated by the buyer;
- any topping fee or break-up fee contemplated by the sale agreement (see discussion below);
- if a creditors' committee existed prepetition, the members of the committee and their affiliations; and
- if applicable, a request for appointment of a consumer privacy ombudsman under section 332.

Second, certain provisions of the proposed sale agreement may be subject to heightened scrutiny. The sale agreement should not act as a "sub rosa" plan of reorganization, dictating the terms of the plan the debtor will ultimately file without compliance with the confirmation requirements of Chapter 11 for approval of the sale agreement in which those terms are contained. *See In re* Braniff Airways, Inc., 700 F.2d 935, 939 (5th Cir. 1983).

Some courts will also conduct a separate inquiry into the appropriateness of any proposed topping fee or break-up fee (sometimes denominated a "liquidated damages" clause). When an initial bidder for the assets of the debtor, after performing its due diligence inquiry, is outbid by a second bidder, the initial bidder may be awarded a break-up fee. The justification for such fees is that in their absence a prospective purchaser of a Chapter 11 debtor's assets would be unwilling to expend the time and resources necessary to perform the due diligence analysis if the purchaser could merely become a "stalking horse" for a higher bid.

Although the debtor may be unable to obtain an initial bid for its assets without ensuring that the initial bidder receives a break-up fee (in which event the break-up fee serves a valuable purpose in the reorganization), the break-up fee may also serve simply to give the initial bidder an advantage

over others by making the cost of the acquisition higher for the later prospective purchasers, which works to the disadvantage of the debtor's estate. Even if the break-up fee is not designed impermissibly to favor a specific bidder, the fee may be unnecessary to accomplish the goal of inducing bids for the assets. If the cost of acquiring the debtor, including the cost of making the bid, is less than the estimated value the purchaser expects to gain from acquiring the company, it will bid whether or not a break-up fee is offered. Whether a break-up fee adds value to the estate is a critical factor in determining whether to approve it. A break-up fee is particularly suspect if there are already other willing buyers. *See generally* Bruce A. Markell, *The Case Against Breakup Fees in Bankruptcy,* 66 Am. Bankr. L.J. 349, 359 (1992).

As a result, the court may want to require any request for approval of a sale agreement that includes a topping or break-up fee be supported by a statement of the precise conditions under which the fee would be payable and the factual basis on which the seller determined that the provision was reasonable. The court may also require that the request disclose the identities of other potential purchasers, the offers made by them (if any), and the nature of the offers. In considering whether to approve the fee, the court may wish to consider whether

- the relationship of the parties who negotiated the break-up fee is tainted by self-dealing or manipulation;
- the fee hampers, rather than encourages, bidding;
- the amount of the fee is unreasonable relative to the proposed purchase price;
- the request for a break-up fee serves to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;
- the fee requested correlates with a maximization of value to the debtor's estate;
- the principal secured creditors and the official creditors' committee are supportive of the concession;
- safeguards beneficial to the debtor's estate are available; and
- there is a substantial adverse impact on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O'Brien Environmental Energy, Inc., 181 F.3d 527 (3d Cir. 1999); *In re* Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992).

Although break-up or topping fees have attracted the most scrutiny from bankruptcy courts in connection with proposed sales of all or substan-

tially all of the assets of Chapter 11 debtors, the court also should examine the proposed sale order for inappropriate findings, releases, and injunctions that are not contemplated by the terms of Bankruptcy Code § 363. Bankruptcy lawyers have been known to draft lengthy (and often unintelligible) sales orders to include provisions that alter the Code and Bankruptcy Rules through over-broad definitions, as well as including third-party releases and exculpation clauses that may run afoul of Bankruptcy Code § 524(e). There should be an evidentiary basis for any proposed finding of "good faith" for purposes of Bankruptcy Code § 363(m). *See, e.g.*, *In re* M Capital Corp., 290 B.R. 743 (9th Cir. BAP 2003).

Third, the court will generally want to ensure that the sale procedures enable competing bidders to present offers for the assets at an auction or, if no auction is contemplated, at the time of the hearing on the sale motion. When competitive bidding is contemplated, the motion to sell and the notice of hearing should be accompanied by a motion to approve sale or bid procedures. A hearing on the procedures motion should be held sufficiently in advance (perhaps 10–20 days) of the date of the auction or presentation of competing bids as to enable other potential acquirors an opportunity to analyze the situation and prepare a competing bid. The procedures motion should describe such matters as the following:

- the time and place of the bidding process and whether telephonic participation will be permitted;
- the amount of any initial bid and whether a topping or break-up fee has been approved;
- the amount of any required overbid protection (overbid protection means that any new bids to purchase the property must represent a specified incremental increase over the initial bidder's price in order to be accepted);
- the amount of subsequent bidding increments;
- any right of first refusal or right to match previous bids offered to any party;
- the amount and form of any required bid deposits and the manner and timing of the return of bid deposits to unsuccessful bidders;
- whether bids will be accepted for less than all assets (i.e., whether bidding "in lots" rather than bidding only on the whole will be considered);
- the effect of the winning bidder's failure to close (e.g., loss of bid deposit, liability for other damages, obligations of next highest bidder to close);

- availability of due diligence information to bidders; and
- summary of essential terms of any purchase agreement.

A hearing on such a procedures motion may generally be scheduled on an expedited basis if necessary. If the court approves the procedures motion, the hearing on the motion to sell should be scheduled as soon as practicable thereafter. Competing bids are generally entertained at that hearing on the sale motion. Any prospective bidder should be prepared to disclose any financial contingencies associated with its offer and to demonstrate to the satisfaction of the court, through an evidentiary hearing, that it is able to consummate the transaction if it is the successful bidder.

The 2005 Amendments have added limitations on the sale or lease of "personally identifiable information" (defined in Bankruptcy Code § 101(41A)) by a debtor who offers a product or a service to individuals under a policy prohibiting the transfer of such information to nonaffiliated persons. In such cases, Bankruptcy Code § 363(b)(1) requires that the sale or use of such information either be consistent with the policy or the court must appoint a "consumer privacy ombudsman" under Bankruptcy Code § 332, and the sale or lease can occur only if the court approves it, taking into account "the facts, circumstances, and conditions of such sale or such lease" and finding that it would not violate applicable nonbankruptcy law. Under Bankruptcy Code § 332(b), the consumer privacy ombudsman may be heard at the hearing and may present information on

- the debtor's privacy practice;
- the potential losses or gains of privacy to consumers if the sale or lease is approved;
- the potential costs or benefits to consumers if the sale or lease is approved; and
- the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

If the debtor is not a moneyed, business, or commercial corporation or trust, the 2005 Amendments allow the use, sale, or lease of property of the debtor only "in accordance with applicable nonbankruptcy law that governs the transfer of property by [such] a corporation or trust." Bankruptcy Code § 363(d)(1). Satisfaction of this requirement is now a condition to confirmation under Bankruptcy Code § 1129(a)(16).

Use of Cash Collateral and Debtor-in-Possession Financing. One of the most pressing initial concerns of a Chapter 11 debtor is access to cash. Although some debtors who file for bankruptcy protection have unencumbered cash, accounts, and proceeds available to finance their opera-

tions, others generate cash that is subject to prepetition security interests of creditors and can use it only pursuant to the terms of Bankruptcy Code § 363(c)(2), or they must seek new financing sources through debtor-in-possession financing secured under Bankruptcy Code § 364. Any motion with respect to use of cash collateral or to obtain postpetition credit presents procedural and substantive issues.

Procedurally, the motion must comply with the requirements of Bankruptcy Rule 4001, as amended effective December 1, 2007. First, the motion must be accompanied by a form of order and, if it seeks approval of postpetition financing, a copy of the proposed credit agreement. Second, if the motion is more than five pages in length, it must begin with a concise statement (not more than five pages) of the relief requested that lists or summarizes and provides the location of material provisions. For a cash collateral order, Rule 4001(b)(1)(B) identifies four key provisions that must be highlighted:

- the name of each entity with an interest in the cash collateral;
- the purposes for which the cash collateral will be used;
- the material terms for the use of the cash collateral, including duration; and
- any liens, cash payments, or other adequate protection that will be provided.

For a proposed financing, Rule 4001(c)(1)(B) requires that the motion set forth the interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. In addition, if the credit agreement contains any of several enumerated provisions, including the grant of priority or a lien on property of the estate, additional disclosure must be made with respect to each one.

A motion that complies with Bankruptcy Rule 4001 must be served on any creditors' committee or, if one has not been appointed, on the twenty largest creditors listed on the schedule filed with the petition. If the motion seeks to use cash collateral, any entity with an interest in the cash collateral must also be served.

The court must then determine when to rule on such a motion. Debtors frequently file motions for the entry of an order approving an agreement to use cash collateral or to obtain credit on an expedited basis early in the case, before the organizational meeting of the creditors' committee and before the section 341 meeting is held. Such agreements are the result of negotiations between a creditor and the debtor, both of whom

will be supporting the request for immediate entry of an order approving their efforts.

When such motions are filed with the court on or shortly after the date of the filing of the petition, the court may choose to grant only interim relief under Bankruptcy Rule 4001(c)(2) with respect to the motion in order to avoid immediate and irreparable harm to the estate pending a final hearing. By granting interim relief, the court allows the debtor access to cash but defers approving any substantive terms of the financing arrangement that justify closer scrutiny, as discussed below. A final hearing on the motion can then be held after notice and hearing pursuant to Bankruptcy Rule 4001, at least fifteen days after service of the motion.

Substantively, the judge must consider whether the provisions included in the proposed order are appropriate. Some courts have identified for the benefit of bankruptcy lawyers the provisions they generally will not approve in such orders. Exhibit II-5 provides one court's guidelines. Other courts do not categorically disapprove such provisions, but require that any such included provisions be identified by the movant, with the location of the provision in the agreement specified (perhaps in a cover sheet). The court may then consider whether to approve the provision based on the facts and circumstances of the specific case. Exhibit II-6 provides a local rule taking this approach.

Where the court does not automatically disallow the following provisions, the movant will generally have to show the necessity of including them:

- cross-collateralization of prepetition debt of a prepetition creditor, that is, securing prepetition debt with postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law;
- "roll-ups" of prepetition debt, meaning the application of proceeds of postpetition financing to pay, in whole or in part, prepetition debt;
- provisions or findings of fact that purport to bind the estate or all parties in interest with respect to the validity, perfection, extent, or amount of the secured creditor's prepetition lien or debt or that waive or release any or all claims against the secured creditor without giving parties in interest a reasonable period to investigate the facts and bring any appropriate proceedings to challenge those provisions or findings (generally 60–90 days);
- provisions that seek to waive the estate's rights to a surcharge under Bankruptcy Code § 506(c);

- provisions granting a lien on the debtor's claims and causes of action arising under Bankruptcy Code § 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a) and the proceeds thereof, or a superpriority administrative claim payable from the proceeds of such claims and causes of action;
- provisions providing less-favorable treatment for professionals retained by a creditors' committee than the treatment provided for the professionals retained by the debtor with respect to a professional fee carve-out;
- provisions providing the creditor relief from the automatic stay without further notice, order, or hearing upon breach of the cash collateral or financing order or agreement;
- provisions that prime any secured lien, without the consent of the creditor whose liens are primed;
- provisions that limit or restrict the right of a debtor or any other party in interest to submit a plan of reorganization, or which would affect the terms of any such plan; and
- provisions waiving, modifying, or limiting the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of such a lien.

Problematic recitations in a proposed order include those that incorporate specific sections of the underlying agreements without describing their effect; those indicating that the court has examined all of the underlying agreements or approves of their terms; statements that the interested parties have had "sufficient and adequate" notice or opportunity to object; and lengthy recitations of fact or any other unnecessary or unduly verbose provisions.

How a judge handles an early motion with respect to cash collateral or the extension of credit may provide a signal to the parties indicating how the judge will approach other submissions made in the case. If the judge looks carefully at any such motion and refuses to provide broader relief than that to which the parties are entitled under the Bankruptcy Code, the parties will know that subsequent submissions are likely to encounter the same scrutiny.

Payment of Employees. One of the debtor's early motions in a megacase may be one seeking authority to pay its employees prepetition wages, salaries, or commissions and related benefits. Sometimes the motions are limited to the amount of these claims that constitute priority claims under

Bankruptcy Code § 507, although the amounts sometimes substantially exceed those limits. Maintaining the good will of the workforce is critically important in the early days of a bankruptcy case and employees generally suffer severe financial hardship if they are not paid until distributions to creditors are made pursuant to a plan of reorganization. Therefore, secured creditors and administrative expense claimants with a higher priority claim generally do not object to the immediate payment of employees up to the priority limit. They may object to, and courts generally scrutinize more carefully, motions that seek to pay amounts in excess of the priority limit, particularly if substantial amounts are being paid to senior management. The 2005 Amendments increased the priority limit for wages, salaries, or commissions, including vacation, severance, and sick-leave pay, from $4,925 to $10,000 per person (and also increased from 90 to 180 days the reach-back period in which these amounts may be earned). The Amendments also established a similar increase with respect to employee benefits. These changes should decrease, to some extent, controversial requests to pay prepetition wages, salaries, or commissions and related benefits.

A motion to pay prepetition wages, salaries, or commissions and related benefits is often handled on an expedited basis, even as a first day order, to avoid missing the regular payroll, which, because of the timing of the bankruptcy filing, includes prepetition amounts. Exhibit II-7 is a sample order authorizing employee payments.

Payment of Critical Vendors. Another motion the debtor may make early in the mega-case is one seeking permission to pay so-called "critical vendors" with respect to their prepetition claims. Debtors justify such motions on the theory that, if the requested prepetition payments are not made, these vendors will be unwilling to continue to ship needed goods to the debtor and the debtor will be denied the opportunity to reorganize. The Bankruptcy Code provides no explicit authority to pay unsecured prepetition claims before a Chapter 11 plan is confirmed. Nevertheless, pre-Code decisions involving nineteenth century railroad reorganizations created the so-called "doctrine of necessity" that allowed payment of prepetition debts in order to ensure that supplies or services necessary to the survival of the debtor were provided. *See* Miltenberger v. Logansport, 106 U.S. 286 (1882); *In re* Lehigh & New England Railway Co., 657 F.2d 570, 581 (3d Cir. 1981). Because critical-vendor payments are claimed to be essential to avoid a debtor's liquidation, some courts have approved immediate payment of critical vendors under Bankruptcy Code § 105. *See, e.g.*, *In re* Tropical Sportswear International Corp., 320 B.R. 15 (Bankr.

M.D. Fla. 2005); *In re* Worldcom, Inc., 2002 WL 1732647 (Bankr. S.D.N.Y. 2002); *In re* Just for Feet, Inc., 242 B.R. 821 (D. Del. 1999).

However, payment of critical vendors is controversial, because it undermines the fundamental policy underlying the Bankruptcy Code of equal treatment of similarly situated creditors. Therefore, some courts have found such payments inappropriate under any circumstances, or have required that the debtor show that the vendors would cease dealing with the debtor in the absence of such payments and that the benefit to the estate is sufficiently great that the payments would not disadvantage other creditors not receiving the payments. *See, e.g.*, *In re* Kmart Corp., 359 F.3d 366 (7th Cir. 2004); *In re* CoServ, L.L.C., 273 B.R. 487 (Bankr. N.D. Tex. 2002); *In re* Timberhouse Post & Beam, Ltd., 196 B.R. 547 (Bankr. D. Mont. 1996).

The 2005 Amendments made certain changes to the Code that may make critical-vendor motions less frequent. Congress added section 503(b)(9), which gives all vendors an administrative expense claim for the value of any goods sold to the debtor in the ordinary course of the debtor's business and received by the debtor within twenty days before the date the case commences. In addition, the revisions to the right of reclamation in section 546(c) and the more generous "ordinary course of business" defense to preference attack in revised section 547(c)(2) may protect many of those critical vendors who were the subject of first day motions. *See generally* Alan N. Resnick, *The Future of the Doctrine of Necessity and Critical-Vendor Payments in Chapter 11 Cases*, 47 B.C. L. Rev. 183 (2005).

In addition, Bankruptcy Rule 6003, effective December 1, 2007, precludes approval of a motion to pay prepetition claims within twenty days after the filing of the petition except as is "necessary to avoid immediate and irreparable harm." If critical-vendor motions are not only less necessary, but are also excluded from ex parte or limited notice resolution, much of the controversy about them may subside.

Insurance Proceeds. If a debtor is confronted with substantial liability claims that have precipitated the bankruptcy, the debtor's liability policy (and the payments that may be made thereunder) may be a major asset of the estate. The question may arise early in the case whether litigation involving the insurance proceeds will be centralized in the bankruptcy court or will proceed in other courts as long as no effort is made to reach the debtor or its other assets. A number of courts have used channeling injunctions and other procedures to address these issues. (A full discussion of those matters is beyond the scope of this Guide.)

To resolve this issue, the court must decide whether the liability policy or its projected proceeds constitute property of the estate under Bankruptcy

Code § 541(a)(1). If the court decides that the proceeds of the policy are property of the estate, any act to obtain possession of those proceeds would be barred by the automatic stay. Although courts almost uniformly conclude that the language of section 541(a)(1) is broad enough to cover the debtor's interest in the liability insurance policy, *see, e.g.*, *In re* Vitek, Inc., 51 F.3d 530, 533 (5th Cir. 1995); MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 92 (2d Cir. 1988); Tringali v. Hathaway Machinery Co., 796 F.2d 553, 560–61 (1st Cir. 1986); A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 1001–02 (4th Cir. 1986); *In re* Minoco Group of Cos., Ltd., 799 F.2d 517, 519 (9th Cir. 1986), the courts are in disagreement over whether the proceeds of a liability insurance policy are property of the estate.

Some courts have found the debtor's interest in the liability policy necessarily extends to the proceeds of that policy, and therefore conclude that claimants are barred from pursuing any action to reach the insurance proceeds. *See* Tringali v. Hathaway Machinery Co., 796 F.2d 553, 560–61 (1st Cir. 1986). Others have looked at the identity of the beneficiary or beneficiaries of the liability policy. If payments by the insurer can be made only to third parties (and not to the debtor), these courts conclude that the proceeds do not constitute property of the estate and are therefore not protected by the automatic stay. *See In re* Edgeworth, 993 F.2d 51 (5th Cir. 1993) (holding that the proceeds of a physician's liability policy were not part of the physician's bankruptcy estate). Such an approach may be particularly relevant for directors' and officers' liability policies. *See, e.g.*, *In re* Louisiana World Exposition, Inc., 832 F.2d 1391 (5th Cir. 1987). A different approach may be necessary if the claims against the debtor exceed the expected liability insurance coverage, so that failure to enjoin actions to recover under the policy would result in a race to the courthouse to seek recovery from the policy. *See Vitek,* 51 F.3d at 535. Such a race could mean unfair results between similarly situated claimants and could also prevent a bankruptcy court from marshaling the insurance proceeds, along with other assets, so as to maximize overall distributions and preserve the estate. *But see* Landry v. Exxon Pipeline Co., 260 B.R. 769, 792–93 (Bankr. M.D. La. 2001).

Similar issues may arise with respect to workers' compensation claims. To the extent that such claims are to be paid by non-estate funds (e.g., a state insurance fund or surety bonds), property of the estate may not be at issue in any workers' compensation proceeding. Therefore, even if the proceeding is not excluded from the automatic stay by the regulatory proceeding exception of Bankruptcy Code § 362(b)(4), *see In re* Mansfield Tire & Rubber Co., 660 F.2d 1108, 1112–14 (6th Cir. 1981) (finding it excluded),

it may not be covered by the automatic stay in the first instance. *See* EEOC v. Rath Packing Corp., 787 F.2d 318, 324 (8th Cir. 1986).

Seller's Right of Reclamation. Creditors who sell goods on credit to the debtor shortly before bankruptcy, if the debtor has received the goods while insolvent, are provided special rights under the Bankruptcy Code both with respect to reclamation of the goods if they are still in the hands of the debtor and with special priority for their value in certain circumstances.

Until 2005, section 546(c) of the Bankruptcy Code essentially recognized the state law of reclamation (Uniform Commercial Code § 2-702(2)), with minor modifications. The 2005 Amendments modified section 546(c) to permit a seller who has sold goods to the debtor in the ordinary course of the seller's business to reclaim the goods, if the debtor received the goods while insolvent, within forty-five days before the commencement of the case. To reclaim the goods, the seller must make a written demand within forty-five days after debtor's receipt of the goods, or twenty days after commencement of the case, whichever period is longer. This section 546(c) right of reclamation is, however, "subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof." It is unclear whether this language gives the seller a right to excess proceeds of the goods after the secured creditor forecloses.

Under section 503(b)(9), enacted in 2005, if the seller does not make a timely demand for reclamation, or for any other reason fails to obtain reclamation of the goods, the seller is still entitled to an administrative expense claim for the value of the goods if the goods were sold to the debtor in the ordinary course of the debtor's business and were received by the debtor within twenty days before commencement of the case.

A court confronted with a large number of reclamation claims may wish to consider consolidating them into a single proceeding and designating a lead counsel to argue any common questions of law.

Postpetition Utility Services. Bankruptcy Code § 366 bars a utility from altering, refusing to provide, or discontinuing service to, or discriminating against, a trustee or debtor solely on the basis of the commencement of a bankruptcy case. However, in a Chapter 11 case the utility is permitted to alter, refuse to provide, or discontinue service if the utility is not provided "adequate assurance of payment for utility service that is satisfactory to the utility" within thirty days of the filing of the petition.

Bankruptcy courts were previously divided over whether an administrative expense priority claim could be given to the utility in lieu of a

deposit. The 2005 Amendments to section 366 explicitly provide that "administrative expense priority shall not constitute an assurance of payment." Instead, "assurance of payment" is defined to mean "(i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee."

Prior to the 2005 Amendments, the bankruptcy court was often asked to decide the adequacy of both the form and amount of the assurance. Because the adequate assurance of payment must now be "satisfactory to the utility" in a Chapter 11 case, presumably the utility must be satisfied both with the form of the assurance of payment and with its amount. Therefore, the debtor must undertake individual negotiations with its utility providers at its various locations to provide adequate assurance of payment, rather than securing a single section 366 order establishing the form and amount (or methodology for determining the amount) of such assurance. The debtor may file a motion pursuant to section 366(c)(3) early in the case presenting its offer of adequate assurance (for example, a cash deposit equal to one month's average usage) and asking the court to determine that it constitutes adequate assurance in the absence of an objection by the utility. The court may wish to set a single court date for the entry of any section 366 orders within thirty days after the petition is filed.

Pension Plan Withdrawal Liability. Under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001–1461 (2006), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Pub. L. No. 96-364, 94 Stat. 1208 (1980), a complete withdrawal from a multiemployer plan is deemed to occur when a participating employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. 29 U.S.C. § 1383 (2006). A 70% contribution decline or a partial cessation of contribution obligations results in a partial withdrawal. *Id.* § 1385. When there is a complete or partial withdrawal, the employer may incur significant withdrawal liability for an allocable amount of unfunded vested benefits, as adjusted. *Id.* § 1391. The statute provides that any disputes between an employer and the plan sponsor of a multiemployer plan concerning determinations of withdrawal liability under the Act shall be resolved through arbitration. *Id.* § 1401(a)(1).

When the employer is in bankruptcy, those bankruptcy courts that have confronted the issue have concluded that, under ERISA, the bankruptcy court has the authority to determine the amount of the claim of the plan sponsor for withdrawal liability without referring the matter for

arbitration. *See In re* Interco Inc., 137 B.R. 993, 995–96 (Bankr. E.D. Mo. 1992); *In re* T.D.M.A., Inc., 66 B.R. 992, 997 (Bankr. E.D. Pa. 1986); *In re* Amalgamated Foods, Inc., 41 B.R. 616, 617–18 (Bankr. C.D. Cal. 1984). These courts have noted that no special expertise is necessary to determine withdrawal liability, and the court should determine the validity and amount of such a claim as part of the normal claims-resolution process.

Appointment of Trustee or Examiner. Under Bankruptcy Code § 1104(a), at any time after the commencement of a case, any party in interest or the U.S. trustee may request appointment of a trustee "for cause, including fraud, dishonesty, incompetence, or gross mismanagement . . . either before or after commencement of the case," or if the appointment would be "in the interests of creditors, any equity security holders, and other interests of the estate," or if grounds exist for conversion or dismissal of the case under section 1112, but the court determines that the appointment of a case trustee is "in the best interests of creditors and the estate." Under the 2005 Amendments, the grounds in section 1112 for converting or dismissing a case (and, therefore, the grounds for appointing a trustee under section 1104) have been substantially expanded. In addition, under the 2005 Amendments, the U.S. trustee is directed to move for the appointment of a trustee if there are reasonable grounds to suspect that certain members of the debtor's management or Board of Directors "participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting." Bankruptcy Code § 1104(e).

When the relationship between creditors and management has been troubled, a motion for the appointment of a trustee may be made early in a case. Bankruptcy courts also have the authority to appoint a trustee sua sponte. *See In re* Bibo, Inc., 76 F.3d 256, 258 (9th Cir. 1995). Although appointing a trustee in a Chapter 11 case is an extraordinary remedy, and there is a "strong presumption" that the debtor should be permitted to remain in possession, *see In re* Marvel Entertainment Group, Inc., 140 F.3d 463, 471 (3d Cir. 1998), such motions must be granted when the required showing is made by "clear and convincing" evidence. *Marvel*, 140 F.3d at 471. Cases in which courts have appointed trustees tend to involve conflicts of interest or self-dealing; misuse of debtor assets; inadequate record keeping and reporting; failure to file required documents or misrepresentations in those documents; financial mismanagement; failure to pay or withhold taxes or failure to file returns; fraud or dishonesty; failure to comply with court orders; and lack of credibility and creditor confidence.

In considering whether to appoint a trustee, the court must also weigh the benefits of the appointment against the costs associated with such an

action, including the compensation that will be paid to the trustee and the cost implicit in replacing current management with a team that is less familiar with the debtor and its operations. *See* Schuster v. Dragone, 266 B.R. 268, 271 (D. Conn. 2001); *In re* SunCruz Casinos, LLC, 298 B.R. 821, 829 (Bankr. S.D. Fla. 2003).

A less dramatic step than the appointment of a trustee is the appointment of an examiner. Under Bankruptcy Code § 1104(c), a party in interest or the U.S. trustee may request the appointment of an examiner "to conduct such an investigation of the debtor as is appropriate." The court is directed to appoint an examiner if the appointment "is in the interests of creditors, any equity security holders and other interests of the estate," or if "the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5,000,000." Most courts conclude that appointment of an examiner is mandatory if the $5 million threshold is met. *See In re* Revco D.S., Inc., 898 F.2d 498 (6th Cir. 1990); *In re* Loral Space & Communications, Ltd., 2004 WL 2979785 (S.D.N.Y. 2004); *In re* UAL Corp., 307 B.R. 80, 84 (Bankr. N.D. Ill. 2004).

Appointment of an examiner may be beneficial to the case for many reasons. For example, an investigation by the examiner may cost significantly less, and be conducted in less time, than would individual investigations of the debtor by multiple parties, particularly those who are involved in other aspects of the case. The examiner may also be able to serve as an unbiased third party, resolving disputes between the parties and helping to facilitate management or reorganization issues that might otherwise become more contentious. *See generally* Barry L. Zaretsky, *Symposium on Bankruptcy: Chapter 11 Issues: Trustees and Examiners in Chapter 11*, 4 S.C. L. Rev. 907, 910 (Summer 1993).

An examiner's duties include investigation of the debtor and the debtor's business and "any other matter relevant to the case or to the formation of a plan," as well as "other duties of the trustee that the court orders the debtor in possession not to perform." Bankruptcy Code § 1106(b). The bankruptcy court retains broad discretion to direct the examiner's investigation by defining its nature, extent, and duration. Exhibit II-8 provides a sample order for appointing an examiner. Among other tasks, examiners have been given the duty to mediate plan negotiations, assist with the resolution of disputed claims, prosecute claims on behalf of the debtor, review fee applications of professional persons, or provide advice to the court with respect to specialized areas of the law. The scope of the examiner's role is determined by the facts and circumstances of the particular case. In defining the duties to be performed by an examiner, the court should consider

whether those duties are already being performed by professionals for the debtor or the committees and whether the cost of certain tasks outweighs the benefits to be derived.

Assumption or Rejection of Executory Contracts or Leases. Under Bankruptcy Code § 365, a trustee or debtor-in-possession is given the option to assume or reject any executory contract or unexpired lease, subject to court approval. For executory contracts and unexpired leases of residential real property, the trustee in a Chapter 11 case is given until confirmation of a plan to make its decision. Bankruptcy Code § 365(d)(2). For unexpired leases of nonresidential real property under which the debtor is the lessee, the lease is deemed rejected if the trustee does not act before the earlier of 120 days after the date of the order for relief or the date of confirmation of a plan. Bankruptcy Code § 365(d)(4). The court may extend the 120-day period for cause for 90 days on motion of the debtor or lessor, but further extensions require the prior written consent of the lessor. *Id.*

Bankruptcy Rule 6003, effective December 1, 2007, prohibits the court from granting motions to assume or assign executory contracts and unexpired leases for the first twenty days of the case, unless granting relief is necessary to avoid immediate and irreparable harm. The purpose of this rule is to alleviate some of the time pressure at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The debtor in a mega-case may be party to a great number of executory contracts and unexpired leases. As a result, the debtor may file a motion seeking to assume or reject multiple contracts or leases at the same time. The concern with such omnibus motions is that individual parties to contracts or leases listed in such a motion may fail to receive effective notice of the motion when their names are included in a long list of parties against whom relief is sought.

Bankruptcy Rule 6006, as amended effective December 1, 2007, imposes significant limitations on motions to assume, reject, or assign multiple executory contracts or unexpired leases.

First, under Bankruptcy Rule 6006(e), no motion to assume or assign may be brought without prior court authorization unless either all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee, or the motion covers unexpired leases of real property to be assumed, but not assigned to more than one assignee.

Second, all omnibus motions to reject and motions to assume or assign permitted under Rule 6006(e) must satisfy the requirements set forth in Rule 6006(f); the motions must

- state in a conspicuous place that parties receiving the motion should locate their names and their contracts in the list of parties against whom relief is sought;
- list all parties against whom relief is sought by any such motion alphabetically and identify the corresponding contract or lease;
- specify the terms, including curing defaults, for each proposed assumption or assignment;
- specify the terms (including the identity of the assignee) for each proposed assignment;
- be numbered consecutively with other such omnibus motions; and
- limit the number of executory contracts and unexpired leases in any such omnibus motion to 100.

When the court approves a motion seeking assumption or assumption and assignment of an executory contract or lease, the order should include appropriate provisions addressing the cure of any defaults under the contract or lease. If the court approves rejection of an executory contract or lease, the deadline and procedure for filing proofs of claim for rejection damages should be established at the same time.

Retention and Payment of Professionals

Retention of Professionals. In a mega-case, both the debtor and any official committee will seek to employ attorneys, accountants, financial advisers, and other professionals to assist them pursuant to Bankruptcy Code §§ 327 and 1103. Such professionals may not be awarded compensation for their services if at any time during their employment they are not "disinterested persons" or if they represent or hold "an interest adverse to the interest of the estate" with respect to the matter of the employment. Bankruptcy Code § 328(c). Special counsel who have represented the debtor may be retained by the trustee under Bankruptcy Code § 327(e) with the court's approval if such retention is "in the best interest of the estate" and the attorney does not "represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which the attorney is to be employed."

The party seeking approval of the retention of a professional person must file with the bankruptcy court an application stating the facts requiring the retention as set forth in Bankruptcy Rule 2014(a), accompanied by

a verified statement or affidavit of the professional person setting forth any connections with the parties in interest and a proposed order approving the motion. Promptly after learning of any additional material information relating to the proposed retention (such as potential or actual conflicts of interest), the professional should file a supplemental verified statement or affidavit setting forth such additional information. Any such application should highlight the statutory basis for the retention. It should also disclose whether the professional person is holding a retainer from the debtor. If the professional is holding a retainer, the proposed order should specifically address the circumstances under which the retainer may be retained and/or applied to the professional's fees and expenses. Any attorney representing the debtor must file the statement, required by Bankruptcy Code § 329 and Rule 2016(b), with the application. In addition, some courts require that the debtor's professionals provide information regarding payments received by them within ninety days before the bankruptcy filing, because being a preference defendant themselves would create an actual conflict. *See, e.g.*, *In re* Florence Tanners, Inc., 209 B.R. 439, 448 (Bankr. E.D. Mich. 1997), *aff'd in part*, Halbert v. Yousif, 225 B.R. 336, 347 (E.D. Mich. 1998); *In re* American Thrift & Loan Ass'n, 137 B.R. 381, 387–88 (Bankr. S.D. Cal. 1992).

Some courts require that an application include a specific recitation of the anticipated services to be rendered by the professional, together with an estimate of the cost associated with each such service. Courts may also require that the order include the proposed terms and method of calculating compensation. For professionals other than general counsel for the debtor and for the official committees, the court may consider imposing a reasonable fee cap based on the estimate contained in the application, subject to adjustment by motion. Some courts also ask the professionals to provide a "budget" and the court then monitors the performance of the professional against the budget at subsequent fee hearings.

All parties in interest should be afforded an opportunity to object to an application for retention, and, if objections are filed, the motion should be subject to a hearing. Indeed, to ensure the matter is given full and close consideration, Bankruptcy Rule 6003, effective December 1, 2007, prohibits the court from granting relief on applications for the employment of professional persons for the first twenty days of the case. However, if a motion is granted, the retention should generally be made effective as of the date the motion was filed, unless the court orders otherwise.

The bankruptcy court should be wary of proposed orders that contain inappropriate or misleading provisions. There has been substantial debate

over provisions providing for indemnification of professionals; some professionals seek court approval for the debtor to indemnify them for their own negligence. *See* United Artists Theatre Co. v. Walton, 315 F.3d 217 (3d Cir. 2003). Some engagement letters provide for arbitration of any fee dispute. Other engagement letters have sought to limit any recovery the estate may have against such professionals to the amount of fees earned by them in the engagement. Such provisions are most common in engagement letters of investment bankers and may be found objectionable.

Courts differ over whether the general requirements of Bankruptcy Code § 327 should apply to the debtor's "ordinary course" professionals, i.e., those professionals who, prior to the debtor's bankruptcy, have been working for the debtor handling routine legal work (such as real estate matters or tax issues). Some courts, citing their authority under Bankruptcy Code § 105, allow these professionals to be paid in the ordinary course of business as long as their fees do not exceed a specified monthly amount and they file a statement of disinterestedness. This procedure permits the debtor's operations to continue undisturbed without requiring perhaps dozens of retention applications and an equal number of applications for compensation that must be approved by the court. Other courts demand that all professionals, including those providing ordinary course services, comply with the requirements of the Code and the Rules governing retention, noting that the ordinary course exception removes the court's control over the retention process, allowing the debtor to retain professionals without the court knowing that a professional has been employed or what that professional has been hired to do.

Payment of Interim Fees. Bankruptcy Code § 331 allows a professional person employed under Bankruptcy Code § 327 or § 1103 to apply to the court "not more than once every 120 days" (or more often if the court permits) for interim compensation. Most courts allow more frequent awards and simplified procedures in a mega-case where professional persons are spending large amounts of time on the case and delay in receipt of compensation may create a significant financial hardship.

Some bankruptcy courts, after notice and a hearing, approve a streamlined procedure for periodical payment of fees and costs prior to actual allowance by the court. For example, the court may permit a professional person to receive the fees and expenses requested, perhaps with a "hold back" of a portion of the fees, by submitting a request supported by contemporaneous billing records. Such a request is filed with the bankruptcy clerk and served on the Short List, and in the absence of an objection (which does not prejudice the right of any party to object to the court's

ultimate allowance of the fees and costs), the interim payment is made. If there is an objection, that portion of the requested fees and costs to which an objection is made is not disbursed. When the court has a hearing to allow fees and expenses (perhaps every 120 days), the fees and any expenses held back from the monthly disbursement may be distributed if allowed. If the court does not ultimately approve the fees and expenses previously paid to a professional, the recipient must disgorge the funds so received. A sample administrative order establishing procedures for interim compensation of professionals on a monthly basis can be found at Exhibit II-9.

Although such an approach has been used in many cases and has been expressly upheld when challenged by several courts, *see, e.g.*, *In re* ACT Manufacturing, Inc., 281 B.R. 468 (Bankr. D. Mass. 2002); *In re* Mariner Post-Acute Network, Inc., 257 B.R. 723 (Bankr. D. Del. 2000); *In re* Pittsburgh Corning Corp., 255 B.R. 162 (Bankr. W.D. Pa. 2000); *In re* Knudsen, 84 B.R. 668 (9th Cir. BAP 1988), some courts have rejected this procedure, stating that there is no statutory basis for allowing the payment of fees and expenses prior to allowance. *See, e.g.*, *In re* Commercial Financial Services, Inc., 231 B.R. 351 (Bankr. N.D. Okla. 1999); *In re* Gemlime Group, L.P., 167 B.R. 453 (Bankr. N.D. Ohio 1994). These courts are willing to allow fees more frequently than once every 120 days, but only with approval by the court upon application and after notice and a hearing under Bankruptcy Code § 331.

When the court is considering the appropriate procedures for awarding interim fees, the court should be sensitive to the financial position of the debtor. If the debtor has operational needs for cash that would be impaired by frequent payments of professionals, such payments may not be warranted. Alternatively, the debtor may prefer for cash-management purposes to pay professionals monthly rather than face a huge bill every 120 days. This allows the debtor to keep a tighter rein on activities by the professionals. If the debtor is likely to be administratively insolvent, the court may not wish to award professional persons more than they would be likely to receive at the end of the case. The court may also wish to ensure that fees are held back in an amount sufficient to allow adjustments when the final fee award is made.

Evaluation and Allowance of Fees. Prior to 1994, Bankruptcy Code § 330(a) directed courts to consider "the nature, the extent, and the value" of the services performed by a professional person in making an award of "reasonable compensation," as well as the "time spent on such services, and the cost of comparable services" in nonbankruptcy situations. In 1994, and again in 2005, Bankruptcy Code § 330(a) was amended to provide more

statutory guidance on the appropriate factors to be considered in awarding compensation. These factors include

- the time spent on such services;
- the rates charged for such services;
- whether the services were necessary or beneficial to the bankruptcy case;
- whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task;
- whether a professional person seeking compensation is board certified or has otherwise demonstrated skill and experience in the bankruptcy field; and
- whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than bankruptcy cases.

Congress also explicitly directed that compensation should be disallowed for unnecessary duplication of services, or services that were not reasonably likely to benefit the debtor's estate or were not necessary to the administration of the case. Bankruptcy Code § 330(a)(4)(A).

Any person seeking compensation for services, or reimbursement of expenses, is directed by Bankruptcy Rule 2016(a) to file an application "setting forth a detailed statement of (1) the services rendered, time expended, and expenses incurred, and (2) the amounts requested." Some districts have adopted local rules or general orders providing specific guidelines on such applications, on the types of services that will be compensable, and on how various expenses will be treated. Among other things, the court may specify a uniform format for fee applications, including perhaps the requirement of a cover sheet that clearly summarizes the fees requested and the total fees already allowed to that professional. For examples of a local form for fee applications and a general order concerning guidelines for compensation and expense reimbursement, see Exhibits II-10 and II-11. If the applicable jurisdiction has no general order or local rule, the bankruptcy judge may wish to consider establishing fee application procedures and guidelines for the particular mega-case. For an example of such an order, see Exhibit II-12.

One issue that has divided courts in mega-cases is whether professionals who are based in a jurisdiction other than that in which the court sits should be allowed fees based on their normal billing rates, or whether the professionals should be bound by those rates charged by professionals in

the local jurisdiction, *see, e.g.*, *In re* Seneca, 65 B.R. 902, 911 (Bankr. N.D. Okla. 1986); *In re* Shaffer-Gordon Associates, Inc., 68 B.R. 344 (Bankr. E.D. Pa. 1986); *In re* Geofreeze Corp., 50 B.R. 200, 202 (Bankr. E.D. Va. 1985); *In re* Global International Airways Corp., 38 B.R. 440 (Bankr. W.D. Mo. 1984). As bankruptcy practice becomes more national in scope, bankruptcy courts may be more willing to allow an award of compensation at the rate generally charged by a retained professional without regard to what those providing similar services in the local market charge. Bankruptcy judges who have handled mega-cases have recognized the value brought to the case by national professionals experienced in complex cases and have recognized that such professionals should be compensated accordingly.

Sometimes financial advisers (which tend to be investment banking firms) request compensation on a basis different from that charged by attorneys (who generally bill on a lodestar basis of rate multiplied by hours worked). Investment bankers typically do not maintain time records, but bill on the basis of a flat fee for a project or a flat monthly fee for the duration of their services, sometimes coupled with a "success" fee. As a result, some bankruptcy courts have allowed financial advisers to be paid according to their usual engagement agreements instead of requiring adherence to the billing practices of attorneys.

Applying the required statutory factors of Bankruptcy Code § 330(a) to the many fee applications filed in a mega-case may be a burdensome task, one with which the court may need assistance. The court may be overwhelmed by fee applications if a procedure for reviewing them is not established as soon as possible. Only the bankruptcy judge may make the ultimate decision to award or deny fees, but effective review of the fee request requires that interested parties have an opportunity to inform the court whether the fee application justifies the compensation requested.

Because professional compensation is paid by the bankruptcy estate, in theory all creditors have an incentive to object to fees that are not justified. However, in practice objections to fee applications are not common. First, no single client has the same interest in controlling fees in bankruptcy (where fees come out of the estate) as it would were the client paying those fees. The clients (both debtor and creditors' committee) also are less likely to challenge the fees sought by their own professionals than they would outside bankruptcy, because they are so dependent on the assistance they are receiving and will be receiving during the case. Finally, there is also a perception that no professional wishes to challenge another professional's fee application lest his or her own application be subject to similar scrutiny by the disgruntled target of the original objection.

Courts have, therefore, recognized that an independent third party may be necessary to scrutinize all fee applications to determine whether the compensation sought is justified. Among the entities on whom courts have relied are the following:

- *U.S. trustee*—In some districts, the U.S. trustee takes an active role in reviewing fee applications. The Executive Office of the United States Trustee (EOUST) has adopted *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330* and is developing software to identify duplicate entries in time sheets submitted with fee applications and provides other technical assistance in reviewing applications. The U.S. trustee can ensure that the description of the work performed is accurate, that expenses are documented, that the hourly rates are consistent with work in other cases, and that the time spent on particular tasks is not excessive. The U.S. trustee can also provide recommendations to the judge on whether the professional is spending the appropriate amount of time on tasks.
- *Fee examiner*—Some courts have appointed their own experts or auditors to review fee applications and make recommendations to the court. While some courts have found such experts helpful, others have found that they add little to the scope of review provided by the U.S. trustee. Moreover, there is a perception that fee examiners may add to a case additional fees that exceed the benefit obtained and that a fee examiner may feel compelled to find something deficient in the fee applications subject to review in order to justify his or her appointment.
- *Budget (or fee audit) committee*—One approach that has met with some success is the appointment of a committee to contain costs during the bankruptcy case. The committee is usually composed of business people (representatives of the debtor, a U.S. trustee representative, and representatives from the creditors' committee) and is allowed to provide guidance to the professionals in the case as to whether certain activities are appropriate before they are pursued. The committee also reviews the fee petitions not only for the types of objections that may typically be made by the U.S. trustee (e.g., unsubstantiated expenses, excessive time on a particular task, or too many people at a meeting), but also for time spent on tasks not likely to create value for the client. If the committee has an independent third-party member, that third party will also be compensated from the estate.

When an independent third party serves as a filter for fee applications, the submissions to the court tend to be stripped of clearly objectionable material, making review by the court more efficient. To facilitate efficient review of fee petitions by an independent third party, the court can require that task codes, uniform for every professional, be used so that the third party can ascertain how much time is spent on each task by each professional. The court also can ask that budgets be established, by task, and it can review monthly costs against the budget, in order to control fees. By implementing effective mechanisms for controlling costs in a mega-case, and for reviewing fee applications, the court can combat the pervasive public perception that bankruptcy fees are too high and taint the legitimacy of the bankruptcy process.

Blank pages included to preserve pagination for double-sided printing.

III. Handling Litigation

Maintaining Control of the Litigation Process

Every adversary proceeding and contested matter in a bankruptcy case potentially presents the opportunity for major conflict. In a mega-case, with large amounts of money at stake, large amounts of money available to fund litigation, and a multiplicity of interested parties and issues, the risk of litigation spinning out of control magnifies. The bankruptcy judge must maintain control over the litigation process to ensure that each matter is resolved efficiently at the lowest cost possible. This section highlights some of the case-management issues the bankruptcy court might encounter in connection with litigation during the mega-case. Other publications describe other case-management issues and techniques that also may be relevant, but they will not be repeated here, *see, e.g.*, Case Management Manual for United States Bankruptcy Judges (Federal Judicial Center and Administrative Office of the U.S. Courts 1995); Manual for Complex Litigation, Fourth (Federal Judicial Center 2004); S. Elizabeth Gibson, Judicial Management of Mass Tort Bankruptcy Cases (Federal Judicial Center 2005).

Pretrial Management Techniques. Bankruptcy Rule 7016, which incorporates Federal Rule of Civil Procedure 16, authorizes the judge in adversary proceedings to conduct a pretrial conference or conferences to expedite the disposition of the action, establish control to avoid unnecessary protraction of the case, and facilitate settlement, among other goals. The court is required in most cases to enter a scheduling order with respect to the adversary proceeding limiting the time to join other parties, to amend the pleadings, to file motions, and to complete discovery. "[A]ny other matters appropriate in the circumstances of the case" may also be included in the order. An example of a pretrial scheduling order can be found at Exhibit III-1. Bankruptcy Code § 105(d)(1) also requires the court to hold "such status conferences as are necessary to further the expeditious and economical resolution of the case."

Although Bankruptcy Rule 7016 is not automatically applicable to "contested matters," the court has the authority pursuant to Bankruptcy Rule 9014(c) at any stage in a particular contested matter to direct that it applies. Thus, if a judge found that conducting a pretrial or settlement conference or issuing a scheduling order would facilitate the resolution of a contested matter in a mega-case, the judge could direct that Rule 7016 be applied.

The court also needs to exercise control over pretrial discovery. Federal Rule of Civil Procedure 26(b)(2)(C), made applicable to adversary proceedings by Bankruptcy Rule 7026 and to contested matters by Bankruptcy Rule 9014(c), allows the court, by order (either on its own initiative or upon motion), to limit the "frequency or extent of use of the discovery methods otherwise permitted," such as the number of depositions and interrogatories or the length of depositions. Such limitations may be appropriate when the court determines that "(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit." For a sample order limiting discovery, see Exhibit III-2.

Under Federal Rule of Civil Procedure 26(d), also applicable to adversary proceedings in bankruptcy cases under Bankruptcy Rule 7026, in most circumstances a party may not seek discovery from any source before the parties have engaged in a conference as described in Federal Rule of Civil Procedure 26(f) (not applicable to contested matters under Bankruptcy Rule 9014(c) unless the court directs otherwise). Such a conference must precede oral depositions (Rule 30(a)(2)(C)), depositions upon written questions (Rule 31(a)(2)(C)), service of interrogatories (Rule 33(a)), requests for production of documents (Rule 34(b)), and requests for admission (Rule 36(a)), unless the court orders otherwise or the parties stipulate to the contrary.

The conference must be held as soon as practicable and in any event at least twenty-one days before a scheduling conference is held or a scheduling order is due. The purpose of such a conference is "to consider the nature and basis of their claim and defenses and the possibility for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan." Form 35, Federal Rules of Civil Procedure, provides guidance on the form of a discovery plan. The plan is to be submitted to the court within fourteen days after the conference, Federal Rule of Civil Procedure 26(f), and serves as the basis for the court's scheduling order under Federal Rule of Civil Procedure 16. The attorneys of record and all unrepresented parties are jointly responsible for arranging the conference, attempting in good faith to agree on a proposed discovery plan, and submitting the plan to the court. If any party or attorney fails to participate in good faith in the development and submission of a proposed discovery plan, the court may

award reasonable expenses caused by the failure to the other party or parties, including attorneys' fees. Federal Rule of Civil Procedure 37(g).

Litigation in large Chapter 11 cases will increasingly involve the exchange of electronically stored information, such as e-mails, webpages, word-processing files, and databases. This information is stored in the memory of computers, on magnetic disks (such as computer hard drives and floppy disks), on optical disks (such as DVDs and CDs), and on flash memory devices (such as thumb or flash drives). Amendments to the Federal Rules of Civil Procedure that specifically address the discovery of electronically stored information and related management considerations are discussed in Barbara J. Rothstein, Ronald J. Hedges & Elizabeth C. Wiggins, *Managing Discovery of Electronic Information: A Pocket Guide for Judges* (Federal Judicial Center 2007).

Because full-blown litigation is costly, and the cost is borne by the bankruptcy estate (at least in part), settlement prior to trial may be the optimal resolution of some disputes, particularly in a mega-case. Some courts have found that the prospect of the court estimating disputed claims may encourage settlement, because the parties would rather determine the amount of claims than leave that issue to the bankruptcy judge. Although the bankruptcy judge may or may not choose to become involved personally in settlement discussions, when the court facilitates and encourages settlement discussions the parties tend to be more willing to pursue them. At the initial pretrial conference, for example, the judge may speak to the parties about the possibility of settlement and set up a schedule of meetings to be briefed on progress. In those districts with multiple bankruptcy judges, some judges who wish to avoid personal involvement in settlement negotiations (because the judge may have to resolve the dispute if it is not settled) have found it useful to request that a colleague on the court take a more active role as a settlement facilitator.

The Alternative Dispute Resolution Act of 1998, 28 U.S.C. §§ 651–658 (2006), directed each district court to "authorize, by local rule . . . , the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy." 28 U.S.C. § 651(b) (2006). Many bankruptcy courts have adopted their own local rules or general orders permitting the court to refer a dispute to mediation or, generally upon consent of the parties pursuant to Bankruptcy Rule 9019(c), to arbitration. Federal Rule of Civil Procedure 16(c), made applicable to adversary proceedings under Bankruptcy Rule 7016, encourages the court to consider and take appropriate action at any pretrial conference "with respect to . . . settlement and the use of special procedures to assist in resolving

the dispute when authorized by statute or local rule." The 1993 Advisory Committee Notes to Rule 16(c) suggest that this language refers to "possible use of alternative procedures such as mini-trials, summary jury trials, mediation, neutral evaluation, and nonbinding arbitration that can lead to consensual resolution of the dispute without a full trial on the merits."

Bankruptcy courts have referred a broad range of issues to mediation or arbitration, from routine adversary proceedings and contested matters to more complex disputes. An independent mediator may also assist in formulation of a plan of reorganization. Some courts, however, have explicitly excluded from eligibility for alternative dispute resolution the compensation of professionals and matters involving contempt or sanctions.

More information about the use of alternative dispute resolution in bankruptcy cases can be found in Robert J. Niemic, Donna Stienstra & Randall E. Ravitz, *Guide to Judicial Management of Cases in ADR* (Federal Judicial Center 2001).

Streamlining Trials. The nature of a mega-case, with its many parties (often geographically dispersed) and large amounts at stake, tends to magnify the challenges of managing the trial process. If there are multiple adversary proceedings pending that involve common questions of law or fact (such as multiple preference actions in which the issue of the debtor's solvency or whether payments were made "in the ordinary course of business" of the debtor may be presented), the court may consider ordering all the actions consolidated or may order a joint hearing or trial of any or all of the common matters under Federal Rule of Civil Procedure 42(a), made applicable to adversary proceedings under Bankruptcy Rule 7042. Even when those proceedings are pending in different courts, perhaps because of the changes to the venue provisions of 28 U.S.C. § 1409(b) made by the 2005 Amendments, the court may wish to coordinate proceedings pending in the different districts to minimize duplication of efforts. Suggestions for coordination between courts can be found in the *Manual for Complex Litigation, Fourth* § 20.14 (Federal Judicial Center 2004).

One of the most potentially time-consuming aspects of trial of an adversary proceeding or contested matter in a mega-case is the direct and cross-examination of witnesses by all interested parties. The bankruptcy court is directed by Federal Rule of Evidence 611(a), made applicable in bankruptcy cases by Bankruptcy Rule 9017, to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Among

the approaches some courts have found useful is requiring various groups of interested parties to select a lead counsel to conduct the examination on their behalf. Other courts have imposed strict limits on the length of trials or the examination or cross-examination of witnesses.

Another technique is to require by pretrial order that direct testimony be provided by declaration, submitted prior to trial under penalty of perjury, rather than by oral testimony in open court. Other parties may raise any evidentiary challenges prior to trial, and the witness must be available for cross-examination in person during the trial. The party presenting the witness may question the witness following cross-examination to present redirect testimony only. Such a mechanism has withstood several challenges that it fails to comply with Federal Rule of Civil Procedure 43(a) (made applicable to bankruptcy cases by Bankruptcy Rule 9017), which requires that "the testimony of witnesses shall be taken in open court" absent a federal law or rule to the contrary. *See, e.g.*, *In re* Gergely, 110 F.3d 1448, 1452 (9th Cir. 1997); *In re* Adair, 965 F.2d 777, 779 (9th Cir. 1992); *In re* Stevinson, 194 B.R. 509, 511 (D. Colo. 1996); *In re* Geller, 170 B.R. 183, 185 (Bankr. S.D. Fla. 1994). For an example of an order requiring presentation of testimony by declarations, see Exhibit III-3. Courts may also allow the admission of deposition testimony at trial under similar circumstances. *See, e.g.*, Haseotes v. Cumberland Farms, Inc., 216 B.R. 690, 694 (D. Mass. 1997). Although some courts have approved that procedure, it is subject to some debate.

Because contested matters are initiated by motion pursuant to Bankruptcy Rule 9014(a), and Federal Rule of Civil Procedure 43(e) (made applicable under Bankruptcy Rule 9017) permits the court to hear a motion "on affidavits presented by the respective parties" or "wholly or partly on oral testimony or depositions," testimony by declaration in a contested matter is clearly permissible. Bankruptcy Rule 9014(d) states that testimony of witnesses with respect to "disputed material factual issues" in contested matters is to be taken in the same manner as testimony in an adversary proceeding.

Federal Rule of Civil Procedure 43(a) provides the court an additional tool for streamlining trials: "For good cause shown in compelling circumstances and upon appropriate safeguards" the court may permit presentation of testimony in open court by "contemporaneous transmission from a different location." Although remote transmission of testimony is not to be used merely for the convenience of witnesses, it does permit the court to continue with the trial (rather than reschedule) in those rare circumstances when a witness is unable to attend trial but is able to testify from a different

location. As noted above, many courts are now using videoconferencing to allow witnesses and counsel to appear and testify from remote locations. For more information, see *Roundtable on the Use of Technology to Facilitate Appearances in Bankruptcy Proceedings* (Federal Judicial Center 2006).

Resolving Claims

A mega-case frequently involves a large number of claims. Although many of these claims may not be subject to objection, others may be disputed by the debtor or other parties in interest. The court should consider implementing a claims-resolution process that will deal with such challenges in an efficient manner that minimizes the need for judicial involvement.

Identification of Claims. The claims-resolution process relies primarily on the claimants to identify themselves by filing their claims pursuant to Bankruptcy Code § 501(a) within the time fixed by the court under Bankruptcy Rule 3003(c)(3). Their ability to do so depends in large measure on their receipt of notice, which must be sufficient to alert them to the necessity of filing a proof of claim by the bar date. Because most potential claimants who receive notice of the bar date are not well versed in bankruptcy law, the bankruptcy judge may wish to require that the notice be written in plain language that is comprehensible to the recipients. If more claimants are able to understand the notice they receive, the court will be less likely to confront large numbers of motions seeking permission to file claims after the bar date.

In some mega-cases, such as a mass tort mega-case, the identity of many of the potential claimants may be unknown to the debtor. As a result, the debtor may be unable to send individualized notices to the potential claimants to alert them of the need to file a claim. The Supreme Court has recognized that notice is "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). However, individualized notice is not necessarily required. Instead, the Constitution requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314. For known claimants, individualized notice is necessary, but for claimants "whose interests or whereabouts could not with due diligence be ascertained," the Supreme Court has approved notice by publication as constitutionally sufficient. *Id*.

Even when notice by publication is appropriate in a mega-case, designing the appropriate publication plan is complicated. The court may

wish to consider encouraging the debtor to retain a media/noticing consultant who can assist in designing an appropriate notice plan that will satisfy due process concerns. In addition to identifying the target audience for the notice, such a professional will also analyze "frequency and reach," that is, what publications or other types of media are likely to be read, seen, or heard by the target audience, and how often and over what period the notice must be disseminated to maximize the likelihood that the target audience will receive it. The role of the court is not to formulate the plan for giving notice, but to rule on whether the plan proposed by the debtor satisfies the requirements of due process.

Even if notice by publication satisfies due process concerns with respect to unknown, present claimants, whether constitutionally sufficient notice can ever be provided to future claimants remains an unresolved issue. For a further discussion of the due process rights of unknown present and future claimants in mass tort bankruptcy cases, see S. Elizabeth Gibson, *Judicial Management of Mass Tort Bankruptcy Cases* (Federal Judicial Center 2005).

Class Claims. One objection that may be raised is to a proof of claim filed by a representative on behalf of a class of similar claims. Although most courts have concluded that these "class proofs of claim" are permissible, at least when the class was certified prepetition, the courts are not uniform. *Compare In re* Birting Fisheries, Inc., 92 F.3d 939 (9th Cir. 1996); *In re* Charter Co., 876 F.2d 866 (11th Cir. 1989); Reid v. White Motor Corp., 886 F.2d 1162 (6th Cir. 1989); *In re* American Reserve Corp., 840 F.2d 487 (7th Cir. 1988); *In re* Trebol Motors Distributor Corp., 220 B.R. 500 (1st Cir. BAP 1998) (allowing class proof of claim), *with In re* Standard Metals Corp., 817 F.2d 625 (10th Cir. 1987), *aff'd in part and rev'd in part on other grounds sub nom.* Sheftelman v. Standard Metals Corp., 839 F.2d 1383 (10th Cir. 1987) (holding class proofs of claim impermissible). *Cf. In re* Craft, 321 B.R. 189 (Bankr. N.D. Tex. 2005) (allowing class proof of claim for a class certified prepetition, but disallowing class proof of claim for a class not certified prepetition).

If the court permits a class proof of claim, the court may have to decide whether the class representative may vote on behalf of the class. Some courts have permitted such a vote, but only on behalf of those members of the class who do not cast individual votes. *See In re* American Family Enterprises, 256 B.R. 377, 404 n.20 (D.N.J. 2000); *In re* Mortgage & Realty Trust, 125 B.R. 575, 583 (Bankr. C.D. Cal. 1991).

Because the issue of the appropriate treatment of a class of claims can have a serious impact on plan negotiations, the court should generally attempt to resolve it early in the case.

Omnibus Objections to Claims. In some cases, debtors have filed objections covering hundreds of claims in a single filing, with an attached schedule itemizing the particular claims. Such "omnibus" objections to claims are an efficient means of resolving claims, but creditors frequently complain that they have a hard time finding their names in a thick list of claims to which objection is made, that the exact nature of the objection is difficult to ascertain, and that they find it too expensive and inefficient to respond to the objection at a single hearing on the motion with hundreds of other creditors.

Bankruptcy Rule 3007, as amended effective December 1, 2007, permits objections to no more than 100 claims to be joined in a single pleading if all the claims were filed by the same entity or if the objections to the claims were based solely on the grounds that the claims should be disallowed, in whole or in part, because:

- they are duplicate claims;
- they were filed in the wrong case;
- they have been amended subsequently;
- they were untimely;
- they have been satisfied or released;
- they were in an improper form so that their validity cannot be determined;
- they are interests, not claims; or
- they seek priority in excess of the amount permitted by Bankruptcy Code § 507.

Rule 3007(d) imposes various procedural requirements to make it easier for a claimant to locate its claim and the nature of the objections to it within the omnibus objection and in other omnibus objections that are filed. In particular, Rule 3007(e) requires that the omnibus objection:

- state in a conspicuous place that claimants receiving it should locate their names and claims;
- list claimants alphabetically, provide a cross-reference to claim numbers, and (if appropriate) list claimants by categories;
- state the grounds of the objection to each claim and provide a cross-reference to the pages in the motion with respect to the grounds;

- state in the title the identity of the party objecting to the claims and the grounds; and
- be numbered consecutively with other omnibus objections filed by the same objector.

Finally, Rule 3007(f) clarifies that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection.

Even before Bankruptcy Rule 3007 was amended, some courts had adopted local rules to establish procedures applicable to omnibus claims objections. Delaware Bankruptcy Local Rule 3007-1 can be found at Exhibit III-4. A bankruptcy judge may also wish to impose limitations on omnibus objections by order. For an example of provisions that one court has inserted in an order for a mega-case, see Exhibit III-5.

Negotiation of Disputed Claims. Some bankruptcy judges, to resolve as many disputed claims as possible without judicial action, require the claimant and the objecting party to negotiate with respect to a disputed claim before judicial resolution is sought.

For example, if liability for a class of claims is not contested but the amount of individual claims is subject to dispute, one court in a mega-case approved a procedure by which the debtor sent each claimant in the class a notice setting forth the amount the debtor believed was owed based on the debtor's records and informing the creditor that if the creditor failed to respond to the notice within forty days, the claim would be allowed in the amount stated. A creditor who did dispute the specified amount was required to explain the basis for the dispute and to include copies of any documentation substantiating the creditor's position. Representatives of the debtor then had to communicate (by telephone or in writing) with each creditor who disputed the debtor's figures and seek to resolve the differences. Only if the differences could not be resolved by the parties would the judge hold a hearing to resolve the amount of the claim.

Even when liability for claims is not conceded, the court may require that the parties seek to resolve potential objections over claims by negotiation prior to seeking judicial resolution. For example, the court may require that any creditor whose claim is the subject of an objection submit to the objecting party a written explanation of the basis of the claim, together with any documentation supporting it. The court then schedules a hearing on the objection only if the parties certify to the court that they are unable to resolve the objection by informal discussions. Exhibit III-6 is an example of an order establishing a procedure for resolving contested claims.

Resolution of Claims. Even if the court implements procedures to encourage private resolution of claims, some claims will remain unresolved despite negotiation between the parties, and the court will have to determine an appropriate resolution. The bankruptcy court has the power to hear and determine all core proceedings arising in a bankruptcy case, including the allowance or disallowance of claims against the estate, but the court may not liquidate or estimate contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution. 28 U.S.C. § 157(b)(2)(B) (2006). Personal injury tort and wrongful death cases must be tried in the district court rather than the bankruptcy court. *Id.* § 157(b)(5). If an individual claim is not of this type, the court is directed by Bankruptcy Code § 502(b) to determine a disputed claim "after notice and a hearing."

If multiple disputed claims present common questions of law or fact, under Federal Rule of Civil Procedure 42, made applicable to bankruptcy cases under Bankruptcy Rules 7042 and 9014(c), the court "may order a joint hearing or trial of any or all the matters in issue in the actions" to make the resolution process more efficient. If the court decides to conduct a joint trial, it must be sensitive to the due process rights of each claimant to participate in the joint proceedings.

Alternatively, the claim may be subject to mandatory or discretionary abstention under 28 U.S.C. § 1334(c), in which event the claim may be liquidated through normal state court proceedings if relief from the stay is granted.

Estimation of Claims. The mega-case frequently involves large numbers of claims, making individual resolution of claims by the bankruptcy court impracticable. Bankruptcy Code § 502(c) permits the court to "estimate[] for purpose of allowance . . . any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case." The court should be careful not to become confused by the terminology of claims. For a discussion of the concepts of "contingent," "unliquidated," and "disputed" claims, see, e.g., *In re Mazzeo*, 131 F.3d 295 (2d Cir. 1997); *In re Knight*, 55 F.3d 231 (5th Cir. 1995); and *In re Nicholes*, 184 B.R. 82 (9th Cir. BAP 1995).

Although, as indicated above, the bankruptcy court may not estimate contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a bankruptcy case, "estimation of claims or interests for the purposes of confirming a plan" is expressly described as a core proceeding. 28 U.S.C. § 157(b)(2)(B) (2006). Courts may estimate claims not only for the purpose of distribu-

tions, *see, e.g.*, *In re* Windsor Plumbing Supply Co., 170 B.R. 503 (Bankr. E.D.N.Y. 1994), or voting on a plan of reorganization, *see, e.g.*, *In re* Trident Shipworks, Inc., 247 B.R. 513 (Bankr. M.D. Fla. 2000); *In re* Federal Press Co., 116 B.R. 650 (Bankr. N.D. Ind. 1989), but also for the purpose of determining the feasibility of a plan, *see, e.g.*, *In re* Pacific Gas & Electric Co., 295 B.R. 635 (Bankr. N.D. Cal. 2003).

Estimation of claims has become particularly crucial in connection with mega-cases involving mass tort claims in which the debtor seeks to quantify its total tort liability. Although the language of Bankruptcy Code § 502(c) suggests estimation of claims on an individual basis, courts have concluded that they are authorized by that section to estimate aggregate liability with respect to a class of claims. *See, e.g.*, *In re* A.H. Robins Co., 880 F.2d 709 (4th Cir. 1989); Owens Corning v. Credit Suisse First Boston, 2005 WL 756747 (D. Del. 2005); *In re* G-I Holdings, Inc., 2005 WL 758193 (Bankr. D.N.J. 2005); *In re* Eagle-Picher Industries, Inc., 189 B.R. 681 (Bankr. S.D. Ohio 1995). Before estimation is appropriate, the court must determine that the disputed claim is a "claim" within the meaning of Bankruptcy Code § 101(5), that the claim is contingent or unliquidated, and that fixing or liquidating the claim would in fact unduly delay the bankruptcy case. *See, e.g.*, *In re* G-I Holdings, Inc., 2005 WL 758193 (Bankr. D.N.J. 2005). At least one court has declined to estimate mass tort claims against a debtor in a mega-case on the grounds that the delay associated with liquidating tort claims outside the bankruptcy court would not be unjustifiable. *See In re* Dow Corning Corp., 211 B.R. 545 (Bankr. E.D. Mich. 1997). *See also In re* Apex Oil Co., 107 B.R. 189 (Bankr. E.D. Mo. 1989).

Even when the court is asked to estimate individual mass tort claims for the purpose of voting on a plan of reorganization, the process may be a complicated one. At this stage of the case, there may be little known about the real ailments of the claimants and the true value of the claims or, indeed, whether the debtor is liable for the claims at all. As a result, assigning appropriate values to individual claims is very difficult. Some courts have approached this problem by initially assigning an equal value to all of the claims for voting purposes (such as $1.00 per claim), reserving the right for any claimant to request that the court assign a different value to a claim based on the seriousness of the claimant's injuries if the outcome of the voting would be affected by assigning a different value. If (as is often the case) the plan is accepted or rejected by an overwhelming majority of claimants in the class, the court need not spend additional time assigning different values to individual claims.

Neither the Bankruptcy Code nor the Bankruptcy Rules set forth any procedures for estimation of claims. Bankruptcy judges may choose "whatever method is best suited to the particular contingencies at issue," Bittner v. Borne Chemical Co., 691 F.2d 134, 135 (3d Cir. 1982), and can be reversed only for abuse of discretion in adopting appropriate procedures. *See, e.g.*, Kool, Mann, Coffee & Co. v. Coffey, 300 F.3d 340, 357 (3d Cir. 2002). Estimation procedures may be established by stipulation among the parties or by judicial order after consultation. Among the methods courts have considered employing are

- complete evidentiary trial;
- abbreviated or summary trial;
- accepting claimant's claim at face value;
- estimating claim at zero and waiving discharge of the claim under Bankruptcy Code § 1141(d);
- review of submitted documents; and
- expert testimony.

An example of an order providing procedures for estimation of claims through a summary trial can be found at Exhibit III-7. The goal of any process is the quick and efficient rough estimation of the claim, not precise liquidation of the claim. For a more detailed discussion of methods for estimation of claims in mass tort bankruptcy mega-cases, see S. Elizabeth Gibson, *Judicial Management of Mass Tort Bankruptcy Cases* (Federal Judicial Center 2005).

Appeals

Prior to the 2005 Amendments, only the U.S. district courts had jurisdiction to hear appeals from the bankruptcy court under 28 U.S.C. § 158(a), unless, with the consent of all parties, an appeal was taken to a bankruptcy appellate panel in the circuit to which a majority of the district judges in the district had authorized appeals be taken under 28 U.S.C. § 158(b)(6).

The 2005 Amendments to 28 U.S.C. § 158 confer on the applicable court of appeals jurisdiction over appeals from the bankruptcy court if the court of appeals authorizes direct appeal of a judgment, order, or decree and either the bankruptcy court, the district court, or the bankruptcy appellate panel involved certifies, or all the appellants and appellees (if any) acting jointly certify, that one of three situations exists:

- the judgment, order, or decree involves a question of law as to which there is no controlling decision of the applicable court of

appeals or the U.S. Supreme Court, or involves a matter of public importance;

- the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or
- an immediate appeal may materially advance the progress of the case or proceeding in which the appeal is taken.

28 U.S.C. § 158(d)(2)(A) (2006). The bankruptcy court, district court, or bankruptcy appellate panel must make such certification if it is requested to do so by a majority of the appellants and a majority of the appellees (if any). *Id*. § 158(d)(2)(B). Any such request for certification must be made not later than sixty days after the entry of the judgment, order, or decree, *id*. § 158(d)(2)(E), although there is no deadline for the certification itself. An uncodified provision in P.L. No. 109-8, § 1233(b)(4), requires that a petition requesting permission to appeal be filed not later than ten days after a certification is entered on the docket. A timely notice of appeal must also be filed. *See* Bankruptcy Rule 8002. The Advisory Committee on Bankruptcy Rules has published proposed amendments to Bankruptcy Rule 8001 to implement these statutory revisions.

Blank pages included to preserve pagination for double-sided printing.

IV. The Process of Confirming a Plan

Development of the Reorganization Plan

A successful Chapter 11 case culminates in the confirmation of a plan of reorganization that allocates reorganization value among the parties in interest. Although the negotiations necessary to achieve this result are primarily the responsibility of the interested parties, the bankruptcy judge can, where appropriate, play a role directly and indirectly in facilitating a successful completion to the case. Direct assistance can come in the form of facilitating negotiations. Indirect assistance can come in the form of tight control over the timing of negotiations and the fees charged for unproductive activities.

Facilitation of Negotiations. When the interested parties appear unable to resolve their differences, the bankruptcy judge must consider the role, if any, that he or she wishes to take in getting negotiations back on track. The response of the court will differ depending on the facts and circumstances of the case, including when the impasse occurs, the reasons for the parties' inability to continue discussions, and the judge's views on how involved he or she should be in the details of negotiations in the absence of a formal dispute requiring judicial resolution.

Of course, the impediment to negotiations may be an issue that could be the subject of judicial resolution. For example, the parties may differ over an issue of law that the court could resolve. Or the parties may be unable to deal with certain claims until they are resolved or estimated through a formal proceeding. In these instances, the judge may wish to encourage the parties to take the appropriate action to obtain judicial resolution of the matters required for efficient negotiations to resume. In such circumstances, the judge must rule promptly on matters that have been argued and submitted to the court, or the negotiations will be stymied.

Some courts have found it useful to use third-party mediators to facilitate negotiations. In some cases, courts have used the district's mediation system with the parties' consent. In other cases, the bankruptcy judge to whom the case is assigned has requested that another bankruptcy judge assume an active role as a mediator in plan negotiations.

The court may also consider appointing an examiner pursuant to Bankruptcy Code § 1104(c) for the purpose of acting as a mediator in plan negotiations. The Bankruptcy Code does not explicitly authorize the appointment of an examiner for this purpose. Under section 1104(c), the examiner is appointed "to conduct such an investigation of the debtor as

is appropriate." However, under Bankruptcy Code § 1106(b), an examiner is directed to perform the duties specified in section 1106(a)(3), which include not only an investigation relating to the debtor, but also of "any other matter relevant to the case or to the formulation of a plan." Relying on this broad language, some courts have included among the tasks allotted to the examiner the role of mediator with respect to outstanding disputes and facilitator of plan negotiations. *See, e.g.*, *In re* Maxwell Communication Corp., 93 F.3d 1036, 1042 (2d Cir. 1996); *In re* Big Rivers Electric Corp., 213 B.R. 962, 966 (Bankr. W.D. Ky. 1997); *In re* Apex Oil Co., 101 B.R. 92, 93 (Bankr. E.D. Mo. 1989); *In re* Public Service Co., 99 B.R. 177 (Bankr. D.N.H. 1989); *In re* UNR Industries, Inc., 72 B.R. 789 (Bankr. N.D. Ill. 1987). However, the authority to appoint an examiner solely for such purpose, in the absence of investigatory responsibilities, is unclear. *See* Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548, 578 (3d Cir. 2003) ("§ 1106(b)'s broad grant is most naturally interpreted to authorize only acts relating directly to investigation").

If an examiner is appointed, the order should describe with specificity the examiner's duties. The court may want to caution the examiner not to assume tasks outside the scope of the order. For example, the examiner should not attempt to force a particular plan on the parties, but should assist the parties in formulating their own plan. The examiner should deal with the judge in the same manner as all other parties in interest; ex parte communications are inappropriate under Bankruptcy Rule 9003(a). The examiner will be unable to function effectively in the role of mediator if the parties believe the judge is privy to the details of the negotiation process.

Exclusivity. Under Bankruptcy Code § 1121(b), "only the debtor may file a plan until after 120 days after the date of the order for relief." The bankruptcy court has the authority, on request of a party in interest and after notice and a hearing, to reduce or increase the 120-day exclusivity period "for cause." Bankruptcy Code § 1121(d)(1). An interlocutory order issued under section 1121(d) reducing or increasing the exclusivity period is subject to appeal to the district court as a matter of right. 28 U.S.C. § 158(a)(2) (2006).

The 2005 Amendments prohibit the court from extending exclusivity beyond a date that is eighteen months after the date of the order for relief. Bankruptcy Code § 1121(d)(2)(A). The prohibition was prompted by a belief that some bankruptcy judges had proven too willing to exercise their discretion to extend exclusivity "for cause," resulting in unduly lengthy bankruptcies for some debtors. During those extra months of bankruptcy,

administrative expenses mounted, leaving little for unsecured creditors when the cases were finally confirmed.

Some parties assert that repeated extensions of exclusivity can prolong a case that should be moving more quickly. They contend that debtors who believe that they will routinely receive an extension of exclusivity beyond the 120-day period will have little incentive to begin serious negotiations with the various parties in interest to develop a plan of reorganization during that period. On the other hand, others assert that mega-cases tend to be complex and that if extensions of exclusivity are ever appropriate, such extensions are more likely to be warranted in such cases. Those parties also maintain that exclusivity sometimes assists in controlling expenses by avoiding development of competing plans that can delay real negotiations between the parties. Parties may refuse to negotiate if they believe they can "wait out" the debtor's exclusive period to file a plan and instead file one of their own.

The Bankruptcy Code and Rules do not set forth factors that may establish "cause" for extending exclusivity within the meaning of section 1121(d). The decision rests with the discretion of the bankruptcy judge, and the debtor has the burden of proof. The judge must balance the goal of giving the debtor sufficient time to reorganize against the legitimate interests of creditors to have a say in the future of the company. Among the considerations listed by courts considering whether "cause" exists for an extension are the following:

- the size and complexity of the case;
- the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- the existence of good-faith progress toward reorganization;
- whether the debtor is paying its bills as they come due;
- whether the debtor has demonstrated reasonable prospects of filing a viable plan;
- whether the debtor has made progress in negotiations with its creditors;
- the amount of time that has elapsed in the case;
- whether the debtor is seeking an extension to pressure creditors to submit to the debtor's reorganization demands; and
- whether an unresolved contingency exists.

See In re Dow Corning Corp., 208 B.R. 661, 664–65 (Bankr. E.D. Mich. 1997). *See also In re* Central Jersey Airport Services, LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002); *In re* Service Merchandise Co., 256 B.R. 744, 751

(Bankr. M.D. Tenn. 2000); *In re* Express One International, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996).

Denial of a request to extend the debtor's period of exclusivity can either accelerate serious negotiations between the parties over a plan of reorganization or terminate all negotiations as the parties prepare to file competing plans. A similar result may ensue if the bankruptcy judge grants a motion to shorten the debtor's period of exclusivity under Bankruptcy Code § 1121(d)(1). As is true for motions to extend the period, the bankruptcy judge may grant a motion to reduce the period "for cause." Factors considered by courts finding cause for reducing the exclusivity period have included the following:

- the debtor's use of exclusivity to force creditors to accept an unsatisfactory or unconfirmable plan;
- the debtor's delay in filing a plan;
- gross mismanagement of the debtor's operations;
- internal dissension between the debtor's principals; and
- the debtor files a nonconsensual "new value" plan.

See In re Situation Management Systems, Inc., 252 B.R. 859 (Bankr. D. Mass. 2000).

With the new absolute prohibition on extensions of exclusivity beyond eighteen months after the order for relief, bankruptcy courts may be more willing to find "cause" for extensions that do not exceed the eighteen-month limit, and may find fewer reasons to reduce the debtor's period of exclusivity.

Disclosure and Confirmation

Once a plan is filed with the court, whether by the debtor or by another party in interest, the process of obtaining confirmation of that plan begins. Confirmation of a plan requires, among other things, that each impaired class of claims or interests accept the plan, unless the plan proponent seeks to confirm a "cramdown" plan under Bankruptcy Code § 1129(b). A class of claims accepts a plan if it is accepted by creditors holding at least two-thirds in amount and more than one-half in number of the allowed claims in the class held by creditors that have voted on the plan (excluding any entities designated under section 1126(e)). Bankruptcy Code § 1126(c). Acceptance by a class of interests requires an affirmative vote by holders of at least two-thirds in amount of the allowed interests in such class (excluding any entities designated under section 1126(e)). *Id.* § 1126(d). A plan proponent may not solicit acceptance or rejection of a plan from a

holder of a claim or interest "unless, at the time of or before such solicitation, there is transmitted to such holder . . . a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." *Id*. § 1125(b). However, under the 2005 Amendments, an acceptance or rejection of the plan may be solicited before the commencement of the case in compliance with applicable nonbankruptcy law. *Id*. § 1125(g). The disclosure statement hearing, and the confirmation hearing under Bankruptcy Code § 1129 after the solicitation of votes on the proposed plan is completed, represent the culmination of the mega-case.

Disclosure Statement. The purpose of the disclosure statement hearing is to determine whether the proposed written disclosure statement of the plan proponent contains "adequate information" within the meaning of Bankruptcy Code § 1125(a)(1). "Adequate information" is defined as

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan.

The 2005 Amendments direct the bankruptcy court, in determining whether the disclosure statement contains adequate information, to "consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." Bankruptcy Code § 1125(a)(1).

In theory, whether the proposed plan satisfies the requirements for confirmation under Bankruptcy Code § 1129 has no bearing on whether the disclosure statement contains adequate information. Therefore, some courts are reluctant to entertain objections to the disclosure statement if those objections constitute attacks on the plan itself. Other courts see the disclosure statement hearing as an opportunity for all parties to raise objections to the plan, objections that may result in necessary modifications before solicitation occurs. The case may be needlessly delayed if the holders of claims and interests vote on a plan that contains a violation of the Bankruptcy Code. The court may consider permitting the solicitation to proceed if any defect in the plan would be mooted by a favorable vote but denying approval of the disclosure statement if the defect would preclude confirmation in any event.

How much information is necessary to be "adequate"? The nature of a mega-case may suggest that more information is required, but the goal of the disclosure statement in a mega-case is the same as in a more routine case—providing enough information in a form comprehensible to the readers to enable them to understand how the plan affects them. Because mega-cases tend to have many different types of claimants, some of whom will have little understanding of legal terminology, the court may want to require that the disclosure statement be written in plain English, perhaps with a cover letter explaining what it is. Some courts have found it useful to have a layperson, such as an employee of the clerk's office, read the disclosure statement and point out any parts that are difficult to understand.

Another approach is for the plan proponent to submit for approval summary disclosure statements that contain key information for a particular target group of claimants or interest holders. If the plan proponent wishes, the summary disclosure statement can accompany the regular disclosure statement and can contain appropriate cross-references to the sections in the regular disclosure statement where a more detailed discussion is available. The summary disclosure statement is designed to include the key information relevant to a particular group of creditors or interest holders in a form more accessible than selected provisions of a much more detailed disclosure statement. Bankruptcy Code § 1125(c) explicitly contemplates the possibility of different disclosure statements for different classes.

The court may be asked to approve disclosure statements relating to proposed competing plans. Such disclosure statements may contain information that is substantively inconsistent, such as different liquidation analyses. In such a situation, the court need not rule on which information is correct, because that issue is not before the court. Each disclosure statement may contain adequate information, despite the differences, so long as each discloses that a dispute exists over the accuracy of the information. Some courts may order a combined disclosure statement be prepared describing proposed competing plans.

Approval of any disclosure statement or statements by the court does not, of course, mean that the court has determined that the information included therein is accurate, merely that it is adequate. Nor is approval of the disclosure statement an indication that the court has determined that the plan has been approved or is confirmable. The court should make sure that the plan proponents do not misrepresent the scope of the court's approval.

When there is opposition to a proposed plan, some parties who oppose the plan may wish to provide holders of claims or interests with information that contradicts information included in the approved disclosure statement or to urge the holders to vote against the plan. Such communications, even when soliciting negative votes on the proposed plan, do not violate any provision of the Bankruptcy Code, including section 1125(b). So long as such communications follow transmission of the approved disclosure statement and do not solicit acceptance or rejection of a competing plan for which an approved disclosure statement has not been distributed, they are permitted without court approval. *See* Century Glove, Inc. v. First American Bank of New York, 860 F.2d 94, 100 (3d Cir. 1988); *In re* Apex Oil Co., 111 B.R. 245 (Bankr. E.D. Mo. 1990). However, when the party sending such communications seeks rejection of the proposed plan by comparing it to another competing plan for which an approved disclosure statement has not been distributed, it may be in violation of Bankruptcy Code § 1125(b), even if an explicit solicitation of votes for the competing plan is not included. *See, e.g.*, *In re* Aspen Limousine Service, Inc., 198 B.R. 341 (D. Colo. 1996); *In re* CGE Shattuck, LLC, 254 B.R. 5 (Bankr. D.N.H. 2000).

Confirmation. Bankruptcy Code § 1128 requires that "[a]fter notice, the court shall hold a hearing on confirmation of a plan." Even in the absence of any objection to confirmation, the proponent of the plan must affirmatively demonstrate to the court that the plan meets the requirements for confirmation set forth in Bankruptcy Code § 1129. *See In re* Woodstock Associates I, Inc., 120 B.R. 436, 453 (Bankr. N.D. Ill. 1990). If no objection is timely filed, Bankruptcy Rule 3020(b)(2) provides that the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

This does not mean that the plan proponent must file a lengthy brief describing the requirements of section 1129 in support of its motion to confirm the plan. Indeed, the court may wish to direct counsel that fees will not be awarded for time spent preparing such a brief for a consensual plan with no objections. If the bankruptcy judge wishes to receive a brief, the judge may specify the issues to be addressed and how long the brief should be. Some courts find it useful to receive a summary chart of the requirements of section 1129 listing the evidence the proponent intends to introduce in order to satisfy the requirements and any objections and responses that have been filed with respect to each requirement.

A proposed plan of reorganization may be confirmed by the bankruptcy judge only if the plan meets all of the requirements for confirmation set forth in Bankruptcy Code § 1129(a) or is confirmed as a cram-

down plan under section 1129(b). Any party in interest may file an objection to confirmation of the proposed plan. Pursuant to Bankruptcy Rule 3020(b)(1), each objection is treated as commencing a contested matter under Bankruptcy Rule 9014.

If objections are timely filed, the court should make clear to the parties prior to the confirmation hearing how the hearing will be conducted, perhaps by holding a pretrial conference and then entering a pretrial order specifying (for example) the types of evidence to be presented and any limits on the number of witnesses or the time allotted for each objection. Exhibit IV-1 is a sample scheduling order. The court should consider the litigation management techniques discussed earlier in this Guide in conducting the confirmation hearing.

Two issues may cause particular concern in connection with confirmation of plans of reorganization in mega-cases: feasibility and third-party releases. Under Bankruptcy Code § 1129(a)(11), a plan cannot be confirmed unless "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Even if no objection to the plan is made, the court must determine that the plan is feasible within the meaning of section 1129(a)(11). To meet the requirement of feasibility, the debtor must establish that it is able to consummate the provisions of the plan, and that the plan will enable the debtor to emerge from bankruptcy as a viable entity. *See In re* Lakeside Global II, Ltd., 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989). Success of the plan does not have to be guaranteed. However, the plan must offer a reasonable prospect of success as opposed to visionary or speculative schemes. *See In re* Pikes Peak Water Co., 779 F.2d 1456, 1460 (10th Cir. 1985); *In re* Pizza of Hawaii, Inc., 761 F.2d 1374, 1382 (9th Cir. 1985). Among the factors considered by the court in determining if a plan is feasible are

- the adequacy of the debtor's financial structure;
- the earning power of the debtor's business;
- the ability of the debtor's management;
- the probability of continuity of management; and
- economic conditions.

See, e.g., *In re* Prussia Associates, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005); *In re* WCI Cable, Inc., 282 B.R. 457, 486 (Bankr. D. Or. 2002). The court has an obligation to scrutinize financial projections carefully—even if the debtor's financial professional testifies that the projections are realistic and

no objection has been filed—to ensure that they are not unduly aspirational in light of the debtor's financial history and that the projections demonstrate an ability to meet the debtor's obligations under the plan.

Proposed plans of reorganization for debtors in mega-cases frequently include provisions providing for releases of parties other than the debtor from liability. Bankruptcy Code § 524(e) provides that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." Based on this provision, some courts have concluded that permanent injunctions protecting nondebtors from liability to nonconsenting creditors are prohibited in reorganization plans. *See In re* Lowenschuss, 67 F.3d 1394, 1401 (9th Cir. 1995); *In re* Zale Corp., 62 F.3d 746, 760 (5th Cir. 1995); *In re* Western Real Estate Fund, Inc., 922 F.2d 592, 600 (10th Cir. 1990), *modified sub nom.* Abel v. West, 932 F.2d 898 (10th Cir. 1991); *In re* Coram Healthcare Corp., 315 B.R. 321, 335 (Bankr. D. Del. 2004).

However, other courts have allowed such permanent injunctions under limited circumstances. *See, e.g.*, *In re* Dow Corning Corp., 280 F.3d 648, 658 (6th Cir. 2002); *In re* Specialty Equipment Cos., 3 F.3d 1043, 1047 (7th Cir. 1993); *In re* Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 293 (2d Cir. 1992); *In re* A.H. Robins Co., 880 F.2d 694, 701–02 (4th Cir. 1989). Most of these courts look to the presence of certain factors justifying the injunction. These factors include the following:

- the third party made an important contribution to the reorganization;
- the release is "essential" or "important" to the reorganization;
- a large majority of the creditors affected by the injunction approved the plan containing the release;
- there is a close connection between the cases against the third party or parties and the case against the debtor; and
- the plan provides for full or substantially full payment of the claims affected by the release.

See, e.g., *In re* Metromedia Fiber Network, Inc., 416 F.3d 136, 142 (2d Cir. 2005); *In re* Prussia Associates, 322 B.R. 572, 597 (Bankr. E.D. Pa. 2005). *Cf. In re* Continental Airlines, 203 F.3d 203, 214 (3d Cir. 2000) (declining to decide whether such releases are ever permitted when release in the plan lacked "hallmarks of permissible nonconsensual releases—fairness, necessity to the reorganization, and specific factual findings to support these conclusions").

If the applicable law in the bankruptcy court's jurisdiction authorizes such releases, the bankruptcy judge should examine the release in the proposed plan in light of the relevant factors even if no objection to the release has been made. If the release is justified, the judge should include the appropriate findings in the confirmation order.

Confirmation Order. Upon confirmation of a plan of reorganization, the bankruptcy judge will be asked to enter a confirmation order. Although Official Form 15 suggests that such an order be short and simple, in a mega-case counsel often present the court (often while the judge is still on the bench at the end of the confirmation hearing) with an order that is as lengthy as the plan and as difficult to parse.

Among the provisions counsel have included in confirmation orders are third-party releases not contemplated by the plan, injunctions against governmental units and other parties who have no connection to the case, findings of fact for which no evidence was presented at the confirmation hearing, and other provisions that are inappropriate or illegal. Such proposed confirmation orders may also improperly state that in the event of conflict between the provisions of the plan and the provisions of the confirmation order, the provisions of the order prevail.

To avoid being ambushed by such a confirmation order, the judge may wish to inform the parties prior to the confirmation hearing that the judge will not sign a confirmation order that varies from Official Form 15 unless the modification is supported by evidence presented at the hearing and good cause justifies the change. For example, as suggested above, any third-party release provided by the plan and approved by the judge should be supported by appropriate findings in the confirmation order. In addition, Bankruptcy Rule 3020(c)(1) requires that if the plan provides for an injunction against conduct not otherwise enjoined under the Code, the confirmation order must "(1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction."

Alternatively, the court may require that the plan proponent submit a proposed form of confirmation order to the court not later than five days prior to the confirmation hearing, together with a cover sheet identifying, for each provision of the order, the location of the corresponding provision in the plan. The judge can then review the form prior to the confirmation hearing and be prepared to accept or reject any specific provisions.

In signing a confirmation order, the court must always ensure that there are no inconsistencies between the order and the plan.

Postconfirmation Problems

Parties in a mega-case, just like those in any confirmed Chapter 11 case, may confront issues after confirmation that they believe require judicial relief. The Bankruptcy Code itself contemplates that the bankruptcy court will continue to have authority to rule on certain matters even after confirmation of a plan. For example, Bankruptcy Code § 1129(a)(4) imposes as a requirement for confirmation of a plan that "[a]ny payment . . . to be made . . . under the plan, . . . or in connection with the plan and incident to the case, . . . is subject to the approval of, the court as reasonable." This provision can be implemented only if the court has jurisdiction to approve such payments after confirmation of the plan. Other examples include:

- authority to convert or dismiss a case based on postconfirmation events under sections 1112(b)(4)(L)–(O);
- confirmation of a modified plan after confirmation of the original plan under sections 1127(b) and (f)(2);
- determination of debts excepted from discharge under sections 1141(d)(2), (3), and (6);
- granting of a discharge to an individual Chapter 11 debtor under section 1141(d)(5);
- authority for the court to issue orders necessary for consummation of the plan under section 1142(b); and
- revocation of order of confirmation under section 1144.

When the postconfirmation dispute is not one Congress has specifically directed that the bankruptcy judge address, it may be unclear whether the court has jurisdiction over the matter or whether the parties should be relegated to a nonbankruptcy forum to resolve the controversy.

Jurisdiction of the Bankruptcy Court. After a plan of reorganization has been confirmed in a Chapter 11 case, the bankruptcy judge continues to have jurisdiction of the case and proceedings arising under title 11 or arising in a title 11 case (which are generally equated with core proceedings described in 28 U.S.C. § 157(b)(2)). Bankruptcy Rule 3020(d) recognizes the retained power of the bankruptcy court after entry of the confirmation order to "issue any other order necessary to administer the estate."

However, most courts have concluded that the bankruptcy court's jurisdiction over related proceedings after confirmation is more limited than that described in the widely cited opinion in *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). Although different courts express the limitations on their postconfirmation jurisdiction in varying ways, all look for a close

connection between the matter at issue and the debtor's implementation of the reorganization plan. *See, e.g.*, *In re* Pegasus Gold Corp., 394 F.3d 1189, 1194 (9th Cir. 2005) ("close nexus to the bankruptcy proceeding"); *In re* Resorts International, Inc., 372 F.3d 154, 166 (3d Cir. 2004) ("whether there is a close nexus to the bankruptcy plan or proceeding"); *In re* Craig's Stores of Texas, Inc., 266 F.3d 388, 390–91 (5th Cir. 2001) (jurisdiction only "for matters pertaining to the implementation or execution of the plan"); *In re* Walker, 198 B.R. 476, 482 (Bankr. E.D. Va. 1996) (dispute must "affect successful implementation and consummation of the plan"); Eubanks v. Esenjay Petroleum Corp., 152 B.R. 459, 464 (E.D. La. 1993) (proceeding must have a "conceivable effect on the debtor's ability to consummate the confirmed plan").

Frequently, the proposed plan of reorganization contains language purporting to confer continuing jurisdiction on the bankruptcy court over a broad range of matters that might arise postconfirmation. Such a provision will be given effect if the scope of jurisdiction described in the plan does not exceed that specified by Congress. However, the parties cannot confer on the bankruptcy judge jurisdiction that goes beyond that contemplated by the Judicial Code. "Where a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement even in a plan of reorganization." *In re* Resorts International, Inc., 372 F.3d 154, 161 (3d Cir. 2004). *See also In re* U.S. Brass Corp., 301 F.3d 296, 303 (5th Cir. 2002). Therefore, the bankruptcy judge may wish to caution the plan proponent that any jurisdictional language in the plan that is broader than the court's statutory authority will not be effective.

If the plan of reorganization does not purport to confer continuing postconfirmation jurisdiction on the bankruptcy court, some courts have concluded that they may not exercise such jurisdiction, even if it would otherwise be available under 28 U.S.C. § 1334. *See, e.g.*, *In re* Johns-Manville Corp., 7 F.3d 32, 34 (2d Cir. 1993); *In re* Sunbrite Cleaners, Inc., 284 B.R. 336, 340 (N.D.N.Y. 2002); Falise v. American Tobacco Co., 241 B.R. 48, 58–59 (E.D.N.Y. 1999); *In re* Linc Capital, Inc., 310 B.R. 847, 855 (Bankr. N.D. Ill. 2004); *In re* Gallien, 214 B.R. 583, 585 (Bankr. E.D. Ark. 1997). *But see In re* Refrigerant Reclamation Corp., 186 B.R. 78, 80 (Bankr. M.D. Tenn. 1995) (postconfirmation jurisdiction is determined by broad jurisdictional grant of 28 U.S.C. § 1334, not terms of plan).

The confirmation order is, of course, a binding final order of a court of competent jurisdiction, entitled to res judicata effect if all other requirements for application of that doctrine are satisfied. *See, e.g.*, Stoll v. Gottlieb, 305 U.S. 165, 170–71 (1938); *In re* Consolidated Water Utilities, Inc., 217

B.R. 588, 590 (9th Cir. BAP 1998). *See also* Bankruptcy Code § 1141(a). Application of the doctrine of res judicata with respect to a claim generally requires a final decision on the merits by a court of competent jurisdiction; a subsequent action between the same parties or those in privity with them; and an identity of the claims in the prior and subsequent action. *See, e.g.*, D&K Properties Crystal Lake v. Mutual Life Insurance Co., 112 F.3d 257, 259 (7th Cir. 1997); Bittinger v. Tecumseh Products Co., 123 F.3d 877, 880 (6th Cir. 1997); *In re* Varat Enterprises, Inc., 81 F.3d 1310, 1315 (4th Cir. 1996). Under the doctrine of claim preclusion, such a final order or judgment "is an absolute bar to the subsequent action or suit between the same parties . . . not only in respect of every matter which was actually offered . . . but also as to every ground of recovery which might have been presented." Baltimore S.S. Co. v. Phillips, 274 U.S. 316, 319 (1927). Therefore, the court should not entertain a postconfirmation proceeding between parties in interest if the subject matter of that proceeding was actually raised, or could have been raised, in connection with confirmation. *See, e.g., In re* Justice Oaks II, Ltd., 898 F.2d 1544, 1552 (11th Cir. 1990). Such a proceeding constitutes an impermissible collateral attack on the confirmation order.

Postconfirmation Issues

Allowance of Fees and Reimbursement of Expenses. As mentioned above, under Bankruptcy Code § 1129(a)(4) a plan can be confirmed only if all payments to be made under the plan for services or costs and expenses in connection with the case or in connection with the plan are subject to the approval of the court as reasonable. Therefore, the court continues to have jurisdiction to rule on the reasonableness of fees to be paid postconfirmation but earned preconfirmation under a confirmed plan. *See, e.g.*, *In re* Anderson Grain Corp., 222 B.R. 528 (Bankr. N.D. Tex. 1998) (requiring disgorgement of fees paid to postconfirmation financer). Those postconfirmation fees may include those requested by professionals who have received interim compensation during the course of the case. See Exhibit IV-2 for a sample order setting out final fee application procedures. After approval of final fee awards, the court may choose to limit its postconfirmation involvement in the payment of fees to resolution of disputes, except in the case of a liquidation.

Allowance of Administrative Expense Claims. No time period for filing administrative expense claims is set forth in the Bankruptcy Code or the Bankruptcy Rules. Although Bankruptcy Code § 503(a) requires that requests for payment of administrative expenses be "timely" filed

(unless tardy filing is permitted by the court "for cause"), Congress left to the bankruptcy court the task of establishing specific filing deadlines. Because administrative expenses continue to accrue throughout a Chapter 11 bankruptcy, a bankruptcy court is likely to establish an administrative claims bar date that is after confirmation of the plan (or even after the effective date of the plan).

In its order approving the disclosure statement and fixing the date of the confirmation hearing, the court may wish to include a provision fixing a deadline to file a request for an award of administrative expenses. A request for payment of an administrative expense claim, unlike a properly filed proof of claim (*see* Bankruptcy Code § 502(a) and Bankruptcy Rule 3001(f)), does not constitute prima facie evidence of the validity and amount of the claim and is therefore not deemed allowed in the absence of an objection. *See, e.g.*, *In re* B & W Tractor Co., Inc., 38 B.R. 613, 616–17 (Bankr. E.D.N.C. 1984).

Administrative expenses may be allowed after notice and a hearing. Bankruptcy Code § 503(b). The bankruptcy court retains jurisdiction to allow administrative expense claims after confirmation of the plan. *See, e.g.*, *In re* DP Partners Ltd., 106 F.3d 667 (5th Cir. 1997) (awarding administrative expenses for making substantial contribution to the case under section 503(b)(3)(D)).

Revocation of Confirmation. If the order of confirmation was "procured by fraud," the bankruptcy court may revoke the order on request of a party in interest at any time before 180 days after the date of entry of the order. Bankruptcy Code § 1144(a). The court may not provide relief after the expiration of the 180-day period, even if the fraud is not discovered early enough to bring a timely motion. *See, e.g.*, *In re* Coastline Care, Inc., 299 B.R. 373, 379 (Bankr. E.D.N.C. 2003); *In re* 680 Fifth Avenue Associates, 209 B.R. 314, 322–23 (Bankr. S.D.N.Y. 1997); *In re* Mission Heights Investors, L.P., 202 B.R. 131, 138 (Bankr. D. Ariz. 1996). *See also* Bankruptcy Rule 9024 ("a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144"); Bankruptcy Rule 9006(b)(2) ("the court may not enlarge the time for taking action under Rule[] . . . 9024"). A proceeding to revoke a confirmation order is an adversary proceeding. Bankruptcy Rule 7001(5).

Enforcement of Postconfirmation Injunction. Confirmation of a Chapter 11 plan generally discharges the debtor from preconfirmation debts under Bankruptcy Code § 1141(d)(1). That discharge "operates as an injunction against the commencement or continuation of an action, the employ-

ment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived." Bankruptcy Code § 524(a)(2). Bankruptcy courts are uniformly held to have jurisdiction to enforce the permanent injunction. *See, e.g.*, *In re* National Gypsum Co., 118 F.3d 1056, 1063 (5th Cir. 1997); *In re* United States Home Corp. of New York, 280 B.R. 330, 335 (Bankr. S.D.N.Y. 2002); *In re* Kewanee Boiler Corp., 270 B.R. 912, 918 (Bankr. N.D. Ill. 2002); *In re* Jacobs, 149 B.R. 983, 989 (Bankr. N.D. Okla. 1993).

Plan Modification. Bankruptcy Code § 1127(b) allows a plan proponent or the reorganized debtor to modify a confirmed plan, consistent with the requirements of Bankruptcy Code §§ 1122 and 1123, before substantial consummation of the plan. Once the plan has been substantially consummated, no further modification is permitted unless the debtor is an individual. *See, e.g.*, *In re* U.S. Brass Corp., 301 F.3d 296, 307 (5th Cir. 2002); *In re* Coastline Care, Inc., 299 B.R. 373, 379 (Bankr. E.D.N.C. 2003); *In re* Bodega Bay Sunset Property, LLC, 2003 WL 22888939 (Bankr. N.D. Cal. 2003).

"Substantial consummation" is defined in Bankruptcy Code § 1101(2) as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan." Whether a plan has been substantially consummated is a question of fact to be determined by the bankruptcy judge based on the facts and circumstances of each case. *See, e.g.*, *In re* Jorgensen, 66 B.R. 104, 106 (9th Cir. BAP 1986).

If the plan is modified, the modified plan becomes the plan of reorganization for the case "if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129." Bankruptcy Code § 1127(b). Appropriate disclosure with respect to the modified plan under section 1125 is also required. *Id.* § 1127(f)(2). The court may conclude that no further disclosure is required if the modification is not material. *See, e.g.*, *In re* Sun Apparel Warehouse, Inc., 2003 WL 21262691 (Bankr. E.D. Pa. 2003); *In re* American Solar King Corp., 90 B.R. 808, 823–24 (Bankr. W.D. Tex. 1988).

Interpretation of Plan. Generally, "[m]atters that affect the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus" to confer jurisdiction on the bankruptcy court. *In re* Resorts International, Inc., 372

F.3d 154, 167 (3d Cir. 2004). *See also In re* Pegasus Gold Corp., 394 F.3d 1189, 1194 (9th Cir. 2005). When the parties are seeking judicial resolution of an ambiguity under the plan (or related agreements), the court is likely to find it has the required jurisdiction. *See, e.g.*, *In re* A.H. Robins Co., 86 F.3d 364, 372 (4th Cir. 1996); *In re* Resorts International, Inc., 199 B.R. 113, 118–19 (Bankr. D.N.J. 1996). Indeed, the dispute may constitute a "core" matter if, for example, it turns on rights established by an order approving a sale of property from the estate, 28 U.S.C. § 157(b)(2)(N) (2006), involves an administrative claim against the estate, *id.* § 157(b)(2)(B), or in some other respect deals with "matters concerning the administration of the estate," *id.* § 157(b)(2)(A). *See, e.g.*, *In re* Petrie Retail, Inc., 304 F.3d 223, 229–30 (2d Cir. 2002).

However, not every dispute involving the interpretation of preconfirmation orders falls within the jurisdiction of the bankruptcy court. For example, postconfirmation disputes over rights conferred by an order entered under Bankruptcy Code § 363 or an order approving a motion for an assumption and assignment of an executory contract or lease under Bankruptcy Code § 365 may arise between two nondebtor parties and have no impact on the prepetition creditors or the implementation of the plan. When parties seek to invoke bankruptcy court jurisdiction after confirmation of a plan, they should be prepared to demonstrate to the judge that jurisdiction exists, even if that dispute arises because of an order that the judge entered at or prior to confirmation.

Reopening the Case. Under Bankruptcy Code § 350(a), the bankruptcy judge is directed to close a bankruptcy case "[a]fter an estate is fully administered and the court has discharged the trustee." However, the court has the authority to reopen the case under Bankruptcy Code § 350(b) "to administer assets, to accord relief to the debtor, or for other cause." A case may be reopened on motion of the debtor or any other party in interest. Bankruptcy Rule 5010. The bankruptcy court also may have authority to reopen the case on its own motion. *See* Donaldson v. Bernstein, 104 F.3d 547, 552 (3d Cir. 1997). There is no time limit on a motion to reopen under Bankruptcy Rule 5010, and Rule 9024 states that such a motion is not subject to the one-year limitation set forth in Federal Rule of Civil Procedure 60(b). *See, e.g.*, *In re* Coastline Care, Inc., 299 B.R. 373, 376–77 (Bankr. E.D.N.C. 2003).

Conversion or Dismissal of Case. Bankruptcy Code § 1112(a) permits a debtor to convert a Chapter 11 case to a case under Chapter 7 unless the debtor is not the debtor in possession, the case was commenced on an in-

voluntary basis, or the case was converted to Chapter 11 other than on the request of the debtor. The court is also required to convert or dismiss the case upon the request of a party in interest other than the debtor if the movant establishes "cause" and there are no "unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate." Bankruptcy Code § 1112(b)(1). "Unusual circumstances" barring conversion or dismissal are present if the debtor or another party in interest establishes that there is a reasonable likelihood that a plan will be confirmed within a reasonable time (or the time specified for a small business case) and the grounds for dismissal or conversion include an act or omission of the debtor for which there exists a reasonable justification and that will be cured within a reasonable period of time fixed by the court. *Id.* § 1112(b)(2).

The term "cause" is defined in Bankruptcy Code § 1112(b)(4) to include sixteen enumerated acts or omissions of the debtor or consequences of those acts or omissions, including some that focus on postconfirmation events, such as revocation of an order of confirmation under section 1144, Bankruptcy Code § 1112(b)(4)(L), inability to effectuate substantial consummation of a confirmed plan, *id.* § 1112(b)(4)(M), and material default by the debtor with respect to a confirmed plan, *id.* § 1112(b)(4)(N).

If a motion to convert or dismiss the case is brought, the court must commence the hearing on the motion not later than thirty days after the motion is filed, and must decide the motion not later than fifteen days after the hearing is commenced, unless the movant "expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits." *Id.* § 1112(b)(3).

Courts differ on whether postconfirmation conversion is ever appropriate. Those courts concluding that conversion is not an option reason that, after confirmation, all property of the estate vests in the debtor under Bankruptcy Code § 1141(b), leaving no estate property to be administered by a Chapter 7 trustee. *See, e.g.*, *In re* Lacy, 304 B.R. 439 (D. Colo. 2004); *In re* Canal Street Ltd. Partnership, 260 B.R. 460, 462 (Bankr. D. Minn. 2001); *In re* K & M Printing, Inc., 210 B.R. 583, 585 (Bankr. D. Ariz. 1997); *In re* T.S.P. Industries, Inc., 117 B.R. 375, 378 (Bankr. N.D. Ill. 1990). In these situations, the court is likely to dismiss the case.

Other courts have concluded that, because the Bankruptcy Code explicitly contemplates postconfirmation conversion, it must intend that the property of the debtor that formerly composed the Chapter 11 bankruptcy estate revest in the Chapter 7 trustee upon conversion. *See, e.g.*, *In re* Consolidated Pioneer Mortgage Entities, 264 F.3d 803, 807 (9th Cir. 2001);

In re Smith, 201 B.R. 267, 273 (D. Nev. 1996), *aff'd*, 141 F.3d 1179 (9th Cir 1998); *In re* Hughes, 279 B.R. 826, 830 (Bankr. S.D. Ill. 2002); *In re* Calania Corp., 188 B.R. 41, 43 (Bankr. M.D. Fla. 1995); *In re* Midway, Inc., 166 B.R. 585, 590 (Bankr. D.N.J. 1994).

Successive Filings. When a reorganized debtor finds itself unable to meet the requirements of a confirmed Chapter 11 plan, it may attempt to file another Chapter 11 case to modify its obligations instead of filing a motion to convert the case to Chapter 7. The Bankruptcy Code does not bar a debtor who has confirmed a plan of reorganization from filing a second Chapter 11 case in good faith. *See, e.g.*, *In re* Elmwood Development Co., 964 F.2d 508 (5th Cir. 1992); *In re* Jartran, Inc., 886 F.2d 859 (7th Cir. 1989). However, because section 1127(b) precludes modification of a confirmed plan of reorganization after substantial consummation of the plan, some courts have found a serial Chapter 11 filing for the purpose of modifying the prior Chapter 11 plan to be made in bad faith and dismissed the successive filing under section 1112(b). *See, e.g.*, *In re* Elmwood Development Co., 964 F.2d 508 (5th Cir. 1992). In evaluating whether the second petition is being filed in good faith as required by section 1112(b), or rather represents an improper collateral attack on the prior confirmation order, the court must consider the circumstances surrounding both petitions, including, for example:

1) The length of time between the two cases;
2) The foreseeability and substantiality of events which ultimately caused the subsequent filing;
3) Whether the new plan contemplates liquidation or reorganization;
4) The degree to which creditors consent to the filing of the subsequent reorganization;
5) The extent to which an objecting creditor's rights were modified in the initial reorganization and its treatment in the subsequent case.

In re Bouy, Hall & Howard & Associates, 208 B.R. 737, 744 (Bankr. S.D. Ga. 1995).

Entry of Final Decree. As mentioned above, under Bankruptcy Code § 350(a) the bankruptcy judge is directed to close a bankruptcy case "[a]fter an estate is fully administered and the court has discharged the trustee." A motion to enter the final decree may be brought by a party in interest, or the court may act on its own motion. Bankruptcy Rule 3022. The advisory committee notes to Bankruptcy Rule 3022 suggest that, although Bankruptcy Code § 1143 requires that "presentment or surrender of a se-

curity or the performance of any other act as a condition to participation in distribution under the plan" occur not later than five years after confirmation, "this provision should not delay entry of the final decree."

The advisory committee notes to the 1991 Amendments to Rule 3022 further state that "[e]ntry of a final decree . . . should not be delayed solely because the payments required by the plan have not been completed" and suggest that the court should consider the following factors in determining whether the estate has been fully administered:

> (1) whether the order confirming the plan has become final,
> (2) whether deposits required by the plan have been distributed,
> (3) whether the property proposed by the plan to be transferred has been transferred,
> (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan,
> (5) whether payments under the plan have commenced, and
> (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

See, e.g., *In re* IDC Services, Inc., 1998 WL 547085 (S.D.N.Y. 1998); Walnut Associates v. Saidel, 164 B.R. 487, 493 (E.D. Pa. 1994); *In re* JMP-Newcor International, Inc., 225 B.R. 462, 465 (Bankr. N.D. Ill. 1998).

A mega-case may involve a number of affiliated filings, and some of the cases of affiliated debtors, perhaps those with smaller and less complicated financial structures, may be completed before others. In such circumstances, the judge may wish to enter a final decree with respect to the cases of those smaller debtors even before the cases of other debtors with larger estates and more complicated issues are resolved.

Because the court has the power to reopen the case under Bankruptcy Code § 350(b), the case need not remain open merely because the court has retained jurisdiction over certain matters under the plan or the court may be asked to assume jurisdiction over disputes in the future. However, "[i]f the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court's jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event." Advisory committee notes to 1991 Amendments to Bankruptcy Rule 3022. *See, e.g.*, *In re* Ground Systems, Inc., 213 B.R. 1016 (9th Cir. BAP 1997).

Blank pages included to preserve pagination for double-sided printing.

Exhibits

Blank pages included to preserve pagination for double-sided printing.

Exhibit I-1A. Request for Designation as Complex Chapter 11 Case

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at _____

In re:	)	Case No. _____
	)	(Chapter 11)
Debtor	)	
	)	

REQUEST FOR DESIGNATION AS COMPLEX CHAPTER 11 BANKRUPTCY CASE

This bankruptcy case was filed on _____, 20____. The Debtor believes that this case qualifies as a Complex Chapter 11 Bankruptcy Case because:

- ☐ There is a need for emergency consideration of the following "first day" motions. **(NOTE: This ground alone is NOT sufficient.)**
- ☐ The Debtor has total debt of more than $_____ million and unsecured non-priority debt of more than $_____ million;
- ☐ There are more than ____ creditors and other parties in interest in this case;
- ☐ Claims against the Debtor are publicly traded;
- ☐ Equity interests in the Debtor are publicly traded;
- ☐ Other: Substantial explanation is required. (Attach additional sheets if necessary.)

Date Signed: _____

_____
Counsel for Debtor in Possession

cc: Debtor
Debtor's Counsel
Committee Counsel
U.S. Trustee
Limited Service List

Exhibit I-1B. Order Granting Complex Chapter 11 Case Treatment

LOCAL BANKRUPTCY FORM NO. 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	Bankruptcy No. _____
	)	Chapter 11
Debtor(s)	)	

INITIAL ORDER FOR COMPLEX CHAPTER 11 BANKRUPTCY CASE

This bankruptcy case was filed on _____. An Ex Parte Motion for Designation as a Complex Chapter 11 Case was filed. After review of the initial pleadings filed in this case, the Court concludes that this is a Complex Chapter 11 Case and issues this scheduling order.

1. The Debtor shall maintain a Service List identifying the parties that must be served whenever a motion or other pleading requires notice. Upon establishment of such a list, notices of motions and other matters will be limited to the parties on the Service List.

a. The Service List shall initially include the Debtor, Debtor's counsel, counsel for the unsecured creditors' committee, U.S. Trustee, all secured creditors, the 20 largest unsecured creditors, any indenture trustee, and any party that files a request for notice.

b. Any party in interest that wishes to receive notice, other than as listed on the Service List, shall be added to the Service List merely by request filed of record with the Clerk and served on the Debtor and Debtor's counsel.

c. Parties on the Service List are encouraged to give a fax number or e-mail address for service of process and parties are encouraged to authorize service by fax or e-mail. Consent to fax or e-mail service may be included in the party's notice of appearance and request for service.

d. The Service List shall be filed within 3 calendar days after entry of this Order. Debtors shall update the Service List and file with the Clerk a copy of the updated Service List upon request of a party to be added.

2. The Court hereby establishes the following dates and times for hearing all motions and other matters in this case in Courtroom _____ at _____.

3. If a matter is properly noticed for hearing and the parties reach agreement on a settlement of the dispute prior to the hearing, the parties may announce the settlement at the scheduled hearing. If the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement, the Court may approve the settlement at the hearing without further notice of the terms of the settlement.

4. The debtor shall give notice of this Order to all parties in interest within 5 calendar days. If any party in interest objects to the provisions of this Order, that party shall file and serve a motion for reconsideration and proposed order within 10 days of the date of this Order articulating the objection and the relief requested.

Date: _____ _____

United States Bankruptcy Judge

Exhibit I-2. Local Rule on Joint Administration of Cases

United States Bankruptcy Court for
the District of Massachusetts

RULE 1015-1. JOINT ADMINISTRATION OF CASES PENDING IN THE SAME COURT

(a) Motion for Joint Administration

A request for an order allowing joint administration of two or more related cases pursuant to Fed. R. Bankr. P. 1015-b shall be made by motion. In the motion for joint administration, the moving party shall 1) designate the name and number of the lead case for conducting proceedings in the jointly administered cases; 2) state the cause warranting joint administration, including the reasons supporting the proposed lead case designation; and 3) state any known facts which may give rise to actual or potential conflicts of interest warranting protection of the interests of creditors of the various estates. A motion for joint administration shall be filed in each case for which joint administration is proposed. A motion for joint administration shall be served by the moving party on all creditors and equity security holders who have requested notice in accordance with Fed. R. Bankr. P. 2002(i), any committee elected under § 705 or appointed under § 1102 of the Bankruptcy Code, the twenty largest unsecured creditors in each case as listed on Official Form 4, all secured creditors and taxing authorities, all attorneys of record, any appointed trustee, and the United States trustee. The court shall grant the motion for joint administration if it is likely to ease the administrative burden on the parties and the court.

(b) Notice and Effect of Order

Upon entry of an order authorizing joint administration of cases, or upon the automatic allowance of a motion for joint administration in accordance with (c) below, the moving party shall serve notice of said order upon all creditors and interested parties of all debtors that are the subject of the motion. The court shall enter the order in each of the other related cases in addition to the designated lead case. An order approving joint administration shall not effect substantive consolidation of the respective debtors' estates.

(c) Automatic Joint Administration of Chapter 11 Cases

If a motion for joint administration of debtors, other than individual debtors, is filed at the same time as the filing of the petitions commencing the cases proposed to be jointly administered, the motion for joint administration shall be treated as an emergency motion and shall be allowed effective upon filing, subject to reconsideration as set forth in (d) below.

(d) Reconsideration

The Court may reconsider an order allowing joint administration upon motion of any party in interest or *sua sponte*.

Exhibit I-3. Judicial Conference Guidelines for Implementing 28 U.S.C. § 156(c)

Guidelines on Use of Outside Facilities and Services

Generally

1. Authority. Section 156(c) of Title 28 authorizes bankruptcy courts to use outside facilities or services to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The statute provides that the use of such facilities and services is subject to any conditions and limitations imposed by the pertinent circuit council.

Comments: Section 156(c) was enacted in recognition that the day-to-day activities and administrative requirements in some large bankruptcy cases are too onerous to be performed efficiently by the bankruptcy clerk's office. Services such as noticing, providing copies of case papers, and processing proofs of claims and interest can sometimes be performed more efficiently outside the bankruptcy clerk's office. The statute authorizes the bankruptcy court to permit third parties to perform these services at the estate's expense.

The need for such outside services is most prevalent in so-called "mega-cases," which are extremely large bankruptcy cases with hundreds or thousands of creditors. The staffing levels of bankruptcy clerks' offices sometimes cannot absorb such dramatic increases in workloads.

Records

2. Custodian. Pursuant to 28 U.S.C. § 156(e), the bankruptcy clerk of court is the official custodian of the records and dockets of the bankruptcy court. As custodian of the records and dockets of the bankruptcy court, the bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including those maintained by the debtor or a third party.

Comments: The bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including dockets, claims registers, mailing matrices, and other case papers maintained by the debtor or a third party.

How the bankruptcy clerk assures the security and integrity of the records and dockets depends on the procedures utilized in a particular case.

If the estate has hired personnel to work in the bankruptcy clerk's office, the bankruptcy clerk should supervise their work. If the debtor or a third party maintains claims registers, mailing matrices, or other case papers outside the bankruptcy clerk's office, the bankruptcy clerk should institute a system to monitor and check its work.

The bankruptcy clerk should institute safeguards to be included in the procedures used by others.

For example, if the debtor or a third party is to process proofs of claims and produce the claims register, it may be required to issue an acknowledgment when a proof of claim is filed. The notice of the meeting of creditors could state that ac-

knowledgments are to be issued for proofs of claims and that if a creditor does not receive one within a week after filing a proof of claim, the creditor should contact the bankruptcy clerk.

Another example of a safeguard would be to require that the third party submit updated copies of the claims register or mailing matrix to the bankruptcy court on a weekly basis.

3. Filing. Proofs of claim or interest, complaints, motions, applications, objections, and other case papers shall be filed with the bankruptcy clerk's office, which, after noting receipt, upon order of the court, may transmit case papers to an outside entity for maintenance.

Comments: Bankruptcy Rules 3002(b) and 5005(a) require that proofs of claim or interest, complaints, motions, applications, objections, and other case papers be filed with the bankruptcy clerk of court in the district where the case is pending, except as specified by section 1409 of Title 28 and except as a judge permits papers to be filed with the judge.

The bankruptcy court should assure itself of the integrity of the procedures before directing that proofs of claim or interest, or other case papers be transmitted to a third party.

If all case papers are filed in the bankruptcy clerk's office and stamped with the date received, the papers can be picked up by the debtor or a third party for processing at another location. The bankruptcy clerk can copy some papers to make spot checks of their processing by the debtor or a third party.

The bankruptcy clerk can obtain a special post office box for the receipt of proofs of claim in mega-cases. This separates the proofs of claim from other mail and speeds processing.

4. Disposition. The bankruptcy clerk remains responsible for the disposition of case papers after the conclusion of a case in which the bankruptcy court has directed the debtor or a third party to maintain the records.

Comments: Although the order which directs the debtor or a third party to maintain records does not necessarily have to provide for their disposition, the bankruptcy clerk should begin planning for records disposition early in the case.

5. Claims. If debtors or third parties are directed to process proofs of claim and maintain the claims register, they should be directed to perform related functions, such as recording transfers of claims and giving notices of transfer.

Comments: Bankruptcy Rule 3001(e)(2),(3),(4) requires notices of certain transfers of claims. The party which processes proofs of claim and maintains the claims register is best able to give the notices. Bankruptcy Rule 3001 requires that the court enter an order on many transfers. The original notices and orders should be placed in the case files.

Bankruptcy Rule 3004 requires notice to the creditor when the debtor or trustee files a claim in the name of the creditor. The party that processes proofs of claim and maintains the claims register is best able to provide the notice.

6. Public records. Section 107 of the Bankruptcy Code provides that the papers filed in bankruptcy cases and the bankruptcy court's dockets are public records unless the bankruptcy court orders otherwise. Case papers such as proofs of claim remain public records even if the debtor or a third party is directed to process and maintain those records. The bankruptcy clerk should ensure that those records are open to examination at reasonable times without charge.

Comments: Case papers processed and maintained by the debtor or a third party at a location outside the bankruptcy clerk's office should be available for review at that location during normal business hours.

Because it may often be impractical for parties to review case papers where the papers are processed and maintained, the bankruptcy clerk should attempt to make as much information available as is possible.

As an example, if a third party or the debtor processes proofs of claim and interest and generates the claims register, the third party or the debtor should furnish copies of the updated claims register to the bankruptcy court at least weekly.

Personnel

7. Waivers. Personnel employed by the estate to assist the bankruptcy clerk's office are not government employees. They should not be administered oaths of office although they may be asked to sign a waiver of any right to compensation by the government. Because such personnel are not government employees, the bankruptcy clerk may not fire them.

Comments: There is no need to administer an oath of office to personnel paid by the estate to assist the bankruptcy clerk's office in processing a case. Administering an oath to such personnel fosters the false impression that they are government employees.

Administering an oath to a new government employee impresses the employee with the obligations of office and triggers certain restrictions on the employee's activities. A written waiver including a statement of the obligations of personnel employed by the estate to assist the bankruptcy clerk's office is less suggestive of government employment.

The bankruptcy clerk should request that special employees sign a written waiver of any right to receive compensation from the government, civil service retirement credit, or other benefits of government employment. The waiver should also include an acknowledgment that the special employee is to be paid by the estate, is directly accountable to the bankruptcy clerk, and will not receive instructions, directions, or orders from the debtor or the trustee.

The waiver should also specify that the special employees will refrain from discussing pending or impending cases, will not disclose confidential information received during the course of their employment, and will not profit from such confidential information. These obligations are included in the code of conduct for clerks, which require that the clerks impose these specific obligations on their staffs.

8. Supervision. The bankruptcy clerk is responsible for supervising the work of personnel employed by the estate to assist the bankruptcy clerk's office.

Comments: The bankruptcy clerk of court may select personnel to be employed by the estate to work in the bankruptcy clerk's office pursuant to section 156(c). If authorized by the order directing the estate to employ the personnel, the bankruptcy clerk may specify the terms of their employment. Due to the nature of such special employees' work, the bankruptcy clerk or a designated deputy clerk should supervise their work.

For the ease of supervision, it is desirable that the special employees work in the bankruptcy clerk's office if sufficient space is available. This also makes it easier to maintain security for the case papers processed by special employees.

9. Favoritism. Personnel employed by the estate to assist the bankruptcy clerk's office may not provide special services for the debtor or the trustee. The bankruptcy clerk should strive to avoid any appearance that these personnel favor the debtor or any other party while performing official duties.

Comments: While they are assisting the bankruptcy clerk's office, special employees should not be in contact with the debtor, except on official business or to receive their paychecks. They should not receive instructions, directions, or orders from the debtor or the trustee.

The bankruptcy clerk should strive to avoid any impression that the special employees favor the debtor or any other party in their work for the bankruptcy clerk's office. For this reason, the special employees should not work in the debtor's business and assist the bankruptcy clerk's office at the same time. It is desirable that the special employees not be former employees of the debtor.

Facilities

10. Equipment. Any equipment, furniture, or other facilities leased or purchased at the estate's expense for the court's use in a bankruptcy case is property of the estate and will be returned to the estate after its use by the bankruptcy court.

Comments: Because section 156(c) prohibits charging the cost of such equipment, furniture, or other facilities to the United States, the bankruptcy clerk should explain to the seller or lessor that the estate—not the bankruptcy court—is responsible for payment.

Services

11. Copies. If the bankruptcy clerk selects a commercial copy service to provide copies of papers in one or more cases, the bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection. The bankruptcy clerk should request written proposals for the work as part of the clerk's determination of which commercial copy service is best qualified to provide such a service. If the cost of the copies is expected to total more than $25,000, the bankruptcy clerk should make a formal solicitation of written proposals for the work. If a very large case is filed without advance notice, the bankruptcy clerk may not have time to solicit formal written proposals for the copy services. In such an instance, the clerk may solicit proposals orally and document the solicitation and responses.

Comments: The bankruptcy clerk's office may not be able to efficiently handle the volume of copy requests in a mega-case. With planning and the bankruptcy clerk's assistance, a private copy service may be able to provide copies of case papers at a lower price than the bankruptcy clerk's office. This saves time for the bankruptcy clerk's office and saves money for the parties. The time savings is particularly important in mega-cases, in which copy requests could otherwise require much of the bankruptcy clerk's office's time.

The bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection of a copy service to provide copies in a mega-case. The bankruptcy clerk should make at least an informal survey to determine which copy service is best qualified to provide copies on the basis of reliability, price per copy, and additional services to be provided, such as maintaining a duplicate file for review by the public.

Advertising is required for most government purchases of more than $25,000 by 41 U.S.C. § 5. Although the bankruptcy court's designation of a copy service is not a government purchase of services, it does convey a valuable business opportunity.

Basic fairness requires that all qualified copy centers be allowed to submit proposals if the bankruptcy clerk anticipates that more than $25,000 worth of copies will be requested in a year. If time permits, the bankruptcy clerk should send written requests for proposals to each of the local copy services, which are capable of performing the work in a timely manner. If time permits and the bankruptcy clerk anticipates that more than $25,000 worth of copies will be requested in a year, copies of all of the written proposals should be sent for review to the Contracts Branch of the Contracts and Services Division of the Administrative Office before a particular proposal is selected.

Proposals for making copies should be solicited on a contingent basis before a mega-case is filed. If it has not been done, the request for proposals can be conveyed orally or hand-delivered with instructions that they be returned within 48 hours.

The order designating the copy service can also require that the parties file an extra copy of all case papers except proofs of claim. The intake and docket clerks can process the copies along with the originals, and the copy service can pick up the copies and an updated docket sheet once a day. The parties can then order copies by docket numbers or can place standing orders for copies.

The request for proposals should require the copy center to maintain a duplicate case file from which copies will be made. The request may also require that the copy center make the duplicate file available for review without charge during normal business hours.

Notices

12. Mailing lists. A debtor in a voluntary case must file a list containing the names and addresses of its creditors, even if the debtor or a third party is ordered to mail all notices in the case. If the debtor or a third party is directed to maintain the mailing matrix in a case, it shall make copies of the matrix available as requested by other parties or the bankruptcy court.

Comments: Bankruptcy Rule 1007(a) requires that debtors in voluntary cases file mailing lists with their petitions unless the petitions are accompanied by schedules of liabilities or Chapter 13 statements. Other parties may need to review the list. Another party or the bankruptcy clerk's office may need the list in order to provide a notice.

In certain circumstances the bankruptcy court may permit the debtor to file the mailing list in the form of a computer tape. The bankruptcy clerk shall take steps to ensure that the mailing list is maintained properly and that it is protected against loss or damage.

13. Certificates of service. The bankruptcy court or the bankruptcy clerk should approve the form and content of any notice not provided by the clerk's office and should receive from the person providing notice a certificate of service which includes a copy of the notice and a list of persons to whom it was mailed.

Comments: Pursuant to the Bankruptcy Noticing Guidelines adopted by the Judicial Conference in March 1986, the parties shall file certificates of service for the notices which they provide. If counsel for the party signs a certificate of service, the certificate may generally state that notice was given to certain parties (such as the parties on the mailing matrix as of a certain date). If someone else signs the certificate, the certificate shall be accompanied by a list of the names and addresses of the parties served.

To ease the burden of reviewing the form and content of notices not prepared by the bankruptcy clerk's office, the bankruptcy clerk and the bankruptcy court can develop form notices for various circumstances. The bankruptcy court can specify the required contents for certain notices in its local rules.

Miscellaneous

14. Assistance. The Bankruptcy Division of the Administrative Office should be consulted when unusual questions or problems arise concerning outside facilities or services.

Comments: Mega-cases often present unusual questions or problems, such as the need to hire additional personnel on an expedited basis or to address unique circumstances in the meeting of creditors notice. The Bankruptcy Division can either answer the questions or refer them to the appropriate office.

Exhibit I-4. Sample Waiver Form for Special Employees of the Estate

Waiver Agreement for Special Employees of the Estate

I, _____, hereby declare that in performing services for the court my status will be that of a "special employee of the estate" of _____, debtor in case no. _____ in the United States Bankruptcy Court for the _____. A "special employee of the estate" for the purposes of this agreement is defined as a person who is employed by the debtor's estate pursuant to 28 U.S.C. § 156(c) to perform services for the court under the direction of the clerk of court in connection with the bankruptcy case filed by the debtor under Title 11 of the United States Code.

I understand that as a "special employee of the estate," I am not an employee of the Federal Government and that the debtor's estate is responsible for the payment of all wages and benefits to which my services may entitle me. I understand that as a "special employee of the estate," I am not entitled to the protections provided to Federal Government employees by the Federal Tort Claims Act from liability for negligence in the performance of duties or by the federal worker's compensation program for on-the-job injuries. I further understand that I will be directly answerable to the clerk of the court, and that I will not take instructions, directions, or orders from the debtor or any trustee who may be appointed in the bankruptcy case, nor will I provide any services to these entities without the approval of the clerk.

I hereby waive any claim or right to receive salary or other compensation, including fringe benefits, from the Federal Government as a result of my services. Further, I hereby agree to: (1) abstain from public comment about a pending or impending proceeding in the court; and (2) refrain from disclosing to any person outside of the clerk's office, including the debtor or the trustee or representatives of the debtor or the trustee, any confidential information received in the performance of my duties and from employing such information for personal gain.

_____ _____

Name Witness

_____ _____

Date Date

Acceptance by Clerk of Court

Pursuant to 28 U.S.C. § 156(c), I hereby accept the services of the above named "special employee of the estate" on behalf of the court subject to the understandings and waivers set forth above.

_____

Clerk of Court

Exhibit I-5. Sample Order Appointing Claims Agent

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:	:
	: Chapter 11
	: Case No.
	:
	: (No Hearing requested)
Debtor(s).	:
	:

ORDER AUTHORIZING EMPLOYMENT OF [name of claims agent] AS CLAIMS, VOTING AND NOTICING AGENT OF THE BANKRUPTCY COURT UNDER 28 U.S.C. § 156(c)

The Court having reviewed the Application for Order Appointing [name of claims agent] as Claims, Voting and Noticing Agent of the Bankruptcy Court Under 28 U.S.C. § 156(c) (the "Application"),[1] filed by [name of debtor], the debtor and debtor in possession herein (the "Debtor") for entry of an order under 28 U.S.C. § 156(c) approving an agreement with [name of claims agent] appointing [name of claims agent] as claims administrator and noticing and balloting agent of the Bankruptcy Court (the "Claims and Noticing Agent"); and the court having reviewed the Application and the Declaration of [name of claims agent], and the Court being satisfied with the representations made in the Application and the [name of claims agent] that [name of claims agent] represents no interest adverse to the Debtor's estate with respect to the matters upon which [name of claims agent] is to be engaged, that [name of claims agent] is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section I 107(b) of the Bankruptcy Code, and that [name of claims agent] appointment is necessary and would be in the best interests of the Debtor's estate; and it appearing that proper and adequate notice has been given that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Application is GRANTED, as of the commencement of this chapter 11 case.

2. [Name of claims agent] is appointed as the Claims and Noticing Agent in this chapter 11 case, as of the commencement of this case, pursuant to 28 U.S.C. § 15b(c), and is authorized to perform the following services as requested by the of-

1. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Application.

fice of the Clerk of the Bankruptcy Court for the Northern District of California (the "Clerk's Office") or the Debtor:

(1) Serve required notices in this chapter 11 case, including:

(a) A notice of the bankruptcy filing, the Section 341 meeting of creditors, the claims bar date, etc. in a form or forms approved by the Clerk, the Office of the United States Trustee and this Court;

(b) Notices of objections to claims;

(c) Notices of any hearings on a disclosure statement and confirmation of a plan of reorganization or liquidation; and

(d) Such other miscellaneous notices as the Debtor or the Court may deem necessary or appropriate for an orderly administration of this chapter 11 case;

(2) Within five business days after the service of a particular notice, file with the Clerk's Office an affidavit of service that includes (i) a copy of the notice served, (ii) an alphabetical list of persons on whom the notice was served, along with their addresses, and (iii) the date and manner of service;

(3) Maintain the originals of all proofs of claim and proofs of interest filed in these cases, until such time as the Clerk's Office directs [name of claims agent] to return such original proofs of claims and interest and file-stamp all documents received with a stamp approved by the Clerk, and file-stamp and return any copies of documents received in the filer's self-addressed, stamped envelope(s);

(4) Maintain official claims registers in these cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:

(a) The name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;

(b) The date the proof of claim or proof of interest was received by [name of claims agent] and/or the Court;

(c) The claim number assigned to the proof of claim or proof of interest;

(d) The asserted amount and classification of the claim; and

(e) The debtor against which a proof of claim or interest is filed.

(5) Implement necessary security measures to ensure the completeness and integrity of the claims registers;

(6) Transmit to the Clerk's Office a copy of the claims registers as requested by the Clerk's Office;

(7) Maintain a current mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the Clerk's Office or any party in interest;

(8) Provide access to the public for examination of copies of the proofs of claim or proofs of interest filed in these cases without charge during regular business hours, and provide copies of any such proofs of claim and proofs of interest to members of the public, upon request, at a cost that is no greater than the per-copy price that is charged by the Court's third-party copy service;

(9) Record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Bankruptcy Rule 3001(e), and record all claims filed by a debtor or trustee pursuant to Bankruptcy Rule 3004 and provide notice of such claims as required by Bankruptcy Rule 3004;

(10) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements;

(11) Provide temporary employees to process claims, as necessary;

(12) Promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and

(13) Provide such other claims processing, noticing and related administrative services as may be requested from time to time by the Debtor.

3. [Name of claims agent] also is authorized to continue assisting the Debtor with, among other things: (a) the preparation of their schedules, statement of financial affairs and master creditor lists and any amendments thereto; (b) the reconciliation and resolution of claims; and (c) the preparation, mailing and tabulation of ballots for the purpose of voting to accept or reject a plan of reorganization.

4. The fees and expenses of [name of claims agent] incurred in the performance of the above services in accordance with the Agreement appended to the [name of claims agent] Declaration as Exhibit "A" shall be treated as an administrative expense of the Debtor's chapter 11 estate and shall be paid by the Debtor on a monthly basis.

5. [Name of claims agent] shall submit monthly invoices to the Debtor. Simultaneously with the delivery to the Debtor of each monthly invoice for services rendered, [name of claims agent] shall deliver a copy of the invoice to the Office of the United States Trustee ("UST") and to counsel for the Official Committee of Unsecured Creditors ("Creditors' Committee"). The Debtor is hereby authorized to pay each [name of claims agent] invoice after the tenth day after the invoice has been submitted to the UST and Creditors' Committee counsel unless the Debtor is advised, within that 10-day period, that a party objects to the invoice, in which case the objecting party must schedule a hearing before the Court to consider the disputed invoice. At the conclusion of [name of claims agent] engagement, [name of claims agent], shall return to the Debtor any unused portion of its retainer.

IT IS SO ORDERED.

Dated: _____

_____

United States Bankruptcy Judge

Exhibit I-6. Sample Order Directing Debtor to Give Notices Pursuant to Bankruptcy Rule 2002

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF _____

In re	)
	) Chapter 11
	)
Debtors	) Case No. _____

Order Directing Debtor to Give Notices Pursuant to Bankruptcy Rules 2002

Upon the request of the clerk of this court for an order directing the above-named debtor (the "Debtor") to give certain notices required by Bankruptcy Rule 2002; and it appearing that the relief requested by the clerk is in the best interests of the Debtor's estate and creditors and will assist the smooth and efficient administration of this Chapter 11 case; and sufficient cause appearing therefor, it is hereby

ORDERED that the Debtor shall give all notices required in this Chapter 11 case by Bankruptcy Rules 2002(a), 2002(b), 2002(d), 2002(f), 2002(i), and 2002(j); and it is further

ORDERED that the Debtor may give all notices that are required by Bankruptcy Rule 2002 to be given to creditors and indenture trustees by arranging for such notices to be given by [name of outside noticing agency] or a corporation that provides similar services, with such notices to be given by said corporation to those creditors and indenture trustees whose names appear on the list of creditors and indenture trustees filed by the Debtor with the court; and it is further

ORDERED that the Debtor may give all notices that are required by Bankruptcy Rule 2002 to be given to holders of publicly held debt and equity securities, including all notices required by Bankruptcy Rule 2002(d), by arranging for such notices to be given by the indenture trustee or transfer agent, as the case may be, for the securities, with such notices to be given by the trustee or transfer agent to those holders of securities whose names appear on a reasonably current list of such holders maintained by the trustee or transfer agent whose names appear on such a list as of a record date established by further order of this court; and it is further

ORDERED that the Debtor shall file with the court a Certificate of Service after the Debtor has given notice pursuant to Bankruptcy Rule 2002, and that in the case of notices which are given to creditors and indenture trustees by [name of outside noticing agency] or a corporation which provides similar services, or which are given to holders of publicly held debt and equity securities by the indenture trustee or transfer agent, the Debtor shall file with the court as promptly as possible under the circumstances a Certificate of Service which shall set forth to whom notice has been given; and it is further

ORDERED that all costs of giving notice as directed may be paid by the Debtor as administrative expenses out of its available funds without further order of this court; and it is further

ORDERED that the foregoing directions to the Debtor to give notice shall be without prejudice to the Debtor or any other person seeking an order of this court shortening the time to give notice or limiting the persons to whom notice is to be given as may be permitted by the Bankruptcy Code, Bankruptcy Rules or otherwise by this court.

Date: _____ _____

United States Bankruptcy Judge

Exhibit I-7. Sample Procedures for Complex Chapter 11 Cases

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN THE MATTER OF	)
PROCEDURES FOR COMPLEX	)
CHAPTER 11 CASES	)

PROCEDURES FOR COMPLEX CHAPTER 11 CASES

Upon consideration of the recommendations of members of the bar of the Northern District of Texas, the court finds a need to implement policies and procedures to better serve the public and the bar in complex Chapter 11 cases. Accordingly,

IT IS ORDERED that the following procedures shall be implemented in complex Chapter 11 cases.

1. A "complex Chapter 11 case" is defined as a case filed in the Northern District of Texas under Chapter 11 of the Bankruptcy Code that requires special scheduling and other procedures because of a combination of the following factors:
   a. The size of the case (usually total debt of more than $10 million);
   b. The large number of parties in interest in the case (usually more than 50 parties in interest in the case); or
   c. The fact that claims against the debtor and/or equity interests in the debtor are publicly traded (with some creditors possibly being represented by indenture trustees).
2. If any party filing a Chapter 11 bankruptcy petition believes that the case should be classified as a complex Chapter 11 case, the party shall file with the bankruptcy petition a Notice of Designation as Complex Chapter 11 Case in the form attached as **Exhibit A**.
3. If a party has matters requiring expedited consideration by the court, it should submit a Request for Expedited Consideration of Certain "First Day" Matters in the form attached as **Exhibit B.**
4. Each judge shall arrange the judge's calendar so that "first day" emergency hearings, as requested in the court-approved form entitled Request for Expedited Consideration of Certain First Day Matters, can be conducted consistent with the Bankruptcy Code and Rules, including Rule 4001, as required by the circumstances, but not more than two business days after the request for emergency "first day" hearings.
5. When a party has filed a Chapter 11 case and filed a Notice of Designation as Complex Chapter 11 Case, the **Clerk of Court shall**:
   a. Randomly allocate the case to a judge in accordance with the usual procedures and general orders;

b. Immediately confer with the court about designating the case as a complex Chapter 11 case and about setting hearings on emergency or first day motions. If the court determines that the case does not qualify as a complex Chapter 11 case, the court shall issue an Order Denying Complex Case Treatment in the form attached as **Exhibit C**. If the court determines that the case appears to be a complex Chapter 11 case, the court shall issue an Order Granting Complex Chapter 11 Case Treatment in the form attached as **Exhibit D**; and

c. Notify and serve counsel for the debtor with the order entered by the court relating to the complex case treatment and notify counsel for the debtor regarding the hearing settings for emergency or first day matters.

6. Counsel for the debtor, upon receipt of notice of entry of an order regarding complex Chapter 11 case treatment, shall:

   a. Serve the order granting or denying complex Chapter 11 case treatment on all parties in interest within seven days.

   b. Provide notice of the first day or emergency hearings in accordance with the procedures shown in the form attached as **Exhibit E.**

7. Counsel shall follow the agenda guidelines for hearings in complex Chapter 11 cases attached as **Exhibit F** and the guidelines for mailing matrices and shortened service lists attached as **Exhibit G**.

The court has authorized the Chief Bankruptcy Judge of the district to adopt these procedures on behalf of the court.

_____

United States Chief Bankruptcy Judge

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:	)	
	)	
	)	CASE NO.
	)	
DEBTOR.	)	

NOTICE OF DESIGNATION AS COMPLEX CHAPTER 11 BANKRUPTCY CASE

This bankruptcy case was filed on _____, 20__. The undersigned party in interest believes that this case qualifies under General Order 2004-03 as a complex Chapter 11 case because:

_____ The debtor has total debt of more than $10 million;
_____ There are more than 50 parties in interest in this case;
_____ Claims against the debtor are publicly traded; and
_____ Other: Substantial explanation is required. (Attach additional sheets if necessary.)

_____
_____
_____

_____, 20___

_____
Name

_____
Address

_____
Telephone and Fax Numbers

_____
E-Mail Address

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:	)	
	)	
	)	CASE NO.
	)	
DEBTOR.	)	

REQUEST FOR EXPEDITED CONSIDERATION OF CERTAIN "FIRST DAY" MATTERS

On _____, _____ filed a petition for relief under Chapter 11 of the Bankruptcy Code. Counsel for the debtor believes that the case qualifies as a "Complex Chapter 11 Case" as defined by General Order 2004-03. The debtor needs expedited consideration of the following initial case matters (check those that apply):

____ Motion for joint administration

____ Motion for order extending time to file schedules and statement of financial affairs

____ Motion re maintenance of bank accounts and existing cash management, attaching notice of conference with U.S. trustee

____ Motion to pay pre-petition wages, salaries, et al., attaching notice of conference with U.S. trustee and detailed exhibit showing who debtor proposes to pay and amounts

____ Motion for entry of interim order authorizing use of cash collateral

____ Motion for interim approval of post-petition secured and, if applicable, super-priority financing pursuant to section 364(c) of the bankruptcy code

____ Motion to establish interim notice procedures

____ Motion for order approving interim retention of professionals

____ Others (list):

_____
_____
_____
_____

_____, 20___

_____
Name

_____
Address

_____
Telephone and Fax Numbers

_____
E-Mail Address

* NOTE: The court expects the parties to exercise judgment regarding which motions are applicable.

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:	)	
	)	
	)	CASE NO.
	)	
DEBTOR.	)	

ORDER DENYING COMPLEX CASE TREATMENT

This bankruptcy case was filed on _____, 20__. A Notice of Designation as Complex Chapter 11 Case (see General Order 2004-03) was filed. After review of the initial pleadings filed in this case, the court concludes that the case does not appear to qualify as a complex Chapter 11 case. Therefore, the case will proceed under the local bankruptcy rules and procedures generally applicable to bankruptcy cases without special scheduling orders. The court may reconsider this determination on motion, after hearing. Based on the foregoing,

IT IS ORDERED that the request for designation as a complex Chapter 11 case is **DENIED.**

The Clerk shall notice:
Debtor
Debtor's Counsel
U.S. Trustee

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:	)	
	)	
	)	CASE NO.
	)	
DEBTOR.	)	

ORDER GRANTING COMPLEX CHAPTER 11 BANKRUPTCY CASE TREATMENT

This bankruptcy case was filed on _____, 20__. A Notice of Designation as Complex Chapter 11 Case (see General Order 2004-03) was filed. After review of the initial pleadings filed in this case, the court concludes that this case appears to be a complex Chapter 11 case. Accordingly, unless the court orders otherwise,

IT IS ORDERED:

1. The debtor shall maintain a service list identifying the parties that must be served whenever a motion or other pleading requires notice. Unless otherwise required by the Bankruptcy Code or Rules, notices of motions and other matters will be limited to the parties on the service list.
   a. The service list shall initially include the debtor, debtor's counsel, counsel for the unsecured creditors' committee, the U.S. Trustee, all secured creditors, the 20 largest unsecured creditors of each debtor, any indenture trustee, and any party that requests notice.
   b. Any party in interest that wishes to receive notice, other than as listed on the service list, shall be added to the service list by filing and serving the debtor and debtor's counsel with a notice of appearance and request for service.
   c. Parties on the service list are required to provide an e-mail address and a fax number for service of pleadings and notices. A party who has registered with the court for use of the court's electronic filing system has consented to service by e-mail to the extent provided in the Revised Administrative Procedures for Electronic Case Filing adopted by General Order 2003-01.2. A party who has not registered for use of the court's electronic filing system may consent to fax or e-mail service in the party's notice of appearance and request for service. Notwithstanding consent to e-mail service, a "hard copy" shall be served by fax or by regular mail only if required by the Revised Administrative Procedures for Electronic Case Filing.

d. The initial service list shall be filed within 3 days after entry of this order. A revised list shall be filed 7 days after the initial service list is filed. The debtor shall update the service list, and shall file a copy of the updated service list, (i) at least every 7 days during the first 30 days of the case; (ii) at least every 15 days during the next 60 days of the case; and (iii) at least every 30 days thereafter throughout the case.

2. The court sets _____ of each week at _____ __.m. as the pre-set hearing day and time for hearing all motions and other matters in these cases. (There may be exceptions; those exceptions will be noted on the court's internet schedule, available at www.txnb.uscourts.gov.)

   a. All motions and other matters requiring hearing, but not requiring expedited or emergency hearing, shall be noticed for hearing, on the next pre-set hearing day that is at least 23 days after the notice is mailed. Parties may use the court's self-calendar procedure at www.txnb.uscourts.gov.

      The court will hear matters on any pre-set hearing date as time permits. Parties must establish the recommended priority for hearing matters on any pre-set hearing date using the agenda format provided by Exhibit F to Procedures for Complex Chapter 11 Cases. The court will ultimately determine the manner of proceeding on any pre-set hearing date, and may continue hearings to subsequent pre-set hearing dates.

      As a preface to each pleading, just below the case caption, in lieu of the language required by Local Bankruptcy Rule 9007.1, and notwithstanding Local Bankruptcy Rule 9014.1, the pleading shall state:

      A HEARING WILL BE CONDUCTED ON THIS MATTER ON _____ AT _____.M. IN COURTROOM _____, _____, _____, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

   b. All motions and other matters requiring expedited or emergency hearing shall comply with the usual court requirements for explanation and verification of the emergency. Specifically, if a party in interest has an emergency or other situation that it believes requires consideration on less than 23-days' notice, the party should file and serve a separate, written motion for expedited hearing, in respect of the underlying motion, and may present the motion for an expedited hearing either (a) ex parte at a regular docket call of the presiding judge, or (b) at the next available pre-set hearing day. The court will rule on the motion for expedited hearing within 24 hours of the time it is presented.

If the court grants the motion for expedited hearing, the underlying motion will be set by the courtroom deputy at the next available pre-set hearing day or at some other appropriate shortened date approved by the court. The party requesting the hearing shall be responsible for providing proper notice in accordance with this order and the Bankruptcy Code and Rules.

3. Emergency and expedited hearings (and other hearings in limited circumstances) in this case may be conducted by telephone conference. Parties must request permission to participate by telephone by contacting the courtroom deputy by e-mail.

4. If a matter is properly noticed for hearing and the parties reach a settlement of the dispute prior to the final hearing, the parties may announce the settlement at the scheduled hearing. If the court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement (i.e., that the terms of the settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated), the court may approve the settlement at the hearing without further notice of the terms of the settlement.

5. The debtor shall give notice of this order to all parties in interest within 7 days. If any party in interest, at any time, objects to the provisions of this order, that party shall file a motion articulating the objection and the relief requested. After hearing the objection and any responses the court may reconsider any part of this order and may grant relief, if appropriate.

The Clerk shall notice:
Debtor
Debtor's Counsel
U.S. Trustee

EXHIBIT E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

Procedures for Obtaining Hearings in Complex Chapter 11 Cases

I. Hearing on First Day Matters: Official Form for Request for Expedited Consideration of Certain First Day Matters.

Upon the filing of a complex Chapter 11 case, if the debtor has matters that require expedited consideration ("first day" or "near first day" relief), the debtor should file a "Request for Expedited Consideration of Certain 'First Day' Matters" using the form of Exhibit B to the Procedures for Complex Chapter 11 Cases ("First Day Hearing Request"), and inform the courtroom deputy of the request by e-mail. The first day hearing request will be presented by the courtroom deputy to the judge who has been assigned the complex Chapter 11 case (or if there are multiple, related debtor cases, to the judge assigned to the first-filed case) as soon as possible. The court will hold a hearing within 2 business days of the time requested by the debtor's counsel and the courtroom deputy will notify counsel for the debtor of the time of the setting. If the judge assigned to the complex Chapter 11 case is not available to hold the hearing within 2 business days of the time requested by the debtor's counsel, an available judge will hold a hearing within 2 business days of the time requested by the debtor's counsel and the courtroom deputy will notify counsel for the debtor of the time of the setting. The debtor's counsel should (1) serve electronically or, for parties not receiving electronic notification, by fax (or by immediate hand-delivery) a copy of the first day hearing request on all affected parties, including the U.S. Trustee, simultaneously with its filing; and (2) notify electronically, or, for parties not receiving electronic notification, by fax (or by immediate hand-delivery) all affected parties of the hearing time on first day matters as soon as possible after debtor's counsel has received confirmation from the court. The court will allow parties in interest to participate telephonically at the hearing on first day matters whenever (and to the extent) practicable, and debtor's counsel will be responsible for the coordination of the telephonic participation.

II. Pre-Set Hearing Dates.

The debtor may request (as one of its first day matters or otherwise) that the court establish in a complex Chapter 11 case a weekly/bi-monthly/monthly setting time ("Pre-Set Hearing Dates") for hearings in the complex Chapter 11 case (e.g., every Wednesday at 1:30 p.m.). The court will accommodate this request for pre-set hearing dates in a complex Chapter 11 case if it appears justified. After pre-set hearing dates are established, all matters in the complex Chapter 11 case (whether initiated by a motion of the debtor or by another party in interest) may be set by using the court's self-calendar process on the first pre-set hearing date

that is at least 23 days after the filing/service of a particular motion (unless otherwise requested by a party or ordered by the court) and the movant shall indicate the hearing date and time on the face of the pleading.

III. Case Emergencies (Other than the First-Day Matters).

If a party in interest has an emergency or other situation that it believes requires consideration on less than 23-days' notice, the party should file and serve a separate, written motion for expedited hearing, in respect of the underlying motion, and inform the courtroom deputy of the request by e-mail. The court may direct that the motion for expedited hearing be presented at a regular docket call of the presiding judge, or at the next available pre-set hearing date. If the court grants the motion for expedited hearing, the underlying motion will be set by the courtroom deputy at the next available pre-set hearing date or at some other appropriate shortened date approved by the court. Motions for expedited hearings will only be granted under emergency or exigent circumstances.

EXHIBIT F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

AGENDA GUIDELINES FOR HEARINGS IN COMPLEX CHAPTER 11 CASES

In complex Chapter 11 cases, counsel for the debtor-in-possession shall file and serve an agenda describing the nature of the items set for hearing. Counsel for the debtor in possession shall also post the agenda on the court's website following instructions that will be provided by the court at the commencement of the case.

1. Timing of Filing

Counsel shall file the agenda at least 24 hours prior to the date and time of the hearing. At the same time, counsel shall also serve a copy of the agenda on all attorneys who have filed papers with respect to the matters scheduled and the service list.

2. Sequence of Items on Agenda

Uncontested matters should be listed ahead of contested matters. Contested matters should be listed in the order in which they appear on the court's docket. When matters have been noticed for hearing by parties in interest other than the debtor-in-possession, counsel for the debtor-in-possession shall consult with counsel for the moving parties to determine the recommended priority for hearing contested matters. Any disagreement on the recommended priority shall be noted on the agenda. The court will determine the order of proceeding.

3. Status Information

For each motion filed in the complex Chapter 11 case, each motion filed in an adversary proceeding concerning the Chapter 11 case, each objection to claim, or application concerning the case, the agenda shall indicate the moving party, the nature of the motion, the docket number of the pleading, if known, the response deadline, and the status of the matter. The status description should indicate whether the motion is settled, going forward, whether a continuance is requested (and any opposition to the continuance, if known) and any other pertinent information.

4. Information for Motions in the Case

For each motion that is going forward, or where a continuance request is not consensual, the agenda shall also list all pleadings in support of the motion, and any objections or responses. Each pleading listed shall identify the entity that filed the pleading, and the docket number of the pleading, if known. If any entity has not filed a responsive pleading, but has engaged in written or oral communica-

tions with the debtor, that fact should be indicated on the agenda, as well as the status or outcome of those communications.

For an omnibus objection to claims, responses to the objection which have been continued by consent may be listed collectively (e.g., "the following responses have been continued by consent:").

5. Changes in Agenda Information

After the filing of the agenda, counsel shall file and post on the court's website any revised agenda.

6. Other Information

The requirements listed above should not be construed to prohibit other information of a procedural nature that counsel thinks would be helpful to the court.

EXHIBIT G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

Guidelines for Mailing Matrices and Shortened Service Lists in Complex Chapter 11 Cases

I. Mailing List or Matrix (a/k/a the Rule 2002 Notice List)

A. Helpful Hints Regarding Whom to Include on the Mailing Matrix in a Complex Chapter 11 Case.

There are certain events and deadlines that occur in a Chapter 11 case which Bankruptcy Rule 2002 requires be broadly noticed to all creditors, indenture trustees, equity interest holders, and other parties in interest ("Rule 2002 notice list"). To facilitate this, L.B.R. 1007.2 requires a debtor to file a mailing list or matrix at the commencement of any case. This list must include all creditors, equity interest holders, and certain other parties in interest (who might be impacted by any relief granted in the bankruptcy case), in order to ensure that parties receive reasonable and adequate notice and are ensured due process. When preparing the mailing matrix and after consultation with the clerk of court, debtor's counsel shall evaluate and consider whether the following people are required to be included:

1. creditors (whether a creditor's claim is disputed, undisputed, contingent, non-contingent, liquidated, unliquidated, matured, unmatured, fixed, legal, equitable, secured or unsecured);
2. indenture trustees;
3. financial institutions at which the debtor has maintained accounts (regardless of whether such institutions are creditors);
4. vendors with whom the debtor has dealt, even if the debtor's records currently indicate no amount is owed;
5. parties to contracts, executory contracts or leases with the debtor;
6. all federal, state, or local taxing authorities with which the debtor deals, including taxing authorities in every county in which the debtor owns real or personal property with regard to which ad valorem taxes might be owed;
7. all governmental entities with which the debtor might interact (including, but not limited to, the U.S. Trustee and the SEC);
8. any party who might allege a lien on property of the debtor;
9. parties to litigation involving the debtor;
10. parties with which the debtor might be engaged in some sort of dispute, whether or not a claim has formally been made against the debtor;

11. tort claimants or accident victims;
12. insurance companies with whom the debtor deals or has policies;
13. active and retired employees of the debtor;
14. officers or directors of the debtor;
15. customers who are owed deposits, refunds, or store credit;
16. utilities;
17. shareholders (preferred and common), holders of options, warrants or other rights or equitable interests in the debtor;
18. miscellaneous others who, in debtor's counsel's judgment, might be entitled to "party in interest" status or who have requested notice.

B. Flexible ("User-Friendly") Format Rules for Mailing Matrix in a Complex Chapter 11 Case in Which Debtor's Counsel Serves Notices.

In a complex Chapter 11 case, where the mailing matrix is likely to be very lengthy, the following special format rules will apply, in lieu of L.B.R. 1007.2, whenever it is the debtor's responsibility to serve notices in the case. The debtor (since it will typically be the party serving all notices in the Chapter 11 case rather than the clerk of court) may create the mailing matrix in whatever format it finds convenient so long as it is neatly typed in upper and lower case letter-quality characters (in no smaller than 10 point and no greater than 14 point type, in either Courier, Times Roman, Helvetica or Orator font). The mailing matrix, if lengthy, should ideally include separate subheadings throughout, to help identify categories of parties in interest. By way of example, the following subheadings (among others) might be used:

Debtor and its Professionals
Secured Creditors
Indenture Trustees
Unsecured Creditors
Governmental Entities
Current and Retired Employees
Officers and Directors
Tort Claimants
Parties to Executory Contracts
Equity Interest Holders
Etc.

Parties in interest within each category/subheading should be listed alphabetically. Also, the mailing matrix may be filed in separate volumes, for the separate categories of parties in interest, if the mailing matrix is voluminous (e.g., Volume 2: Unsecured Creditors). Finally, if there are multiple, related debtors and the debtors intend to promptly move for joint administration of

their cases, the debtors may file a consolidated mailing matrix, subject to later being required to file separate mailing matrices if joint administration is not permitted.

C. When Inclusion of Certain Parties in Interest on a Mailing Matrix Is Burdensome.

If inclusion of certain categories of parties in interest on the mailing matrix would be extremely impracticable, burdensome and costly to the estate, the debtor may file a motion, pursuant to B.R. 2002(l), requesting authority to provide notice by publication in lieu of mailing certain notices to certain categories of parties in interest and may forego including those categories of parties in interest on the mailing matrix if the court grants the motion.

II. Shortened Service List Procedure in a Complex Chapter 11 Case.

A. Procedures/Contents/Presumptions.

If the court has entered an order granting complex Chapter 11 case treatment, the debtor shall provide service as required by ¶ 1 of that order. If the court has not entered such an order, the debtor may move to limit notice – that is, for approval of a shortened service list – that will be acceptable for noticing most events in the bankruptcy case, other than those events/deadlines that B.R. 2002 contemplates be served on all creditors and equity interest holders. At a minimum, the shortened list should include the debtor and its professionals, the secured creditors, the 20 largest unsecured creditors, any official committees and the professionals for same, the U.S. Trustee, the IRS and other relevant governmental entities, and all parties who have requested notice. Upon the court's approval of a shortened service list in a complex Chapter 11 case, notice in any particular situation during a case shall be presumed adequate if there has been service on (1) the most current service list on file in the case; plus (2) any other party directly affected by the relief requested and not otherwise included on the service list.

B. Obligation to Update, File, and Serve Service List.

The debtor must update the service list as parties request to be added to it or as circumstances otherwise require. To be added to the list, a party should file a notice of appearance and request for service and serve the notice on debtor's counsel. Parties should include an e-mail address and fax number. Additionally, the debtor should file an updated service list and should serve a clean and redlined copy of the updated service list on all parties on the service list weekly for the first month after filing, then bi-monthly for the next 60 days, then monthly thereafter during the pendency of the case. If, in a particular month, there are no changes to the service list, the debtor should simply file a notice with the court so stating.

Exhibit I-8. Sample Guidelines for Case-Management Order for Complex Chapter 11 Case (United States Bankruptcy Court for the District of New Jersey)

EXHIBIT F

GUIDELINES ESTABLISHING CASE-MANAGEMENT AND ADMINISTRATIVE PROCEDURES FOR CASES DESIGNATED AS COMPLEX CHAPTER 11 CASES

After review of the initial pleadings filed in a case designated and approved as "complex" and the Court conducting its initial status conference at the hearing on First Day Matters, and for which the court concludes that the case is appropriate for the entry of a case management and administrative procedures order, the following guidelines as they relate to case management and administrative procedures may be requested by Debtor's counsel upon the submission of an "Order Establishing Case-Management and Administrative Procedures for Cases Designated as Complex Chapter 11 Cases."

A. OMNIBUS HEARING DATES

1. The Court may conduct omnibus hearings on a weekly/bi-monthly/monthly basis as dictated by the circumstances of the case (the "Omnibus Hearing Dates").
2. Omnibus Hearing Dates will occur thereafter as may be scheduled by the Court. To the extent possible, all matters requiring a hearing in this case shall be set for and be heard on Omnibus Hearing Dates unless alternative hearing dates are approved by the Court for good cause shown.

B. EXPEDITED HEARINGS

3. If a party in interest has an emergency or other situation that it believes requires consideration on less than the 20-days' notice as required by D.N.J. LBR 9013-1(c), the moving party should file and serve a separate written application requesting shortened time and expedited hearing in respect of the underlying motion in the form provided at D.N.J. LBR 9013-1(e).
4. The Court will rule on the request for shortened time within twenty-four (24) hours of the time it is presented. If the court grants the motion for expedited hearing, the underlying motion will be set at the next available omnibus hearing date or at some other appropriate shortened date approved by the Court.
5. Requests for expedited hearings will only be granted under emergency or exigent circumstances.
6. This section does not apply to matters filed under an Application for Expedited Consideration of First Day Matters and all parties are directed to consult the General Order Adopting Guidelines Governing First Day Matters.

C. COMPLIANCE WITH TERMS OF ORDER ESTABLISHING CASE-MANAGEMENT AND ADMINISTRATIVE PROCEDURES

7. If any person makes any filing in contravention of the omnibus dates process established pursuant to a particular chapter 11 case Order Establishing Case-Management and Administrative Procedures entered by the Court by, among other things, setting a hearing on such filing for a date and time other than an omnibus hearing date without an order from this Court authorizing such hearing for cause, the Debtor's counsel shall forward a copy of the Order Establishing Case-Management and Administrative Procedures to such person within three (3) business days of the receipt of such filing. If such filing is filed at least twenty (20) days from the next Omnibus Hearing Date, then the hearing with respect to such filing shall be deemed to be on such omnibus hearing date. If such filing is less than twenty (20) days prior to the next omnibus hearing date then the hearing with respect to such filing shall be the next omnibus hearing date thereafter. The movant must provide notice of the corrected hearing date to all affected parties and thereafter file a certificate of service regarding the notice.

D. NOTICING PROCEDURES

8. All filings in this case, unless otherwise ordered by the Court, shall be served upon the following entities constituting the "Core Service List":
   (a) The Debtor(s);
   (b) The Debtor's counsel;
   (c) The Newark office of the United States Trustee for Region III;
   (d) The chairperson of any official committees established pursuant to section 1102 of the Bankruptcy Code;
   (e) Counsel retained by any official committees established pursuant to section 1102 of the Bankruptcy Code, or the twenty (20) largest creditors if an official committee has not been appointed;
   (f) Counsel to secured creditors; and
   (g) Any other person/entity as authorized by the Court.
9. Debtor's counsel or counsel to the trustee, if one is appointed, must maintain and update the Core Service List at least every fifteen (15) days during the first sixty (60) days of the case and at least every thirty (30) days thereafter. Further, Debtor's counsel must file a Core Service List with the Court every time it is updated.
10. Debtor's counsel or counsel to the trustee shall also maintain and update a master service list (the "Master Service List") which shall be comprised of the Core Service List and the parties that have filed a notice of appearance and request for notices in the Debtor's case. Service on the persons/entities listed on the Master Service List shall be made only with respect to those matters enumerated in the Order Establishing Case-Management and Administrative Procedures. Debtor's counsel must update the Master Service List at least every fifteen (15) days dur-

ing the first sixty (60) days of the case and at least every thirty (30) days thereafter. Further, Debtor's counsel must file the Master Service List with the Court each time it is updated.

11. The certificate of service for each filing must be filed with the Court together with the complete service list that was utilized and served for a particular filing but said certificate of service is not to be served via hard copy on the recipients of the filing.

12. Whether filed conventionally or electronically, summons and complaints or the initiating motion in a contested matter shall be served in hard copy format pursuant to Fed. R. Bankr. P. 7004, upon all parties having a particularized interest in the subject of the filings or motions and parties listed on the Core Service List.

13. All notices required by subdivisions (a)(2), (3) and (6) of Fed. R. Bankr. P. 2002 and by Fed. R. Bankr. P. 4001 shall be served upon:

    (a) Each entity designated on the Core Service List; and

    (b) When the notice is of a proposed use, sale, lease or abandonment of property or of a hearing thereon, each entity designated on the most recent Master Service List and each entity having an interest in the property; and

    (c) When the notice relates to relief from the stay in order to take action against property of the Debtor's Estate, each entity having a lien, encumbrance or interest in the subject property; and

    (d) When the notice relates to use of cash collateral or obtaining credit, each entity who has an interest in the cash collateral or each entity who has a lien or other interest in property on which a lien is proposed to be granted; and

    (e) When the notice is of a proposed compromise or settlement or of a hearing thereon, each entity designated on the most recent Master Service List and each entity who is a party to the compromise or settlement; and

    (f) When the notice is of an application for compensation or reimbursement of expenses or of a hearing thereon, each entity designated on the most recent Master Service List and each professional person who is seeking compensation or reimbursement whose retention in these cases is authorized by the Court.

E. NEGATIVE NOTICING PROCEDURES

14. Subject to the Court's discretion, the Court may approve notice procedures which provide that if no objections are timely filed and served by a deadline set in accordance with the Federal Rules of Bankruptcy Procedure and/or the Order Establishing Case-Management and Administrative Procedures and/or the District of New Jersey Local Bankruptcy Rules, the Court may enter an order granting the relief requested without further notice or a hearing ("Negative Notice"). The notice of motion accompanying such motion must specifically advise parties of the objection deadline, and must also inform the recipient that if no objections are filed and served, the Court may enter an order granting the motion without further notice or hearing.

15. "Negative Notice" may be used in connection with motions including, but not limited to, matters requesting the following relief:
    (a) Rejection of a non-residential real property lease or executory contract pursuant to 11 U.S.C. § 365;
    (b) Retention and employment of professional pursuant to 11 U.S.C. §§ 327, 328 and 330 and 28 U.S.C. § 156(o);
    (c) Extension of deadline to seek removal action pursuant to Federal Rule of Bankruptcy Procedure 9027;
    (d) Sales of assets outside the ordinary course of business pursuant to 11 U.S.C. § 363 with a purchase price set on a case-by-case basis;
    (e) Approval of settlements and compromises pursuant to Federal Rule of Bankruptcy Procedure 9019 of claims where the settled amount of the claim does not exceed an amount set on a case-by-case basis; and
    (f) Nothing contained herein shall be construed to limit a party in interest's ability to request that the court approve the use of Negative Notice procedures in connection with motions not specifically identified above.
16. If an objection is timely filed and served, a hearing will be scheduled for the next omnibus hearing date unless otherwise ordered by the Court.

F. CERTIFICATION OF NO OBJECTION

17. After the objection date has passed with no objection having been filed or served, counsel for the movant may file a Certification of No Objection substantially in the form as it appears on the annexed Schedule "1" stating that no objection has been filed or served on the movant.
18. By filing such certifications, counsel for the movant is representing to the Court that the movant is unaware of any objection to the motion or application and that counsel has reviewed the Court's docket and no objection appears thereon.
19. Upon receipt of the Certification of No Objection, the Court may enter the Order accompanying the motion or application without further pleading or hearing and, once the Order is entered, the hearing scheduled on the motion or application shall be cancelled without further notice.

G. NOTICE OF AGENDA

20. Subject to the Court's discretion, in a case that has been designated as complex and if the Court has authorized a Notice of Agenda to be utilized, debtor's counsel or counsel to the trustee, if one is appointed shall maintain file and serve a Notice of Agenda for each hearing held in the case in conformity with the proposed form annexed hereto as Schedule "2" and the guidelines set forth below (G.21-G.28) unless modified or otherwise directed by the Court to the contrary.

21. Counsel (as described above in section G.20) shall file a proposed Notice of Agenda before 12:00 noon on the day that is two (2) business days before the date of the omnibus hearing.

22. Resolved or continued matters shall be listed ahead of unresolved matters on the Notice of Agenda. Contested matters shall be listed in the order of docketing with corresponding docket number.

23. All amended Notices of Agenda shall list matters as listed in the original Notice of Agenda with all edits and additional information being listed in boldface type.

24. Copies of the Notice of Agenda shall be served upon local counsel who have entered an appearance in the case, as well as all other counsel with a direct interest in any matter on the Notice of Agenda and the United States Trustee simultaneously with the filing of the Notice of Agenda with the Court.

25. For each motion and/or application the Notice of Agenda shall indicate the movant and/or the applicant, the nature of the motion and the docket number. Supporting papers of the movant/applicant shall be similarly denoted.

26. For each motion/application the Notice of Agenda shall indicate the objection deadline and any objection filed and its docket number, if available.

27. For each motion/application the Notice of Agenda shall indicate whether the matter is going forward, whether a continuance is requested (and any opposition to the continuance if known), whether any or all of the objections have been resolved and any other pertinent status information.

28. When an adversary proceeding is scheduled the Notice of Agenda shall indicate the adversary proceeding number and the corresponding docket number for pleadings filed in the adversary proceeding on the Notice of Agenda, in addition to the information regularly required in a Notice of Agenda.

H. PRO HAC VICE APPLICATIONS

29. Application by non-resident attorneys for permission to practice before the Court in this case, pro hac vice, may not be set for hearing unless the Court requires otherwise. These applications may be GRANTED by the Court unless objections are promptly filed thereto. Pro hac vice applications must be served upon each entity designated on the Core Service List.

30. The Court will require parties to obtain local counsel in accordance with the District of New Jersey Local District Court Rules and Local Bankruptcy Rules.

I. ELECTRONIC FILING PROCEDURES

31. Pursuant to this Court's General Order Authorizing Administrative Procedures for the Electronic Filing, Signing and Verification of Documents, dated March 27, 2002, except with regard to documents which may be filed under seal, unless good cause can be demonstrated and established to the contrary at the return date on the hearing(s) of the First Day Matters, all motions, pleadings, memoranda of

law or other documents to be filed with the Court in a Complex Chapter 11 Case shall be electronically filed on the Court's Electronic Filing System.

32. Notwithstanding the above, the Office of the United States Trustee for Region III–New Jersey Office requires service upon it of the following documents in hard copy format regardless of whether the United States Trustee's Office receives same electronically:

    a. Petition;
    b. Schedules and Statement of Financial Affairs;
    c. Chapter 11 Plan and Disclosure Statement;
    d. Fee Applications;
    e. All First Day Matters and supporting pleadings and documents thereto; and
    f. Monthly Operating Reports.

J. MAILING MATRIX

33. A mailing matrix submitted electronically shall be prepared in accordance with D.N.J. LBR 1007-2.

K. OTHER ADMINISTRATIVE ISSUES

34. Any party may at any time apply for reconsideration or modification of the Order Establishing Case-Management and Administrative Procedures. Service of said motion shall be made to all persons/entities on the Master Service List. The court may amend the Order Establishing Case Management and Administrative Procedure from time to time as is necessary.

Exhibit I-9. Sample Case-Management Orders for Complex Chapter 11 Case

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

IN RE)
)
) CASE NO. _____
)

INITIAL ORDER FOR COMPLEX CHAPTER 11 BANKRUPTCY CASE

This bankruptcy case was filed on _____, 200__. A Notice of Designation as Complex Chapter 11 Case (L.R. 1002-2) was filed. After review of the initial pleadings filed in this case, the Court concludes that this appears to be a Complex Chapter 11 Case and issues this scheduling order, subject to rescission, revision, or modification as provided below:

1. Service List and Limitation on Service: Subject to the Local Rules and the requirements of the Electronic Case Filing System, the Debtor shall maintain a service list ("Service List"), identifying the parties that must be served whenever a motion or other pleading requires notice. Upon establishment of such a list, notices of motions and other matters will be limited to the parties on the Service List.

The Service List shall initially include the Debtor, Debtor's counsel, counsel for the Official Unsecured Creditors' Committee, U.S. Trustee, Internal Revenue Service, SEC (if publicly traded), all secured creditors, 20 largest unsecured creditors [of each Debtor], any indenture trustee, and any party that requests notice;

Any party in interest that wishes to receive notice, other than as listed on the Service List, shall be added to the Service List merely by filing an entry of appearance;

Parties on the Service List are required to give a fax number and e-mail address for service of process;

The initial Service List shall be filed within three (3) days after entry of this order. A revised list shall be filed after fifteen (15) days after the Initial Service List is filed. Debtors shall update the Service List, and shall file the updated Service List, at least every 30 days thereafter.

2. Hearing Days: The Court hereby establishes _____ of each month at _____.m. as the scheduled hearing day ("Hearing Day") and time for hearing all motions and other matters in these cases. (There may be exceptions.)

3. Setting Hearings and Giving Notice of a Motion Requiring Emergency for Expedited Relief: If a motion requires emergency or expedited relief, a separate motion for emergency or expedited relief should be filed, stating with specificity the reason why an emergency exists or why there is a need for expedited treatment. If the court grants such emergency treatment, the Court will direct the requisite notice and will set a hearing date and time.

4. Proposed Hearing Agenda: At least two (2) business days prior to each Hearing Day, Debtor's counsel shall file and serve on the Master Service List a Proposed Hearing Agenda.

> The Proposed Hearing Agenda is merely a proposal for the convenience of the Court and counsel. It is NOT determinative of the matters to be heard on that day and is not determinative of whether there will be a settlement or continuance.
>
> The Proposed Hearing Agenda is expected to include:
>
> 1. The docket number and title of each matter to be scheduled for hearing on the next Hearing Day;
> 2. Whether the Matter is contested or uncontested;
> 3. Other comments that will assist the Court in organizing its docket for the day (for example, if a request for continuance or withdrawal of the matter is expected); and
> 4. A suggestion for the order in which the matters should be addressed.
>
> On the Hearing Day, the Court may, or may not, accept the hearing agenda proposed by the Debtor.

5. Participation in Some Hearings by Telephone: Emergency and expedited hearings (and other hearings in limited circumstances) in this case may be conducted by telephone conference. Parties must obtain permission to participate by telephone from the Judge's courtroom deputy.

6. Settlement: If a matter is properly noticed for hearing and the parties reach agreement on a settlement of the dispute prior to the final hearing, the parties may announce the settlement at the scheduled hearing. If the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement (i.e., that the terms of the settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement.

7. Case Captions: Complex cases usually involve hundreds of motions. To facilitate motion tracking by the Clerk of the Court, each answer, reply, objection and order filed or provided by a party in this case should contain, in its title or first paragraph, a reference to the docket number of the pleading to which it responds. EXAMPLE:

> Response by XYZ Bank to Debtor's Motion for Use of Cash Collateral.
> [This pleading responds to Docket #_____]

8. Notice and Objections to this Order: This order shall be served by Debtor on all parties in interest within seven (7) days. If any party in interest, at any time, objects to the provisions of this order, that party shall file a motion articulating the objection and the relief requested. The motion shall comply with the provisions of this order. After hearing the Motion and any responses, the Court may grant appropriate

relief, if any is required. The Court may also, *sua sponte*, revise, modify or rescind this order.

SIGNED_____, 20___. _____

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:
	: Chapter 11
DELTA AIR LINES, INC., et al.,	:
	: Case No. _____
	: (Jointly Administered)
Debtor(s).	:
	:

**ORDER APPROVING NOTICE,
CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES**

Upon the motion dated September 14, 2005 (the "Case Management Motion")[1] of Delta Air Lines Inc., and those of its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "Debtors"),[2] for authorization pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and rule 1015(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") to establish certain notice, case management and administrative procedures (the "Procedures"), as more fully described in the Case Management Motion; and upon consideration of the Declaration of [name] Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules") in Support of First-Day Motions and Applications, dated as of the Petition Date; and the Court having jurisdiction to consider the Case Management Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Case Management Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b)(2); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Case Management Motion having been provided to the Office of the United States Trustee for the Southern District of New York, those creditors holding the five largest secured claims against the Debtors' estates, those creditors holding the thirty largest unsecured claims against the Debtors' estates and the attorneys for (i) the of-

1. Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Case Management Motion.

2. The Debtors are the following entities: ASA Holdings, Inc.; Comair Holdings, LLC; Comair, Inc.; Comair Services, Inc.; Crown Rooms, Inc.; DAL Aircraft Trading, Inc.; DAL Global Services, LLC; DAL, Moscow, Inc.; Delta AirElite Business Jets, Inc.; Delta Air Lines, Inc.; Delta Benefits Management, Inc.; Delta Connection Academy, Inc.; Delta Corporate Identity, Inc.; Delta Loyalty Management Services, LLC; Delta Technology, LLC; Delta Ventures III, LLC; Epsilon Trading, Inc.; Kappa Capital Management, Inc.; and Song, LLC.

ficial committee of unsecured creditors appointed in these chapter 11 cases, (ii) the agent for the Debtors' post petition lenders and (iii) American Express Travel Related Services Company, Inc., and it appearing that no other or further notice need be provided, and the relief requested in the Case Management Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Case Management Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the "Hearing"), and certain changes to the form of Order having been made at the request of the court clerk, the court and others; and the Court having determined that the legal and factual bases set forth in the Case Management Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Case Management Motion is hereby granted as modified by this Order; and it is further

ORDERED that the Debtors shall make this Order available on the Case Information Website (as defined below) and, within three (3) business days after its entry, serve it by U.S. Mail, band delivery, facsimile or email on the Core Parties (as defined below) and all parties that, prior to the date of the entry of this Order, have requested notice pursuant to Bankruptcy Rule 2002; and it is further

ORDERED that the Procedures set forth herein are approved and shall govern all aspects of these chapter 11 cases, except as otherwise ordered by the Court; and it is further

ORDERED that, to the extent the Procedures conflict with the Bankruptcy Rules or the Local Rules, the Procedures govern and supersede such rules and shall apply to these chapter 11 cases; and it is further

ORDERED that all motions, applications and other matters requiring notice and/or a hearing (collectively, the "Motions"), all objections and responses to the Motions (the "Objections"), all replies to Objections (the "Replies") and all other documents required to be filed with the Court (together with the Motions, Objections and Replies, the "Court Papers") shall be filed electronically with the Court in accordance with General Order M-242, as amended by General Order M-269 (available at the Court's website, www.nysb.uscourts.gov (the "Court's Website")), by registered users of the Court's Electronic Case Files system (the "ECF System") (a PACER login and password are needed to file documents on the ECF System and can be obtained at http://pacer.psc.uscourts.gov) and, by all other parties in interest, on a 3.5 inch disk or a CD-ROM, preferably in Portable Document Format ("PDF"), WordPerfect or any other Windows-based word processing format; and it is further

ORDERED that all court Papers shall be served, in the manner described herein, on (i) the chambers of the undersigned Judge, (ii) attorneys for the Debtors, [attorney names, addresses], (iii) conflicts counsel to the Debtors, [attorney names, addresses], (iv) aircraft counsel to the Debtors, [attorney names, addresses], (v) the Office of the United States Trustee for the Southern District of New York, [address, name], (vi) the attorneys for the official committee of unsecured creditors, [attorney names, addresses], (vii) the attorneys for any other official committee(s) appointed in these chapter 11 cases, (viii) the Securities and Exchange Commission, 100 F Street, NE,

Washington, DC 20549, Attn: [name], (ix) the Internal Revenue Service, 290 Broadway, New York, NY 10008, Attn: [agent name], (x) any additional govemment agencies to the extent required by the Bankruptcy Rules and the Local Rules and (xi) Bankruptcy Services LLC, 757 Third Avenue, New York, NY 10017, Attn: [name] (the Debtors' court authorized claims and noticing agent, the operator of the website www.deltadocket.com, created in connection with these cases, and the copy service used by the Debtors, the "Claims Agent"—collectively, the "Core Parties"); and it is further

ORDERED that all other persons or entities with a particularized interest in the relevant Court Papers (the "Particularized Interest Parties") shall be served as set forth herein; and it is further

ORDERED that the top thirty creditors will no longer be served (except to the extent that a creditor is a Particularized Interest Party of a Non-ECF Service Party (as defined below)); and it is further

ORDERED that, except with respect to (i) Core Parties, (ii) Particularized Interest Parties and (iii) Non-ECF Service Parties, all parties in interest (whether or not they have filed or file after the date hereof a Notice of Appearance or request for service of papers under Bankruptcy Rule 2002) shall be deemed to be receiving electronic notice through the ECF System of all Court Papers filed on the court's docket and therefore, in accordance with General Order M-242, need not be separately served with such court Papers; and it is further

ORDERED that electronic notice through the ECF system shall be deemed effective as of the date the relevant Court Papers are posted on the Court's electronic docket on the ECF system; and it is further

ORDERED that any party in interest that does not have and cannot practicably obtain access to the Court's ECF system shall file with the Court and deliver to counsel for the Debtors a certification of that fact and a request to be exempted from electronic service through the ECF system (an "ECF Service Exemption Request") in order to deliver it to counsel for the Debtors, such request may be sent by facsimile or sent by U.S. mail, overnight delivery or hand delivery, to [attorney name, address]; and it is further

ORDERED that an ECF Service Exemption Request shall include the following information: (i) the party's name and address, (ii) the name of the client (unless the party is appearing solely on its own behalf), (iii) an e-mail address at which the requesting party can be served, (iv) an address at which the requesting party may be served by U.S. mail, hand delivery and overnight delivery and (v) a facsimile number for the requesting party. Notwithstanding Bankruptcy Rules 2002 and 9010(b), no ECF Service Exemption Request filed in the chapter 11 cases shall have any effect unless all of the foregoing requirements are satisfied; and it is further

ORDERED that any individual or entity filing an ECF Service Exemption Request who does not maintain and cannot practicably obtain an e-mail address must include in its ECF Service Exemption Request a certification stating the same. Notice will be provided to that individual or entity by U.S. mail, overnight delivery, hand delivery or facsimile, in the sole discretion of the serving party; and it is further

ORDERED that any individual or entity who files an ECF Service Exemption Request but prefers not to include its e-mail address in such individual or entity's publicly filed ECF Service Exemption Request shall: (i) include in such ECF Service Exemption Request an explanation setting forth the reason(s) for not including an e-mail address and contemporaneously (ii) send a notice providing such individual or entity's e-mail address to attorneys for the Debtors, [attorney names, addresses]; and it is further

ORDERED that in addition to the Core Parties and the Particularized Interest Parties, Court Papers must be served on all persons and entities that have submitted ECF Service Exemption Requests as set forth herein (the "Non-ECF Service Parties"); and it is further

ORDERED that papers filed in adversary proceedings (including objections and replies thereto) do not need to be served on the Non-ECF Service Parties; and it is further

ORDERED that the Debtors shall maintain a service list, which shall include only the Core Parties and the Non-ECF Service Parties (the "Non-ECF Service List"); and it is further

ORDERED that the Non-ECF Service List shall not include e-mail addresses, but may include addresses and facsimile numbers; and it is further

ORDERED that the Debtors shall use reasonable efforts to update the Non-ECF Service List as often as practicable, but in no event less frequently than every thirty (30) days; and it is further

ORDERED that the Non-ECF Service List shall be posted on the Case Information Website and filed with the Court no less frequently than every thirty (30) days commencing as of the date that is ten (10) days after the date of this Order, provided that there has been a change to the Non-ECF Service List; and it is further

ORDERED that Core Parties (and no other party) shall be authorized to serve all Court Papers by e-mail on the Non-ECF Service Parties and any relevant Particularized Interest Parties in accordance with the procedures set forth below, and shall serve other Core Parties by U .S. mail, overnight delivery, hand delivery or facsimile (at the sole discretion of the serving party) or, if so elected by the Core Party to be served, by e-mail. All other parties shall serve Court Papers in accordance with this Order, the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; and it is further

ORDERED that all Court Papers served by a Core Party by e-mail shall include access to an attached file or files containing the entire Court Paper, including the proposed form(s) of order and any exhibits, attachments and other relevant materials, in PDF, readable by Adobe Acrobat or an equivalent program. Notwithstanding the foregoing, if a Court Paper cannot be annexed to an e-mail (because of size, technical difficulties or otherwise), the serving party may, in its sole discretion (i) serve the entire Court Paper by U.S. Mail, hand delivery, overnight delivery or facsimile, including the proposed form(s) of order and any exhibits, attachments and other relevant materials, or (ii) e-mail a notice stating that the Court Paper cannot be attached and is available on the Court's Website (and, if the Court Paper is being served by

the Debtors, on the Case Information Website) and will be mailed only if requested by the party receiving the notice; and it is further

ORDERED that service by e-mail shall be effective as of the date the Court Paper or a notice stating that the Court Paper cannot be attached and is available on the Court's Website is sent by e-mail to the address provided by a party; and it is further

ORDERED that nothing in these Procedures shall prejudice the right of any party to move the Court to request relief under section 107(b) of the Bankruptcy Code or Bankruptcy Rule 9018 to protect any entity with respect to a trade secretor confidential research, development, or commercial information or to protect a person with respect to scandalous or defamatory matter contained in a Court Paper filed in these cases; and it is further

ORDERED that upon the filing of any Court Paper, the filing party shall, in accordance with Local Rule 9078-1, file with the Court either an affidavit of service or a certification of service (a "Certificate of Service") annexing the list of parties that received notice. The Certificate of Service shall not include e-mail addresses; it shall be sufficient to indicate a party was served by e-mail; and it is further

ORDERED that Certificates of Service shall be filed with the Court and served on all recipients. However, parties shall not be required to include a full service list when serving the Certificate of Service. In lieu of attaching a full service list to the Certificate of service to be served on all recipients, a party filing a Court Paper shall include in their Certificate of Service (a) the list of Particularized Interest Parties served, (b) a statement that their full service list was filed with the Court and that it was the Non-ECF Service List from the Case Information Website or the Court's docket and (c) what date the Non-ECF Service List was downloaded from the Case Information Website or filed on the Court's Docket; and it is further

ORDERED that unless otherwise ordered by the Court, the Procedures shall not supersede the requirements for notice of the proceedings described in Bankruptcy Rules: (i) 2002(a)(7) (time fixed for filing proofs of claims pursuant to Bankruptcy Rule 3003(c)), (ii) 2002(b) (time fixed for filing objections and the hearing to consider approval of a disclosure statement or confirmation of a chapter 11 plan), (iii) 2002(d) (certain notices to equity security holders) and (iv) 2002(f) (certain other notices); and it is further

ORDERED that the Debtors shall be authorized to schedule, in cooperation with the Court, periodic omnibus hearings ("Omnibus Hearings') at which motions, pleadings, applications and other requests for relief shall be heard. The following guidelines shall apply to all Omnibus Hearings:

a. Hearings in connection with claims objections and pretrial conferences and trials related to adversary proceedings may be scheduled for dates other than the Omnibus Hearing dates. However, initial pretrial conferences scheduled in connection with adversary proceedings shall be set on the next available Omnibus Hearing date that is at least forty-five (45) days after the filing of the complaint, except as otherwise ordered by the Court.

b. If a Court Paper filed by a non-Debtor party purports to set a hearing date inconsistent with the Procedures, the hearing shall be scheduled, without the neces-

sity of court order, for the first Omnibus Hearing date after the applicable notice period has expired. If this occurs, the Debtors shall provide the movant with notice of these Procedures within three business days of the Debtors' receipt of the Court Paper that is erroneously filed.

c. If a movant or applicant other than the Debtors determines that a motion or application requires emergency or expedited relief, the movant or applicant shall telephonically contact the Debtors' attorneys requesting that the motion or application be considered on an expedited basis. If the Debtors disagree with the movant's or applicant's determination regarding the emergency or expedited nature of the relief requested, the movant or applicant shall arrange for a chambers conference, telephonic or in person, to be held among the Court, the Debtors' attorneys and the movant or applicant to discuss the disagreement. If the Court agrees with the position of the movant or applicant regarding the necessity for expedited consideration, the Court shall direct the requisite notice and shall set a hearing date and time. On the hearing date, the Court shall first consider the propriety of emergency relief whether adequate notice has been given, and whether there has been adequate opportunity for parties to be heard. If the Debtors seek emergency or expedited relief, such request for emergency or expedited consideration shall be upon prior notice to counsel for the Creditors' Committee and an opportunity for the Creditors' Committee to be heard; and it is further

ORDERED that Motions (other than those as set forth below) shall not be considered by the Court unless filed and served in accordance with these Procedures at least fourteen (14) calendar days before the scheduled hearing date. Notwithstanding the foregoing, if the parties served with a Motion are predominantly parties being served by U.S. mail, a hearing may not be scheduled before seventeen (17) calendar days from the date of service; and it is further

ORDERED that nothing in these Procedures shall prejudice the right of any party to move the Court to request an enlargement or reduction of any time period under Bankruptcy Rules 9006(b) and 9006(c); and it is further

ORDERED that if a Motion requests relief pursuant to Bankruptcy Rules 2002(a)(1), (a)(4)–(8) or (b), the relevant hearing shall be set after the passage of the time period set forth in such rule, *provided, however*, that, consistent with Bankruptcy Rule 9006, if service is by U.S. mail, a hearing shall not be scheduled before twenty-three (23) calendar days from the date of service; and it is further

ORDERED that a Motion may be granted without a hearing, provided that, after the passage of the Objection Deadline, the attorney for the entity who filed the Motion: (i) files a declaration pursuant to 28 U.S.C. § 1746 indicating that no Objection has been filed or served in accordance with these Procedures, (ii) if the entity who filed the Motion is not the Debtor, serves the declaration via facsimile upon the undersigned attorneys for the Debtors at least one (1) business day prior to submission thereof to the Court and (iii) delivers by U.S. mail, or hand or overnight delivery, a package to the Court, with a copy to Debtors' counsel, including (a) the declaration described in subsection (i) above, (b) a disk containing an order granting the relief requested in the applicable Motion, (c) a printed copy of the order and (d) the ECF docket number(s) of the Motion to which the proposed order relates (collectively, the

"Presentment Package"). Upon receipt of the Presentment Package, the Court may grant the relief requested in the Motion without further submission, hearing or request. If the Court does not grant the relief, (i) the Motion will be heard at the next Omnibus Hearing that is at least six (6) calendar days from the date the Presentment Package is received by the Court and (ii) the decision not to grant the relief shall not constitute an extension of the Objection Deadline related thereto, unless otherwise agreed between the objecting party and the party seeking relief; and it is further

ORDERED that, except as set forth below, a "Notice of Motion" shall be affixed to all Motions and shall include the following: (i) the title of the Motion, (ii) the parties upon whom any Objection to the Motion is required to be served, (iii) the date and time of the applicable Objection Deadline, (iv) the date of the Omnibus Hearing at which the Motion shall be considered by the Court and (v) a statement that the relief requested may be granted without a hearing if no Objection is timely filed and served in accordance with these Procedures. The applicable Objection Deadline and hearing date shall also appear in the upper right corner of the first page of the Notice of Motion. However, a separate "Notice of Motion" shall not be required where the Motion itself contains the information required to be included in the "Notice of Motion"; and it is further

ORDERED that, except with respect to significant pleadings in adversary proceedings, Local Rule 9013-1(b) shall not be read to require a separate memorandum of law, so long as the relevant points and authorities relied on in support of the Court Paper are set forth therein; and it is further

ORDERED that the deadline to file an Objection (the "Objection Deadline") to any Motion shall be: (i) at least seven (7) calendar days before the applicable hearing date or (ii) any date otherwise ordered by the Court. The Objection Deadline may be extended with the consent of the movant or applicant. No Objection will be considered timely unless filed with the Court and served on the Core Parties on or before the applicable Objection Deadline. All parties filing an Objection shall include their telephone and facsimile numbers in the signature block on the last page of the Objection; and it is further

ORDERED that unless otherwise ordered by the Court, a reply to an Objection shall be filed with the Court and served in accordance with these Procedures on or before 12:00 p.m. on the day that is two (2) business days before the date of the applicable hearing; and it is further

ORDERED that, by approximately 4:00 p.m. on the day before an Omnibus Hearing, the Debtors shall file with the Court a letter setting forth each matter to be heard at the hearing (the letter may be updated after the initial submission if necessary) (the "Agenda Letter") and shall serve the letter(s), by facsimile or e-mail (the choice of the foregoing being in the Debtors' sole discretion) on: (i) chambers, (ii) the Office of the United States Trustee for the Southern District of New York, [name], (iii) the attorneys for the official committee of unsecured creditors, [attorney names, addresses], (iv) the attorneys for any other official committee(s) appointed in these chapter 11 cases, and (v) any parties that have filed Court Papers to be considered at the hearing. Agenda Letters shall not be required where the Debtors have less

than forty eight (48) hours notice of the hearing. The matters listed on the Agenda Letter shall be limited to matters of substance and shall not include administrative filings such as notices of appearance and affidavits of service; and it is further

ORDERED that notwithstanding anything contained herein, motions for relief from the automatic stay filed pursuant to section 362 of the Bankruptcy Code shall be noticed for consideration on an Omnibus Hearing Date that is at least twenty (20) calendar days after the motion is filed and served. Unless otherwise ordered by the Court, the Objection Deadline shall be three (3) days before the scheduled hearing; and it is further

ORDERED that notwithstanding section 362(e) of the Bankruptcy Code, if a scheduled motion with respect to a request for relief under section 362(d) of the Bankruptcy Code is adjourned upon the consent of the Debtors and the moving party to a date that is on or after the thirtieth (30th) day after the moving party's request for relief was made, the moving party shall be deemed to have consented to the continuation of the automatic stay in effect pending the conclusion of, or as a remit of, a final hearing and determination under section 362(d) of the Bankruptcy Code, and shall be deemed to have waived its right to assert the termination of the automatic stay under section 362(e) of the Bankruptcy Code; and it is further

ORDERED that the Debtors, in cooperation with the Claims Agent, are hereby authorized to create and maintain an independent website for the posting of certain information regarding these chapter 11 cases (the "Case Information Website"), located at www.deltadocket.com, including, in the Debtors' sole discretion, certain orders, decisions or other Court Papers filed in these chapter 11 cases; and it is further

ORDERED that the Court's Website shall include a link to the Case Information Website; and it is further

ORDERED that the Case Information Website shall display a disclaimer substantially similar to the following:

> Please take notice that this website has been established and is being maintained and operated at the direction of the United States Bankruptcy Court for the Southern District of New York (the "Court") by Bankruptcy Services LLC (the "Claims Agent"), in cooperation with Delta Air Lines, Inc. ("Delta") and those of its subsidiaries that have filed for chapter 11 (collectively, the "Debtors"), pursuant to the Case Management Order entered in connection with the Debtors' chapter 11 cases. This website is not the website of the Court. While every attempt is being made to ensure the accuracy of the information contained herein, this website does not contain or comprise the official court records. Neither Delta nor the Claims Agent guarantees or warrants the accuracy, completeness, or timeless of the information provided on this website and neither Delta nor the Claims Agent shall be liable for any loss or injury arising out of or caused in whole or in part by the acts, errors or emissions of the parties responsible for the website, whether negligent or otherwise, in procuring, compiling, collecting, meeting, reporting, communicating or delivering the information contained in the website.

> Neither Delta nor the Claims Agent undertakes any obligation to update, modify, revise or recategorize the information provided herein, or to notify you or any third party should the information be updated, modified, revised or recategorized. In no event shall anything included or omitted from this website make Delta and/or the Claims Agent liable to you or any third party for any direct, indirect, incidental, consequential or special damages (including, but not limited to, damages arising from the disallowance of a potential claim, damages to business reputation, lost business or lost profits), whether or not foreseeable and however caused. This website should not be relied upon as a substitute for financial, legal or other professional advice. It is your sole obligation to maintain accurate records of the documents filed in the chapter 11 cases, based on the Court's dockets relating to the Debtors' chapter 11 cases which can be accessed through the court's website at www.nysb.uscourts.gov (a PACER login and password are needed to view these documents and can be obtained at http://pacer.psc.uscourts.gov). The Debtors' website is being made available merely as a convenience to interested parties and the public;

and it is further

ORDERED that the Debtors are authorized to use the Claims Agent as a copy service for the purpose of distributing Court Papers filed in these chapter 11 cases to any requesting party at costs not to exceed those designated by 28 U.S.C. § 1930. The Debtors shall not be charged for this service. Parties seeking to obtain Court Papers from the Claims Agent may call [phone number]; and it is further

ORDERED that the Debtors may amend the Procedures from time to time throughout these chapter 11 cases and shall present such amendments to the Court by motion in accordance with this Order; and it is further

ORDERED that notice of the Case Management Motion as provided therein shall be deemed good and sufficient notice of such Case Management Motion; and it is further

ORDERED that this Order is without prejudice to any party in interest's right to seek to amend or otherwise modify the relief ordered herein.

Dated: October 6, 2005
New York, New York

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:
	: Chapter 11
WORLDCOM, INC., et al.,	:
	: Case No. _____
	:
	: (Jointly Administered)
Debtor(s).	:
	:

FIRST AMENDED CASE-MANAGEMENT ORDER (i) ESTABLISHING, AMONG OTHER THINGS, NOTICE PROCEDURES (INCLUDING BY ELECTRONIC MEANS), OMNIBUS HEARING DATES, AND ALTERNATIVE METHODS OF PARTICIPATION AT HEARINGS AND (ii) AUTHORIZING WORLDCOM, INC., ET AL., TO ESTABLISH AN INDEPENDENT WEBSITE

Upon the sua sponte motion of this Court at a hearing held on July 22, 2002 (the "Motion"), for WorldCom, Inc. and its direct and indirect domestic subsidiaries, as debtors and debtors in possession (collectively, the "Initial Debtors"); and the Court having the authority and jurisdiction to consider the Motion and the relief requested therein in accordance with 11 U.S.C. § 105, and 28 U.S.C. §§ 157 and 1334; and due and proper notice of the Motion; and the Court being cognizant of (i) the size and complexities of these chapter 11 cases, including, without limitation, the number of creditors, equity interest holders and parties in interest with respect thereto and the difficulties associated with attendance at hearings and (ii) the need for the implementation of electronic noticing procedures for the orderly and efficient administration of these chapter 11 cases for the benefit of the Debtors, their creditors and the Debtors' chapter 11 estates; and by order dated July 29, 2002 (the "Initial Order"), the Court having granted the Motion; and certain affiliates of the Initial Debtors having thereafter commenced chapter 11 cases (together with the initial Debtors, the "Debtors"); and, upon review, the Court having determined to modify the Initial Order as provided herein; upon due consideration, good and sufficient cause

appearing therefor, it is hereby ORDERED AS FOLLOWS :

1. The Initial Order is hereby modified and amended.

Service List

2. The Debtors shall maintain a master service list (the "Service List") identifying the parties that must be served whenever a motion, application or other pleading requires the service of notice .

a. The Service List shall include (i) the Debtors, [attorney names, addresses], (ii) [attorney names, addresses], Attorneys for Debtors and Debtors in Possession, [attorney names, addresses], (iii) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: [name], (iv) [law firm name], Attorneys for the Examiner in these chapter 11 cases, [attorney names, addresses], (v) [law firm name], Attorneys for the Lenders Party to the Debtors' 364-Day Revolving Credit Agreement, [attorney names, addresses], (vi) [law firm name], Attorneys for the Debtors' Postpetition Lenders, [attorney names, addresses], (vi) [law firm name], Attorneys for the statutory committee of unsecured creditors (the "Creditors' Committee"), [attorney names, addresses], (viii) [law firm name], Attorneys for Informal Committee of Bondholders of MCI Communications Corporation, [attorney names, addresses], (ix) [law firm name], Attorneys for Informal Committee of Bondholders of Intermedia Communications Inc., [attorney names, addresses], (x) Securities and Exchange Commission, 233 Broadway, New York, New York 10279, Attn: [name] and Securities & Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, Attn: [name], (xi) Internal Revenue Service, 290 Broadway, New York, New York 10007, Attn: District Director, and Internal Revenue Service, 290 Broadway, New York, New York 10007, Attn: Regional Director, (xii) other government agencies to the extent required by the Bankruptcy Rules and the Local Rules (each, as defined below) and (xiii) any party that has requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

b. Any creditor, equity interest holder or party in interest that, as of the date hereof, is not included on the Service List and wishes to receive notice other than as required in accordance with Bankruptcy Rule 2002 must file a notice of appearance and request for service of papers (a "Request") with the Clerk of the Court and serve a copy of such Request upon each of the parties set forth in decretal paragraph 2(a)(i)-(x) above. Each Request must include such party's (i) name, (ii) address, (iii) name of client, if applicable, (iv) telephone number, (v) facsimile telephone number and (vi) electronic mail (e-mail) address, unless such party files a request to be exempted from providing an electronic (e-mail) address.

c. Any party having submitted properly a Request as of the date hereof (an "Initial Request") shall not be required to submit a second Request (a "Supplemental Request") except to the extent that such Initial Request failed to include an electronic mail (e-mail) address. To the extent that such party fails to file and serve a Supplemental Request which contains an electronic mail (e-mail) address, notwithstanding the filing of the Initial Request, such party shall not be entitled to additional service of papers in accordance with decretal paragraph 3 hereof, unless such party (i) files a request to be exempted from providing an electronic (e-mail) address and (ii) serves a copy of such request upon each of the parties set forth on the Service List as the

date thereof, including, without limitation, the parties set forth in paragraph 2(a) hereof.

d. The Debtors shall use their reasonable best efforts to update the Service List as frequently as practicable, but in no event less frequently than every ten (10) days. The Service List shall be available electronically on the Court's website (www.nysb.uscourts.gov) and on the Independent Website, as defined below, to be created and maintained for these chapter 11 cases.

Filing/Service of Papers

3. Pursuant to (i) the Court's General Order (Revised Electronic Filing Electronic Procedures), #M-242, dated January 19, 2001, and (ii) Sections II (A) and (B) of the Revised Administrative Electronic Procedures for Electronically Filed Cases (the "Electronic Procedures"), (a) except with regard to documents which may be filed under seal, all motions, pleadings, memoranda of law, or other documents required to be filed with the Court in these chapter 11 cases shall be electronically filed on the Court's Electronic Filing System, (b) *except with regard to (i) service upon (1) counsel to the Debtors, (2) counsel to the Creditors' Committee, (3) the U.S. Trustee, (4) counsel to the Examiner and (5) any department or agency of the United States of America*, including the United States Attorney, as may be required in accordance with Section II(B)(3) of the Electronic Procedures, or in accordance with a subsequent order of the Court, and (ii) the delivery, unless otherwise ordered by the Court, of a courtesy copy of every pleading, motion, application, objection, response or other filed document to the Court's chambers c/o Room 534, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, clearly marked "Chambers Copy," no documents shall be required to be served in paper (i.e., "hard copy"), and (c) except as set forth in paragraphs 2(b) and (c) hereof, each party having filed a Request, whether or not set forth in the Service List, shall be deemed to have consented to electronic service of papers. Notwithstanding the foregoing, any party that has not filed a Request or that has not consented to or been deemed to have consented to electronic service shall be served in paper (i.e., "hard-copy"). Under all circumstances, service upon counsel to the Debtors, counsel to the Creditors' Committee, the U.S. Trustee, counsel to the Examiner and any department or agency of the United States of America, including the United States Attorney, is required to be in paper, as well as in accordance with the Electronic Procedures.

Omnibus Hearing Days

4. Unless otherwise ordered by the Court or established by the Court as of the date hereof, the Court hereby establishes Tuesday of each week at 10:00 a.m. as the scheduled hearing day (the "Hearing Day") and time for hearing all motions, applications and other matters in these chapter 11 cases, including, without limitation, in connection with adversary proceedings. No calendared matter shall, even with the consent of the Debtors and the other movant with respect thereto, be adjourned without Court approval. Notwithstanding the foregoing, to the extent that such Tuesday is not a business day, or the Court is not otherwise open for business, the Court shall post such exceptions on the Court's internet case calendar (the "Court Calendar"),

available at www.nysb.uscourts.gov. In the event that a motion, application or other matter is filed with the Court and does not appear on the Court Calendar within three (3) business days of the filing thereof, such filing party should contact the Court's chambers for the sole purpose of posting a hearing with respect thereto on the Court Calendar.

5. Except with regard to (a) motions for relief from the automatic stay in accordance with section 362 of title 11 of the United States Code (the "Bankruptcy Code") and(b) motions and applications to compromise and settle claims, disputes and causes of action pursuant to Bankruptcy Rule 9019, all motions, applications and other matters requiring notice and/or a hearing that are filed, lodged or submitted by the Debtors, the Creditors' Committee or any other party in interest, including, without limitation, (i) motions to compel the assumption or rejection of executory contracts and unexpired leases in accordance with section 365 of the Bankruptcy Code, and (ii) motions or applications to take examinations pursuant to Bankruptcy Rule 2004, but expressly excluding "first day" hearings for newly filed debtors, claims objections, and adversary proceedings, shall be noticed for hearing on the next Hearing Day that is at least twenty-five (25) days after such motion, application or other pleading is filed with the Clerk of the Court and notice thereof is served upon the appropriate parties. Unless otherwise ordered by the Court, the objection deadline with respect thereto shall be the later to occur of (i) twenty (20) days after the date of filing and service of such motion, application or other pleading and (ii) three (3) business days prior to the Hearing Day with respect thereto, provided, however, that unless the parties agree otherwise, if a duly scheduled motion is adjourned before an interested party's objection has been filed and before the objection deadline has expired, then the objection deadline shall be extended automatically as to such interested party to the date that is three (3) business days prior to the adjourned Hearing Day with respect to such motion, application, or other proceeding. The Hearing Day and objection deadline shall be set forth in the upper right corner of the first page of the applicable motion, application, or other pleading. Unless otherwise specified herein, all time periods referred to herein shall be calculated in accordance with Bankruptcy Rule 9006.

a. In the event that any nondebtor affiliates of the Debtors commence chapter 11 cases and "first day" motions or applications (including, without limitation, motions and applications regarding the applicability of existing "first day" orders to the chapter 11 cases of such newly filed affiliated debtors) are filed and served by newly filed debtors at least thirty-six (36) hours before a Hearing Day, upon notice to such entities' twenty (20) largest unsecured creditors, the Court shall consider such motions and applications at the next Hearing Day. Otherwise, such motions and applications shall be considered by the Court on the following Hearing Day.

b. The Court shall set separate hearings for claims objections and for pretrial conferences and trials in connection with adversary proceedings. Initial pretrial conferences in connection with adversary proceedings shall be scheduled on the next available Hearing Day that is at least forty-five (45) days after the filing of the complaint.

c. In the event that any party or entity proposes to act or obtain an order by notice of presentment, notice of settlement or other means, in lieu of proceeding by motion,

such party may provide written notice in accordance with the provisions of Rule 2002-2 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"); provided, however, that, unless otherwise ordered by the Court, the time periods set forth in Local Rules 2002-2 (b) and (d) are hereby extended to those set forth in this decretal paragraph 5. If a timely objection is made to a proposal to act or obtain an order by notice of presentment, notice of settlement or other means, such objection is deemed to be a request for a hearing. In such a case, a Hearing Day will be chosen by the Court and the parties will be notified of the Hearing Day pursuant to the terms of this Order.

d. Notwithstanding anything contained in this decretal paragraph 5 to the contrary, motions for relief from the automatic stay in accordance with section 362 of the Bankruptcy Code shall be noticed for hearing on the next Hearing Day that is at least twenty (20) days after such motion is filed with the Clerk of the Court and notice thereof is served upon the Debtors. Unless otherwise ordered by the Court, the objection deadline with respect thereto shall be the later to occur of (i) fifteen (15) days after the date of filing and service of such motion and (ii) three (3) days prior to the Hearing Day with respect thereto. If such duly scheduled motion with respect to a request for relief under section 362(d) of the Bankruptcy Code is adjourned upon the consent of the Debtors and the moving party to a date that is on or after the thirtieth (30th) day after the moving party's request for relief was made, the moving party shall be deemed to have consented to the continuation of the automatic stay in effect pending the conclusion of, or as a result of, a final hearing and determination under section 362(d) of the Bankruptcy Code, and shall be deemed to have waived its right to assert the termination of the automatic stay under section 362(e) of the Bankruptcy Code. In the event that any hearing in connection with a motion for relief from the automatic stay shall require the presentation of evidence, the movant shall inform the Court, the Debtors and the Creditors' Committee, in writing, of any such intention, the manner of presentation, the number of potential witnesses and the expected length of such presentation no later than three (3) business days prior to the Hearing Day with respect thereto.

e. Notwithstanding anything contained in this decretal paragraph 5 to the contrary, and unless otherwise shortened by an order of the Court; motions and applications to compromise and settle claims, disputes and causes of action pursuant to Bankruptcy Rule 9019 shall be noticed for hearing on the next Hearing Day that is at least ten (10) days after such motion or application is filed with the Clerk of the Court; provided, however, that the foregoing is without prejudice to the right of the Creditors' Committee to seek an adjournment thereof. Unless otherwise ordered by the Court, the objection deadline with respect thereto shall be three (3) business days prior to the Hearing Day with respect thereto.

6. Notwithstanding the provisions of decretal paragraph 5 hereof in the event that, in the reasoned determination of a movant or applicant, a motion or application of a party or entity other than the Debtors requires emergency or expedited relief:

a. Such movant or applicant shall contact counsel to the Debtors and counsel to the Creditors' Committee requesting that such motion or application be considered on an expedited basis.

b. In the event that either counsel to the Debtors or counsel to the Creditors' Committee disagrees with the movant's or applicant's determination regarding the emergency or expedited nature of the relief requested, such movant or applicant, as the case may be, shall (i) inform the Court of such disagreement via telephone and thereafter (ii) arrange for a chambers conference, telephonic or in person, to be held among the Court, counsel to the Debtors, counsel to the Creditors' Committee and such movant or applicant to discuss such disagreement. In the event that, following such chambers conference, the Court agrees with the position of such movant or applicant regarding the necessity for expedited consideration, such movant or applicant, as the case may be, may, by order to show cause, request a hearing to be held on a Hearing Day prior to the Hearing Day that is twenty-five (25) days, or in the case of motions for relief of the automatic stay, twenty (20) days, following the filing and service of the applicable motion or application. Any such motion or application must state with specificity the reason why an emergency exists or why there is a need for expedited treatment, indicate in the caption thereof that it is an emergency motion and certify the fact that a chambers conference, telephonic or in-person, was held and the concurrence of the Court as to the necessity for expedited consideration. In the event that the Court grants such emergency treatment, the Court shall direct the requisite notice and shall set a hearing date and time. On the Hearing Day on which the matter is scheduled, the Court shall first consider the propriety of emergency treatment, whether adequate notice has been given, and whether there has been adequate opportunity for parties to be heard. In the event that the Debtors seek emergency or expedited relief such request for emergency or expedited consideration shall be upon prior notice to counsel for any statutory committee and an opportunity to be heard.

c. In the event that counsel to the Debtors and counsel to the Creditors' Committee do not disagree with the movant's or applicant's determination regarding the emergency or expedited nature of the relief requested, such movant or applicant, as the case may be, may, by proposed scheduling order, request a hearing to be held on a Hearing Day prior to the Hearing Day that is twenty-five (25) days, or in the case of motions for relief of the automatic stay, twenty (20) days, following the filing and service of the applicable motion or application. Any such motion or application must certify the agreement of expedited treatment by the Debtors and the Creditors' Committee, state with specificity the reason why an emergency exists or why there is a need for expedited treatment and indicate in the caption thereof that it is an emergency motion. In the event that the Court grants such emergency treatment, the Court shall direct the requisite notice and shall set a hearing date and time. On the Hearing Day on which the matter is scheduled, the Court shall first consider the propriety of emergency treatment, whether adequate notice has been given, and whether there has been adequate opportunity for parties to be heard.

Proposed Hearing Agenda

7. By 12:00 noon on the day prior to each Hearing Day, the Debtors' counsel shall provide to Chambers, counsel for the Creditors' Committee, counsel to the Debtors' debtor in possession lenders, the U.S. Trustee, and counsel to the Examiner

a proposed agenda with regard to the matters which are or were to be heard on such Hearing Day (the "Proposed Hearing Agenda").

a. The Clerk shall post the Proposed Hearing Agenda on the Court's website and the Debtors shall provide a copy of the Proposed Hearing Agenda to the Independent Website host and cause the Proposed Hearing Agenda to be posted on the Independent Website. The Proposed Hearing Agenda, whether or not served on parties or published on the Internet, shall constitute merely a proposal for the convenience of the Court and counsel and NOT be determinative of the matters to be heard on that day or whether there will be a settlement or continuance.

b. The Proposed Hearing Agenda is expected to include:

(i) The docket number and title of each matter to be scheduled for hearing on the next Hearing Day;

(ii) Whether the matter has been adjourned;

(iii) Whether the matter is contested or uncontested;

(iv) The Debtors' estimate of the time required to hear each matter;

(v) Other comments that will assist the Court in organizing its docket for the day (for example, if a request for continuance or withdrawal of the matter is expected); and

(vi) a suggestion for the order in which the matters should be addressed.

c. On the Hearing Day, the Court may, or may not, accept the hearing agenda proposed by the Debtors.

Independent Website

8. The Debtors are authorized to establish and maintain an independent, separately named website (the "Independent Website") for the posting of all documents filed in the main case, as well as any associated adversary proceedings, except proofs of claim and those documents filed under seal or otherwise excepted by the Court. It is intended that orders, decisions and all other documents will be posted on the Independent Website within one (1) business day of receipt by the Independent Website host. All documents filed with the Court or otherwise entered by the Clerk shall be posted on the Court's System, as defined in the Electronic Procedures, and then the Independent Website host will post such documents on the Independent Website. Unless previously provided electronically, if necessary, it shall be the responsibility of the Debtors to arrange to have the documents picked up or delivered at least once during each day the Clerk's Office is open. The Clerk of the Court shall continue to docket all documents and maintain the official court record on the Court's System.

9. Unless otherwise determined by the Debtors, the schedules and statement of financial affairs (the "Schedules") to be filed by the Debtors shall be placed on the Independent Website. In the event a party in interest desires a photocopy of the Schedules, such party must contact [law firm name], Attorneys for Debtors and Debtors in Possession, [attorney names, addresses].

10. Proofs of claims shall not be placed on the Independent Website.

11. Notwithstanding the foregoing, in its discretion, the Court may direct that certain pleadings not be placed on the Independent Website if they are simply proce-

dural and do not deal with specific substantive matters, including, without limitation, requests for special notices and certificates of service.

12. The Independent Website shall prominently display the following disclaimer:

> "Please take notice that this website has been established, and is being maintained and operated by the Debtors, WorldCom, Inc., et al., as authorized by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") pursuant to the Case Management Order (i) Establishing, Among Other Things, Notice Procedures (Including By Electronic Means), Omnibus Hearing Dates, and Alternative Methods of Participation at Hearings and (ii) Authorizing WorldCom, Inc., et al., to Establish an Independent Website dated July 29, 2002, as amended by the First Amended Case Management Order (i) Establishing, Among Other Things, Notice Procedures (Including By Electronic Means), Omnibus Hearing Dates, and Alternative Methods of Participating at Hearings and (ii) Authorizing WorldCom, Inc., et al., to Establish an Independent Website. This website is not the website of the Bankruptcy Court. While every attempt is being made to ensure the accuracy of the information contained on the site, this website does not contain or comprise the official court records. The site is being made available merely as a convenience to all interested parties and the public."

Participation in Hearings by Telephone/Video-Conferencing

13. The Debtors shall arrange with a service, to be determined by the Debtors in their sole and absolute discretion, for the participation in hearings in these chapter 11 cases by telephone conference. Any party filing a motion, application or other pleading, including, without limitation, an objection or response thereto, may participate in a hearing by telephone conference; *provided however,* that prior written notification of such party's intention to participate telephonically shall be provided by such party to counsel to the Debtors and any statutory committee at least twenty-four (24) hours prior to the commencement of any hearing. Any party not submitting a pleading, but interested in monitoring the Court's proceedings, may participate by telephone conference in "listen only" mode. Under no circumstances may any party record or broadcast the proceedings conducted by the Court. Information regarding the manner and cost of telephonic participation shall be posted on the Court's website and the Independent Website. Any costs associated with setting up this system, but expressly not including the cost of participation, shall be borne by the Debtors as permitted by 28 U.S.C. § 156(c).

14. The Court shall consider the use of video-conferencing on a case-by-case basis. Any costs associated with the use of video-conferencing, unless otherwise ordered by the Court, shall be borne by the party requesting the use thereof.

Settlement

15. In the event that a matter is properly noticed for hearing and the parties reach agreement on a settlement of the dispute prior to the final hearing, the parties may announce the settlement at the scheduled hearing on the Hearing Day. In the event that the Court determines that the notice of the dispute and the hearing is adequate

notice of the effects of the settlement (i.e., that the terms of the settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement. In the event that the Court determines that additional or supplemental notice is required, the Debtors shall serve such notice in accordance with the procedures set forth in decretal paragraphs 3 and 5 hereof and a hearing to consider such settlement shall be on the next Hearing Day deemed appropriate by the Court.

Notice

16. Upon entry hereof, the Debtors shall serve a hard copy of this Order upon all parties set forth on the Service List as of the date hereof.

Effect

17. This Order is without prejudice to any party in interest to seek to amend, or otherwise modify, the relief ordered herein.

Dated: New York, New York
December 23, 2002

HONORABLE ARTHUR J. GONZALEZ
UNITED STATES BANKRUPTCY JUDGE

Exhibit I-10. Sample Certification of No Objection

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF NEW JERSEY

IN RE:	: CASE NO.:	_____
	: CHAPTER:	11
DEBTOR	: JUDGE:	_____

CERTIFICATION OF NO OBJECTION REGARDING _____

DOCUMENT NO. _____

The undersigned hereby certifies that, as of _____, _____ has received no answer, objection or other responsive pleading to _____, document no. _____ filed on _____. The undersigned further certifies that I have reviewed the Court's docket in this case and no answer, objection or other responsive pleading to the _____ appears thereon. Pursuant to Notice of _____, objections to the _____ were to be filed and served no later than _____.

It is hereby respectfully requested that the Order attached to the _____ _____ be entered at the earliest convenience of the Court.

Dated: _____ Counsel to: _____

By: _____

Exhibit I-11. Sample Form of Notice of Agenda

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF NEW JERSEY

	:	CASE NO.:	_____
In RE	:		
	:	CHAPTER:	11
	:		
DEBTOR	:	JUDGE:	_____

NOTICE OF AGENDA OF MATTERS

SCHEDULED ON _____, 20___ AT _____.M.

CONTINUED MATTERS

1. Title of Motion [Document no.]
   - Response Deadline:
   - Response(s) Received:
   - Related Documents:
   - Status: (Practice Note for Bar – state the continued hearing date, if known or if date needs to be determined)

UNCONTESTED MATTERS

2. Title of Motion [Document no.]
   - Response Deadline:
   - Response(s) Received:
   - Related Documents:
   - Status: (Practice Note for Bar – state no objections have been received and a certification of No Objection has or will be filed)

PRETRIAL CONFERENCES

3. Pretrial Conference on Complaint Re: [Caption of Adversary], Adversary Pro. No. _____
   - Related Documents:
   - Adversary Complaint of _____ [Docket No.: _____]
   - Response/Answer Deadline:
   - Response(s) Received:
   - Related Documents:

- Status: (The matter is going forward, Practice Note for Bar: If the parties are still negotiating please also state this development for the court).

CONTESTED MATTERS

4. Title of Motion [Document no.]
   - Response Deadline:
   - Response(s) Received:
   - Related Documents:
   - Status: (The matter is going forward, Practice Note for Bar: If the parties are still negotiating please also state this development for the court).

CONTESTED MATTER—EVIDENTIARY HEARING REQUIRED

5. Title of Motion [Document no.]
   - Response Deadline:
   - Response(s) Received:
   - Related Documents:
   - Status: (The matter is going forward, Practice Note for Bar: If the parties are still negotiating please also state this development for the court).

FEE APPLICATIONS

6. Title of Fee Application [Document no.]
   - Response Deadline:
   - Response(s) Received:
   - Related Documents:
   - Status

Date: _____ _____

IMPORTANT NOTES TO NOTICE OF AGENDA

- Number Agenda matters consecutively. Therefore, do not start with number 1 at each new section.
- Include docket numbers for any pleadings referenced on Notice of Agenda.
- Amended Notices of Agenda should have new material in **bold** only. There is no need to italicize, underline, or blackline. DO NOT REARRANGE the numbering of the Notice of Agenda when and if submitting an Amended Notice of Agenda.
- Double check the updated docket before filing a Notice of Agenda to be sure you have included all docket numbers on pleadings listed. If for some reason a pleading is not docketed please note TBD and state when pleading filed with the court.

Exhibit II-1. Sample Order Denying a Motion to Appoint a Common Stockholders Committee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re	)	
	)	
	)	
Debtor	)	
	)	BK No. _____

Order Re Motion for Common Stockholders Committee

This matter came on for hearing on February 2, 1990, upon the Motion of [movants' names] for Order Appointing an Official Committee of Common Stockholders. The Motion in question was filed on January 12, 1990. The Court has reflected on those arguments, as well as the written pleadings on this matter and the record in this case, and hereby denies said Motion on the following grounds:

1. This Chapter 11 case was commenced by a voluntary petition filed on January 28, 1988. The unique nature and complexity of this case of a debtor that is a regulated monopoly electric utility company has been set forth in prior opinions of this court. See, e.g., [prior decisions in this bankruptcy case].

2. Following a long and tortuous process this case in September 1989 had plans of reorganization filed by multiple, competing plan proponents and, under a series of procedural orders entered by the Court, there commenced a grueling sequence of hearings in November and December of 1989, consuming more than ten trial days and resulting in an order entered December 8, 1989, approving a disclosure statement on a joint plan of reorganization. A further procedural order then was entered on January 3, 1990, setting forth requirements for mailing the disclosure materials to creditors and stockholders, for voting on the plan, and for a confirmation hearing to commence on April 4, 1990.

3. No case cited to this court or independently found by this court has authorized the appointment of an additional committee after the disclosure statement hearing has been closed and the disclosure statement approved and before a scheduled confirmation hearing.

4. Courts generally do not look with favor on authorizing committees late in the reorganization process due to delay and disruption. See, e.g., [prior decisions in this bankruptcy case] (and cases cited therein). The decision cited above was rendered in August of 1988 and denied a request to appoint a separate committee of individual debenture holders. It was noted that the Court at the outset of these proceedings encouraged quick formation of committees in this case at conference hearings held in February and March of 1988 and that the individual debenture holder committee requested by a motion filed in June of 1988 would "belatedly interject" an additional committee that would cause unjustified delay and disruption in the proceeding.

5. Some conflicts between members of committees or their interests are expectable and do not per se warrant authorizing an extra committee, especially considering the added cost and complexity that appointing a committee would bring to the proceedings. See [prior decisions in this bankruptcy case].

6. It is conceded in the present case that granting the Motion for the Appointment of a Common Stockholder Committee will necessarily result in subsequent motions and appointment of attorneys and financial advisors to the new committee. In my judgment such appointments will necessarily delay and disrupt the scheduled confirmation hearings in order for such new professionals to be made knowledgeable about the history of this Chapter 11 proceeding and all factors bearing upon confirmation of the pending plan of reorganization.

7. There has been no showing that the existing equity committee does not adequately represent the interests of common as well as preferred stockholders in the circumstances of this case. The makeup of the committee has been known to all parties since originally appointed by the U.S. Trustee at the outset of the case and, until the present Motion was filed, no common stockholders aside from [movant's names] have challenged the makeup of the committee as not being representative or involving an impermissible conflict.

8. The movants believe the underlying compromise with the State of New Hampshire on rate increases for the reorganized company does not give sufficient weight to the possible rate increases that the company might achieve if the pending plan is not confirmed and the debtor proceeds with a litigated rate case once the Seabrook nuclear power plant comes online. The movants believe that the present plan proponents, including the equity committee, will not make an appropriate showing before the Court as to the possibilities of rate litigation as part of a showing that the compromise included within the plan of reorganization is fair and equitable. However, the plan proponents will have the burden at the confirmation hearing of establishing on the record that the compromise is fair and equitable—including a showing as to the range of possible results that might come out of a litigated rate case—as a factor in determining whether the plan is in the best interest of creditors and stockholders under Bankruptcy Code § 1129 (a)(7). The Court will have to make an affirmative finding in that regard to support confirmation of the pending plan.

9. The Court also notes in this regard that by Order entered April 3, 1989, the Court appointed [examiner's name], a former Chairman of the New York Public Service Commission, as Examiner in these proceedings under Bankruptcy Code § 1104, and has appointed [examiner's attorney's name] of New York City, as his attorney in these proceedings. The Court expects to receive knowledgeable analysis and information from the Examiner and his attorney at the confirmation hearing with regard to the range of possible results in a litigated rate case with the State of New Hampshire should the pending plan of reorganization not be confirmed. To the extent that the existing orders appointing the Examiner and his attorney may be restrictive in that regard they are hereby amended and expanded pro tanto to ensure this Court will have the requisite information to make the best interest finding under Bankruptcy Code § 1129(a)(7) at the confirmation hearing.

10. Nothing in this Order denying appointment of a committee will prevent [movants' names] from opposing in their individual capacities as common stockholders the confirmation of the plan of reorganization under the scheduling order. Moreover, under Bankruptcy Code § 503(b)(3) and (b)(4) should their activity in this case result in the making of a substantial contribution to the case as therein provided, they have the possibility of recovering their fees and expenses in that regard as an administrative expense of this estate.

11. Finally, it should be noted that the reluctance of this and other courts to appoint additional committees late in the reorganization process—and particularly after the disclosure statement hearings have been closed—is a function of the importance to the Chapter 11 reorganization process of meaningful and effective deadlines for plan formulation. This is especially true with regard to the approval of the requisite disclosure statement permitting a plan to go forward for vote on confirmation. Much that makes Chapter 11 work is the result of the pressure put on the parties and interests to "put their best foot forward" in the plan formulation process before the disclosure statement hearings are closed and the plan confirmation procedures commence. The present case, in its history during the August through December 1989 period, amply illustrates the constant improving of contending plans under this competitive time pressure, leading to the closing of the disclosure statement hearings.

12. The question as to the makeup of the equity committee in this case could have been raised at any time prior to the closing of the disclosure statement hearings, but was not. To order an additional committee now on that ground, even if it arguably might have been ordered earlier in the case, would be a precedent that would inevitably weaken the force of the procedures and deadlines necessary to effective plan formulation in Chapter 11 cases.

DONE and ORDERED this 9th day of February, 1990, at Manchester, New Hampshire.

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to serve Full List

Exhibit II-2. Sample Order with Respect to Procedures for Prepackaged Chapter 11 Cases

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

IN RE:	)
	)
PROCEDURES FOR	) GENERAL ORDER NO. 03-11
PREPACKAGED CHAPTER 11 CASES	)
	)

1. Definition of "Prepackaged Chapter 11 Case." A "prepackaged Chapter 11 case" shall be one in which the Debtor, substantially contemporaneously with the filing of its Chapter 11 petition, files a Confirmation Hearing Scheduling Motion for Prepackaged Plan satisfying the applicable criteria set forth below ("Prepack Scheduling Motion"), a plan, disclosure statement (or other solicitation document), and voting certification.

2. Criteria for Prepackaged Chapter 11 Case; Contents of Prepack Scheduling Motion.

2.1 Contents of Prepack Scheduling Motion. The Prepack Scheduling Motion shall represent:

2.1(a) that the solicitation of all votes to accept or reject the Debtor's plan required for confirmation of that plan was completed prior to commencement of the Debtor's Chapter 11 case, and that no additional solicitation of votes on that plan is contemplated by the Debtor, or that the solicitation of all votes to accept or reject the Debtor's plan required for confirmation of that plan has been deemed adequate by the Court pursuant to ¶ 2.3 below such that no additional solicitation will be required;

2.1(b) that the requisite acceptances of such plan have been obtained from each class of claims or interests as to which solicitation is required except as provided in ¶ 2.1(c) below; and

2.1(c) with respect to any class of interests that has not accepted the plan whether or not it is deemed not to have accepted the plan under § 1126(g), represent that the Debtor is requesting confirmation under § 1129(b); and

2.1(d) request entry of an order scheduling the hearing, on date that is not more than ninety days after the petition date, on confirmation of the plan and on whether the Debtor has satisfied the requirements of either 11 U.S.C. § 1126(b)(1) or (b)(2).

2.2 Confirmation Pursuant to 11 U.S.C. § 1129(b)(2)(C). A Chapter 11 case may constitute a "prepackaged Chapter 11 case" for purposes of these guidelines notwithstanding the fact that the Debtor proposes to confirm the Plan pursuant to 11 U.S.C. § 1129(b)(2)(C) as to a class of interests.

2.3 Filing of Petition After Solicitation Has Commenced But Before Expiration of Voting Deadline. Unless the Court orders otherwise, if a Chapter 11 case is commenced by or against the Debtor, or if a Chapter 7 case is commenced against the Debtor and converted to a Chapter 11 case by the Debtor pursuant to 11 U.S.C. § 706(a), after the Debtor has transmitted all solicitation materials to holders of claims or interests whose vote is sought but before the deadline for casting acceptances or rejections of the Debtor's plan (the "Voting Deadline"):

2.3(a) the Debtor and other parties in interest shall be permitted to accept but not solicit ballots until the Voting Deadline; and

2.3(b) After notice and a hearing the Court shall determine the effect of any and all such votes.

2.4 Applicability of Guidelines to Cases Involving Cramdown of Classes of Claims and Interests and "Partial Prepackaged Chapter 11 Cases." The Court may, upon request of the Debtor or other party in interest in an appropriate case, apply some or all of these guidelines to:

2.4(a) cases in which the Debtor has satisfied the requirements of ¶ 2.1(a) above but intends to seek confirmation of the plan pursuant to 11 U.S.C. § 1129(b) as to a class of (1) claims which is deemed not to have accepted the plan under 11 U.S.C. § 1126(g); (2) claims or interests which is receiving or retaining property under or pursuant to the plan but whose members' votes were not solicited prepetition and whose rejection of the plan has been assumed by the Debtor for purposes of confirming the plan; or (3) claims or interests which is receiving or retaining property under or pursuant to the plan and which voted prepetition to reject the plan, as long as no class junior to such rejecting class is receiving or retaining any property under or pursuant to the plan; and

2.4(b) "partial prepackaged Chapter 11 cases," i.e., cases in which acceptances of the Debtor's plan were solicited prior to the commencement of the case from some, but not all, classes of claims or interests whose solicitation is required to confirm the Debtor's plan.

3. Procedure Prior to Filing.

3.1 Notice of Proposed Filing to UST. At least two business days prior to the anticipated filing date of the prepackaged Chapter 11 case, the Debtor should notify the UST of the Debtor's intention to file a prepackaged Chapter 11 case and supply the UST with two copies of the Debtor's plan and disclosure statement (or other solicitation document).

3.2 Notice of Proposed "Prepackaged First Day Orders". Paragraph 4.2 of the Court's General Order No. 03-10, concerning procedures prior to filing of First Day Motions, applies to all Prepackaged First Day Motions (as defined in ¶ 3.3 below). In addition, counsel for the Debtor should advise the Courtroom Deputy for the Judge assigned to the case of any unique procedures which may be requested.

3.3 Prepackaged First Day Orders.

3.3(a) Motions for Request for Entry of Immediate Orders. "Prepackaged First Day Motions" as defined in (b), shall comply with the requirements of ¶¶ 4 and 5 of the Court's General Order No. 03-10.

3.3(b) Typical Prepackaged First Day Motions. Prepackaged First Day Motions typically entertained by the Court on or within two business days of the later of the petition date or the date of filing of the Prepackaged First Day Motions include (but are not limited to) the First Day Motions listed in ¶ 4.6 of the Court's General Order No. 03-10, and the following:

3.3(b)(i) Prepack Scheduling Motion, setting forth the information required in ¶ 2 above.[1]

3.3(b)(ii) Motion for order authorizing Debtor to mail initial notices, including the notice of meeting of creditors under 11 U.S.C. § 341(a).

3.3(b)(iii) Motion for order dispensing with the requirement of filing any or all schedules and statement of financial affairs in the event the Debtor is not seeking to bar and subsequently discharge all or certain categories of debt or extending Debtor's time for filing schedules and statement of financial affairs to a specified date.

3.3(b)(iv) Motion for an order setting the last date for filing proofs of claim or interest if the Debtor has determined that a deadline should be set.

3.3(b)(v) Employment Applications, as defined in ¶ 6 of the Court's General Order No. 03-10;

3.3(b)(vi) Motion for order authorizing employment and payment without fee applications of professionals used in ordinary course of business, not to exceed a specified individual and aggregate amount.

3.3(b)(vii) Motion for order establishing procedures for compensation and reimbursement of expenses of professionals.

3.3(b)(viii) Motion for order authorizing Debtor to pay claims for contribution to employee benefit plans in an amount not to exceed a specified amount, which amount shall be set forth in the Motion. If the Motion requests authority to pay amounts in excess of the amounts set forth in 11 U.S.C. § 507(a)(4) (as modified by 11 U.S.C. § 104(b)) then a list of the names and position/job titles of all employees as to whom those payments will be made shall be attached. However, the propriety of those requests shall be considered on a case-by-case basis. The Motion also shall provide the information required by ¶ 3.3(c).

3.3(b)(ix) Motion for an order authorizing Debtor to reimburse employee business expenses in an amount not to exceed a specified amount per employee and not to exceed a specified aggregate amount, which amounts

1. In the event solicitation has not been completed prior to the petition date, an alternative first day motion should be submitted consistent with sections 2(a)(i) and 2(c).

shall be set forth in the Motion. The Motion also shall provide the information required by ¶ 3.3(c).

3.3(b)(x) Motion for an order authorizing Debtor to pay creditors whose prepetition claims will be paid in full in cash on consummation under the Debtor's plan, not to exceed a specified aggregate amount, which amount shall be set forth in the Motion. The Motion should disclose the types of claims that the Debtor proposes to pay, e.g., trade creditors supplying goods; trade creditors supplying services; professionals involved in the routine, day-to-day operations and business of the Debtor. The Motion also shall provide the information required by ¶ 3.3(c).

3.3(b)(xi) Motion for an order authorizing continued performance without assumption under key executory contracts, including payment of prepetition amounts due and owing thereunder in an amount not to exceed specified aggregate and per claimant amounts. The Motion shall list and state all contracts subject to the motion and provide the information required by ¶ 3.3(c).

3.3(b)(xii) any Motion to Sell, as defined in ¶ 8 of the Court's General Order No. 03-10.

3.3(c) Motions Affecting Priority Claims. Any Motion under ¶ 3.3(b)(viii) through (ix) that proposes to pay a claim which is not a priority claim shall also explain why those claims should be afforded the treatment requested in the Motion.

3.4 Voting Period; Ballot; Multiple Votes; Notice Presumptions.

3.4(a) Voting Period Guidelines. Under ordinary circumstances, in determining whether the time allowed for casting acceptances and rejections on the Debtor's plan satisfied Fed. R. Bankr. P. 3018(b), the Court will approve as reasonable:

3.4(a)(i) For securities listed or admitted to trading on the New York Stock Exchange or American Stock Exchange or any international exchanges quoted on NASDAQ, and for securities publicly traded on any other national securities exchange ("Publicly Traded Securities"), a twenty-business-day voting period, measured from the date of commencement of mailing.

3.4(a)(ii) For securities which are not Publicly Traded Securities and for debt for borrowed money which is not evidenced by a Publicly Traded Security, a ten-business-day voting period, measured from the date of commencement of mailing.

3.4(a)(iii) For all other claims and interests, a twenty-business-day voting period, measured from the date of commencement of mailing.

3.4(b) Shorter or Longer Voting Period. Nothing herein is intended to preclude a shorter voting period if it is justified in a particular case or any party in interest from demonstrating that the presumptions set forth above are not reasonable in a particular case.

3.4(c) Ballot. The ballot may include information in addition to that set forth on the Official Ballot Form, and may request and provide space for the holder of a claim or interest to vote on matters in addition to the plan. By way of example, the ballot may seek and record votes relating to an exchange offer, consents to or votes with respect to benefits plans, and elections provided for in the plan (or exchange offer).

3.4(d) Multiple Votes. If the holder of a claim or interest changes its vote during the prepetition voting period, only the last timely ballot cast by such holder shall be counted in determining whether the plan has been accepted or rejected unless the disclosure statement (or other solicitation document) clearly provides for some other procedure for determining votes on the prepackaged plan. If a holder of a claim or interest wants to change a vote post-petition, Fed. R. Bankr. P. 3018(a) requires a showing of cause and Court approval.

3.4(e) Notice Guidelines. In determining whether the plan was transmitted to substantially all creditors and equity security holders of the same class, the Court will take into account whether (1) the Debtor transmitted the plan and disclosure statement (or other solicitation document) in substantial compliance with applicable nonbankruptcy law, rules, or regulations and (2) the fact that creditors and equity security holders who are not record holders of the securities upon which their claims or interests are based generally assume the risk associated with their decision to hold their securities in "street name."

3.5 Meeting of Creditors. After the filing of the Chapter 11 petition, the Debtor shall notify creditors of the date, time and place of the meeting of creditors pursuant to 11 U.S.C. § 341(a), as well as the other information set forth in § 9.8(b)(ii) below. The date set for the § 341(a) meeting should be no more than forty days after the filing of the petition.

3.6 Last Date for Filing Proofs of Claim or Interest.

3.6(a) A last date to file proofs of claim or interest will not be set unless the Debtor seeks an order fixing such a deadline for filing proofs of claim or proofs of interest.

3.6(b) If a claims agent is appointed, such agent shall docket all proofs of claim and proofs of interest and deliver to the Debtor complete copies of the proofs of claim and interest, along with a complete claims and interest docket, not later than five business days after the last date to file proofs of claim or interest.

3.7 Notice.

3.7(a) In General. Notice of the filing of the plan and disclosure statement (or other solicitation document) and of the hearing to consider compliance with disclosure requirements and confirmation of the plan must be given to all parties-in-interest. Paper copy of a notice must be mailed; service of a notice of electronic filing will not suffice. No further distribution of the plan

and disclosure statement (or other solicitation document) beyond that which occurred prepetition is required unless requested by a party-in-interest.

3.7(b) Hearing Notice.

3.7(b)(i) Where the disclosure statement has not been approved by the Court prior to confirmation, the Debtor shall prepare and mail paper copies to all parties-in-interest of a Notice of Confirmation Hearing and Approval of Disclosure Statement (or other solicitation documents) (the "Hearing Notice"). The Hearing Notice must (1) set forth the date, time and place of the hearing to consider compliance with disclosure requirements and confirmation of the plan; (2) set forth the date and time by which objections to the foregoing must be filed and served; (3) include a chart summarizing plan distributions; (4) set forth the name, address and telephone number of the person from whom copies of the plan and disclosure statement (or other solicitation document) can be obtained (at the Debtor's expense); and (5) state that the plan and disclosure statement (or other solicitation document) can be viewed electronically and explain briefly how electronic access to these documents may be obtained.

3.7(b)(ii) Either the Hearing Notice or a separate notice must set forth the date, time and place of the § 341(a) meeting and state that such meeting will not be convened if (1) the plan is confirmed prior to the date set for the § 341(a) meeting and (2) the order confirming the plan (or order entered substantially contemporaneously therewith) contains a provision waiving the convening of such a meeting.

3.7(c) Service.

3.7(c)(i) The Hearing Notice shall be served upon (1) record (registered) holders of debt and equity securities (determined as of the record date established in the disclosure statement or other solicitation document) that were entitled to vote on the plan, (2) record (registered) holders of all other claims and interests of any class (determined as of a record date that is not more than ten days prior to the date of the filing of the petition), (3) all other creditors listed in the Debtor's schedules, unless Debtor is not seeking to bar and subsequently discharge claims, in which case schedules may not be required to be filed, (4) the UST, (5) all indenture trustees, (6) any committee(s) that may have been appointed in the case, and (7) the United States in accordance with Fed. R. Bankr. P. 2002.

3.7(c)(ii) The Debtor shall inform the Court of the proposed procedures for transmitting the Hearing Notice to beneficial holders of stock, bonds, debentures, notes, and other securities, and the Court shall determine the adequacy of those procedures and enter such orders as it deems appropriate.

3.7(d) Time Period. The Official Notice shall be mailed at least twenty days prior to the scheduled hearing date on confirmation of the plan and adequacy of disclosure unless the Court shortens such notice period.

3.8 Combined Hearings. The hearings on the Debtor's compliance with either 11 U.S.C. § 1126(b)(1) or 11 U.S.C. § 1126(b)(2), as applicable, and on confirmation of the plan in a prepackaged Chapter 11 case shall be combined whenever practicable.

This order shall become effective on November 3, 2003.

SO ORDERED THIS _____ DAY OF _____, 2003.

FOR THE COURT:

_____
Basil H. Lorch, III, Chief Judge

Exhibit II-3. Sample Order for a Disclosure and Confirmation Hearing on a Prepackaged Plan

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11 Case No.
[NAME],	:	__-_____(__)
Debtor.	:	
[DEBTOR'S ADDRESS]	:	Tax ID No.
		_____

SUMMARY OF PLAN OF REORGANIZATION AND NOTICE OF HEARING TO CONSIDER (i) DEBTOR'S COMPLIANCE WITH DISCLOSURE REQUIREMENTS AND (ii) CONFIRMATION OF PLAN OF REORGANIZATION

NOTICE IS HEREBY GIVEN as follows:

1. On_____, _____ (the "Petition Date"), [name of debtor], the above-captioned debtor (the "Debtor"), filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") a proposed plan of reorganization (the "Plan") and a proposed disclosure statement (the "Disclosure Statement") pursuant to §§ 1125 and 1126(b) of title 11 of the United States Code (the "Bankruptcy Code"). Copies of the Plan and the Disclosure Statement may be obtained upon request of Debtor's counsel at the address specified below and are on file with the Clerk of the Bankruptcy Court, [address], where they are available for review between the hours of 9:00 a.m.–4:30 p.m. The Plan and Disclosure Statement also are available for inspection on the Bankruptcy Court's Internet site at www.nysb.uscourts.gov.

Summary of Plan of Reorganization

2. [Provide one paragraph general description of salient Plan provisions, including whether proponent requests confirmation pursuant to 11 U.S.C. § 1129(b).] Votes on the Plan were solicited prior to the Petition Date. The following chart summarizes the treatment provided by the Plan to each class of claims and interests and indicates the acceptance or rejection of the Plan by each class entitled to vote.

CLASS	CLASS CLASSIFICATION	IMPAIRMENT/ TREATMENT	ACCEPT/ REJECT

Hearing to Consider Compliance with Disclosure Requirements

3. A hearing to consider compliance with the disclosure requirements, any objections to the Disclosure Statement, and any other matter that may properly come before the Bankruptcy Court will be held before the Honorable _____, United States Bankruptcy Judge, in Room _____ of the United States Bankruptcy Court, [ADDRESS], on _____ at ___:___ .m. or as soon thereafter as counsel may be heard (the "Disclosure Compliance Hearing"). The Disclosure Compliance Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Disclosure Compliance Hearing or at an adjourned Disclosure Compliance Hearing and will be available on the electronic case filing docket.

4. Any objections to the Disclosure Statement shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, shall set forth the name of the objector, the nature and amount of any claims or interests held or asserted by the objector against the estate or property of the Debtor, the basis for the objection, and the specific grounds therefor, and shall be filed with the Bankruptcy Court at the address specified in the previous paragraph, with a copy delivered directly to Chambers, together with proof of service thereof, and served upon the following persons so as to be received on or before _____, _____, at 5:00 p.m. (Eastern Time):

(i) [NAME AND ADDRESS of DEBTOR'S COUNSEL]

(ii) [NAME AND ADDRESS OF COMMITTEE COUNSEL]

(iii) [NAME AND ADDRESS OF BANK COUNSEL]

(iv) [NAME AND ADDRESS OF INDENTURE TRUSTEE]

(v) OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street, 21st Floor
New York, NY 10004
Attn: Deirdre A. Martini, Esq.

[and if applicable]

(vi) OFFICE OF THE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK
One St. Andrew's Plaza
New York, NY 10007
Attn: David Jones, Esq.

(vii) SECURITIES AND EXCHANGE COMMISSION
Northeast Regional
3 World Financial Center
Broker Dealer Dept., Rm. 4300
New York, NY 10281

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

Hearing on Confirmation of the Plan

5. A hearing to consider confirmation of the Plan, any objections thereto, and any other matter that may properly come before the Bankruptcy Court shall be held before the Honorable _____, United States Bankruptcy Judge, in Room _____ of the United States Bankruptcy Court, [address], immediately following the Disclosure Compliance Hearing referred to above or at such later time as determined by the Bankruptcy Court at the conclusion of the Disclosure Compliance Hearing (the "Confirmation Hearing"). The Confirmation Hearing may be adjourned from time to time without further notice other than an announcement of the adjourned date or dates at the Confirmation Hearing or at an adjourned Confirmation Hearing.

6. Objections to the Plan, if any, shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, shall set forth the name of the objector, the nature and amount of any claims or interests held or asserted by the objector against the estate or property of the Debtor, the basis for the objection, and the specific grounds therefor, and shall be filed with the Bankruptcy Court at the address specific in the previous paragraph, with a copy delivered directly to Chambers, together with proof of service thereof, and served upon the persons set forth in paragraph 4 above so as to be received on or before_____, ____, at 5:00 p.m. (Eastern time). **UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

7. The times fixed for the Confirmation Hearing and objections to confirmation of the Plan may be rescheduled by the Bankruptcy Court in the event that the Bankruptcy Court does not find compliance with the disclosure requirements on _____,_____. Notice of the rescheduled date or dates, if any, will be provided by an announcement at the Disclosure Compliance Hearing or at an adjourned Disclosure Compliance Hearing and will be available on the electronic case filing docket.

Section 341(a) Meeting

8. A meeting pursuant to section 341(a) of the Bankruptcy Code (the "Section 341(a) Meeting") shall be held at the United States Bankruptcy Court, in room ____, [ADDRESS], on _____, ____at___:__ __.m. Such meeting will not be convened if (i) the Plan is confirmed prior to the date set forth above for the Section 341(a) Meeting and (ii) the order confirming the Plan (or order entered substantially contemporaneously therewith) contains a provision waiving the convening of a Section 341(a) Meeting.

Dated: New York, New York
_____, _____

BY ORDER OF THE COURT

_____
United States Bankruptcy Judge

[NAME, ADDRESS, AND TELEPHONE NUMBER OF DEBTOR'S COUNSEL]

Exhibit II-4. Guidelines on Sale of All or Substantially All Assets

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

GUIDELINES FOR EARLY DISPOSITION OF ASSETS IN CHAPTER 11 CASES

THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER SECTION 363 AND OVERBID AND TOPPING FEES

The following guidelines are promulgated as a result of the increasing use of pre-negotiated or pre-packaged plans and 11 U.S.C. § 363 sales to dispose of substantially all assets of a Chapter 11 debtor shortly after the filing of the petition. The guidelines recognize that parties in interest perceive the need at times to act expeditiously on such matters. In addition, the guidelines are written to provide procedural protection to the parties in interest. The court will consider requests to modify the guidelines to fit the circumstances of a particular case.

OVERBIDS & TOPPING FEES

1. Topping Fees and Break-up Fees. Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the precise conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. The request shall also disclose the identities of other potential purchasers, the offers made by them (if any), and the nature of the offer, including, without limitation, any disclosure of their plans as it relates to retention of debtor's employees.
2. Topping fees, break-up fees, overbid amounts and other buyer protection provisions will be reviewed on a case-by-case basis and approved if supported by evidence and case law. Case law may not support buyer protection provisions for readily marketable assets.
3. In connection with a request to sell substantially all assets under § 363 within 60 days of the filing of the petition, buyer protections may be considered upon motion, on an expedited basis.

THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER SECTION 363 WITHIN 60 DAYS OF THE FILING OF THE PETITION

4. The Motion to Sell. In connection with any hearing to approve the sale of substantially all assets at any time before 60 days after the filing of the petition, a motion for an order authorizing a sale procedure and hearing or the sale motion itself when regularly noticed, should include factual information on the following points:

a. Creditors' Committee. If a creditors' committee existed prepetition, indicate the date and manner in which the committee was formed, as well as the identity of the members of the committee and the companies with which they are affiliated.

b. Counsel for Committee. If the prepetition creditors' committee retained counsel, indicate the date counsel was engaged and the selection process, as well as the identity of committee counsel.

c. Sale Contingencies. Statement of all contingencies to the sale agreement, together with a copy of the agreement.

d. Creditor Contact List. If no committee has been formed, a list of contact persons, together with fax and phone numbers for each of the largest 20 unsecured creditors.

e. Administrative Expenses. Assuming the sale is approved, an itemization and an estimate of administrative expenses relating to the sale to be incurred prior to closing and the source of payment for those expenses.

f. Proceeds of Sale. An estimate of the gross proceeds anticipated from the sale, together with an estimate of the net proceeds coming to the estate with an explanation of the items making up the difference. Itemize all deductions that are to be made from gross sale proceeds and include a brief description of the basis for any such deductions.

g. Debt Structure of Debtor. A brief description of the debtor's debt structure, including the amount of the debtor's secured debt, priority claims and general unsecured claims.

h. Need for Quick Sale. An extensive description of why the assets of the estate must be sold on an expedited basis. Include a discussion of alternatives to the sale.

i. Negotiating Background. A description of the length of time spent in negotiating the sale, and which parties in interest were involved in the negotiation, along with a description of the details of any other offers to purchase, including, without limitation, the potential purchaser's plans in connection with retention of the debtor's employees.

j. Marketing of Assets. A description of the manner in which the assets were marketed for sale, including the period of time involved and the results achieved.

k. Decision to Sell. The date on which the debtor accepted the offer to purchase the assets.

l. Relationship of Buyer. A statement identifying the buyer and setting forth all of the buyer's (including its officers, directors and shareholders) connections with the debtor, creditors, any other party in interest, their respective attorneys, accountants, the United States Trustee or any person employed in the office of the United States Trustee.

m. Post-Sale Relationship with Debtor. A statement setting forth any relationship or connection the debtor (including its officers, directors, shareholders

and employees) will have with the buyer after the consummation of the sale, assuming it is approved.

n. Relationship with Secured Creditors. If the sale involves the payment of all or a portion of secured debt(s), a statement of all connections between debtor's officers, directors, employees or other insiders and each secured creditor involved (for example, release of insider's guaranty).

o. Insider Compensation. Disclosure of current compensation received by officers, directors, key employees or other insiders pending approval of the sale.

p. Notice Timing. Notice of the hearing on the motion to approve the motion to sell will be provided as is necessary under the circumstances.

5. Proposed Order Approving Sale. A proposed order approving the sale must be included with the motion or the notice of hearing. A proposed final order and redlined version of the order approving the sale should be provided to chambers twenty-four hours prior to the hearing.

6. Good Faith Finding. There must be an evidentiary basis for a finding of good faith under 11 U.S.C. § 363(m).

7. Competing Bids. Unless the court orders otherwise, competing bids may be presented at the time of the hearing. The motion to sell and the notice of hearing should so provide.

8. Financial Ability to Close. Unless the court orders otherwise, any bidder must be prepared to demonstrate to the satisfaction of the court, through an evidentiary hearing, its ability to consummate the transaction if it is the successful bidder, along with evidence regarding any financial contingencies to closing the transaction.

9. Hearing and Notice Regarding Sale. Unless the court orders otherwise, all sales governed by these guidelines, including auctions or the presentation of competing bids, will occur at the hearing before the court. The court may, for cause, including the need to maximize and preserve asset value, expedite a hearing on a motion to sell substantially all assets under § 363.

Exhibit II-5. Guidelines for Cash Collateral and Financing Stipulations

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

GUIDELINES FOR CASH COLLATERAL AND FINANCING MOTIONS AND STIPULATIONS

A. Introduction

The following Guidelines for Cash Collateral and Financing Motions and Stipulations ("Guidelines") are promulgated pursuant to B.L.R. 9029-1 and apply to uncontested motions or stipulations for the use of cash collateral (see Bankruptcy Code § 363(c)(2) and (3) and Fed. R. Bankr. P. 4001(b) and (d)) and to uncontested motions or stipulations for obtaining credit (see Bankruptcy Code § 364(c) and Fed. R. Bankr. P. 4001(c) and (d)).

B. Introductory Statement

Any motion or stipulation presented to the court for approval must include a completed Cash Collateral—Post-Petition Financing Introductory Statement ("Introductory Statement"), which shall not exceed three pages and shall be signed and certified by the Certifying Professional as provided herein.

The Introductory Statement for cash collateral motions and stipulations must summarize all material provisions of the motion or stipulation, including:

- the name of each entity with an interest in the cash collateral;
- the purposes for the use of the cash collateral:
- the terms, including duration, of the use of the cash collateral; and
- any liens, cash payments, or other adequate protection (including any protections afforded by Bankruptcy Code § 364) that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.

Motions or stipulations for authority to obtain credit under Bankruptcy Code § 364 shall be accompanied by:

- a copy of the credit agreement;
- a proposed form of order; and
- the Introductory Statement, which must summarize all material provisions of the proposed credit agreement, including the amount of "new" money to be advanced, interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.

C. Required Disclosures

If the motion, stipulation, proposed credit agreement or proposed order (either for use of cash collateral or for financing) includes any of the following provisions, the motion or stipulation shall describe the nature and extent of each provision, explain the reasons for each provision, and identify the specific location of the provisions in the proposed form of order, agreement, stipulation or other document:

1. The granting of priority or a lien on property of the estate pursuant to Bankruptcy Code § 364(c) or (d);

2. The providing of adequate protection or priority with respect to a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under Bankruptcy Code § 364 to make cash payments on account of the claim;

3. A determination with respect to the validity, perfection, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing such claim;

4. A waiver or modification of the provisions of the Bankruptcy Code or applicable rules relating to the automatic stay;

5. A waiver or modification of any entity's authority to file a plan, to seek an extension of time in which the debtor has the exclusive right to file a plan, or the right to request the use of cash collateral under Bankruptcy Code § 363(c), or to request authority to obtain credit under Bankruptcy Code § 364;

6. A waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

7. A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

8. Indemnification of any entity;

9. A release, waiver, or limitation of any right under Bankruptcy Code § 506(c); or

10. The granting of a lien on any claim or cause of action arising under Bankruptcy Code § 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

11. Provisions for "carve-outs" for professionals' fees and expenses.

D. Application of Rule 9024

The court may grant appropriate relief under Fed. R. Bankr. P. 9024 if it determines that the Introductory Statement did not adequately disclose a material element of the motion, stipulation or agreement.

E. The court will not ordinarily approve the following:

1. Cross-collateralization clauses, i.e., clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security

interest by virtue of its prepetition security agreement or applicable law. See Bankruptcy Code § 552. Also, "roll-ups," i.e., such as provisions deeming pre-petition debt to be post-petition debt or using post-petition loans from a pre-petition secured creditor to pay part or all of that secured creditor's pre-petition debt, other than as provided in Bankruptcy Code § 552(b), which deals with security interests in proceeds and profits. (See ¶¶ C.1, C.2)

2. Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the pre-petition secured party's lien or debt. (See ¶ C.3)

3. Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the stipulation. (This would include, for example, an order approving a stipulation providing that the secured party's lien is a "first priority" lien.) (See ¶ C.3)

4. Waivers of, or grants of lien on, rights under Bankruptcy Code § 506(c), unless the waiver or grant is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds. (Otherwise a future trustee might be faced with a duty to care for and preserve collateral in the trustee's possession and no financial means for discharging that duty.) (See ¶ C.9, C.10)

5. Provisions that operate, as a practical matter, to divest the debtor in possession or trustee of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law. (See ¶ C.5)

6. Releases of, or limitations on, liability for the creditor's alleged prepetition torts or breaches of contract. (See ¶ C.7)

7. Waivers of, or liens on any of the estate's rights arising under Bankruptcy Code § 544, 545, 547, 548, 549, 553, 723(a), or 724(a), or the proceeds of any such rights. (See ¶ C.10)

8. Automatic relief from the automatic stay upon default, conversion to Chapter 7, or appointment of a trustee. (See ¶ C.4)

9. Waivers and modifications of the procedural requirements for foreclosure mandated under applicable non-bankruptcy law. (See ¶ C.6)

10. Waivers or limitations, effective on default or expiration, of the debtor in possession's or trustee's right to move for a court order pursuant to Bankruptcy Code 363(c)(2)(B) authorizing the use of cash collateral in the absence of the secured party's consent. (See ¶ C.5)

11. Findings of fact on matters extraneous to the approval process . (For example, in connection with an application to borrow on a secured basis, a finding that the debtor cannot obtain unsecured credit would be acceptable if supported by competent evidence, whereas a "finding" that the lender acted in good faith in declaring the prepetition loan in default would not be acceptable.)

12. Provisions providing unreasonable treatment with respect to fees or professionals retained by a creditors' committee compared to any carve-outs provided for professionals retained by the debtor in possession or trustee. (See ¶ C.11)

13. Provisions that provide an inadequate carve-out for a subsequently appointed trustee in the case, whether before or after conversion. (See ¶ C.11)

F. The court will ordinarily approve the following:

1. Withdrawal of consent to use cash collateral or termination of further financing, upon occurrence of a default or conversion to Chapter 7.

2. Securing any postpetition diminution in the value of the secured party's collateral with a lien on postpetition collateral of the same type as the secured party had prepetition, if such lien is subordinated to the compensation and expense reimbursement (excluding professional fees) allowed to any trustee thereafter appointed in the case.

3. Securing new advances or value diminution with a lien on other assets of the estate, but only if the lien is subordinated to all the expenses of administration (including professional fees) of a superseding Chapter 7 case.

4. Reservations of rights under Bankruptcy Code § 507(b), unless the stipulation calls for modification of the Code's priorities in the event of a conversion to Chapter 7. (See Bankruptcy Code § 726(b))

5. Reasonable reporting requirements.

6. Reasonable budgets and use restrictions.

7. Expiration date for the stipulation.

G. Certification

Each unopposed motion or stipulation for the use of cash collateral or postpetition financing must include a certification signed by counsel for the debtor in possession or trustee ("Certifying Professional") regarding compliance with these Guidelines. The certification must appear as part of the Introductory Statement and be signed by the Certifying Professional. The certification is as follows:

> Certification - The undersigned Certifying Professional has read the accompanying motion or stipulation and the Cash Collateral–Post-Petition Financing Introductory Statement; to the best of my knowledge, information and belief, formed after reasonable inquiry, the terms of the relief sought in the motion or stipulation are in conformity with the Court's Guidelines for Cash Collateral and Financing Motions and Stipulations except as set forth above. I understand and have advised the debtor in possession or trustee that the court may grant appropriate relief under Fed. R. Bankr. P. 9024 if the court determines that a material element of the motion or stipulation was not adequately disclosed in the Introductory Statement.
>
> _____
> (Certifying Professional's Name)

Exhibit II-6. Local Rule on Motion to Use Cash Collateral or Obtain Credit (United States Bankruptcy Court for the Eastern District of Michigan)

Rule 4001-2 Motion for Use of Cash Collateral or to Obtain Financing

(a) Contents of the Motion. In addition to the requirements of F.R.Bankr.P. 4001(b)(1)(B) and F.R.Bankr.P. 4001(c)(1)(B), a motion for use of cash collateral under § 363(c)(2) or to obtain credit under § 364(c) or (d) shall explicitly state the moving party's position as to the value of each of the secured interests to be protected. Pertinent appraisals and projections shall be summarized in the motion.

(b) Cover Sheet. The motion shall be filed with a completed form "Cover Sheet for Motion to Use Cash Collateral or to Obtain Financing," available on the court's website.

(c) Motion to Approve Agreement. A motion for the entry of an order approving an agreement for the use of cash collateral or to obtain credit on an expedited basis may be granted without a hearing if the motion complies with F.R.Bankr.P. 4001(d)(1)(B) and if:

(1) The proposed order is approved by all creditors who may have an interest in the cash collateral to be used or the credit to be extended, by the chairperson or attorney for each official committee and by the United States trustee;

(2) The proposed order provides for the debtor to use cash collateral or to obtain credit in a maximum specified dollar amount necessary to avoid immediate and irreparable harm only until the earlier of the date of the final hearing or the date that the order would become a final order;

(3) The proposed order provides for a final hearing, the date and time for which shall be filled in by the court when the proposed order is entered;

(4) The proposed order provides that the debtor shall, within 24 hours of its entry, serve a copy of the motion with its attachments and the entered order on all parties who are required to be served under F.R.Bankr.P. 4001(d);

(5) The proposed order provides that:

(A) The deadline to file an objection to the proposed order is 15 days from the entry of the order, except that an official committee may file objections within 15 days after it is served with the entered order;

(B) If an objection is timely filed, the final hearing will be held; and

(C) If no objection is timely filed, the interim or preliminary order may become a final order; and

(6) The motion is accompanied by an affidavit or declaration of the debtor or a principal of the debtor stating the facts upon which the debtor relies in seeking the entry of the proposed order on an expedited basis and the amount of money needed to avoid immediate and irreparable harm.

(d) Interim Order on Expedited Basis. If a debtor files a motion for authority to use cash collateral or to obtain post-petition financing but the debtor's prepetition secured

creditors have not consented to the relief sought in the motion, the court may enter an interim order granting the relief requested on an expedited basis if:

(1) The debtor has served a copy of the motion, a proposed order and a notice of the hearing on the motion on the non-consenting secured creditors in the manner set forth in Local Rule 9013-1;

(2) The court has held a hearing on the motion at which the non-consenting secured creditors were given an opportunity to be heard;

(3) The proposed order complies with each of the requirements of subparagraphs (c)(2)–(c)(6) of this rule; and

(4) The court makes a specific finding of fact that the protection offered to the non-consenting secured creditors is adequate and such adequate protection is incorporated into the proposed order.

(e) Effect of Interim Order. If the court enters an interim order under paragraph (d) over the objection of a secured creditor or if a secured creditor does not appear at the hearing or object to the motion, such secured creditor retains the right to object to the interim order as provided in subparagraph (c)(5)(A) of this rule.

(f) Reducing or Enlarging for Objections. On timely motion, the court may enlarge or reduce the time within which an objection must be filed, except that the court may not reduce the time within which a non-consenting secured creditor must file an objection under subparagraph (c)(5)(A) of this rule. In its discretion, the court may schedule a hearing on the debtor's motion at any time, with such notice as it deems appropriate, provided such notice and hearing are consistent with paragraph (d) of this rule.

Comment

This local rule is revised to conform to the amendments to F.R.Bankr.P. 4001(b), (c) and (d) effective December 1, 2007, but is otherwise unchanged in substance. It is internally renumbered.

APPENDIX 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
_____ DIVISION

IN RE: CASE NO.: _____

CHAPTER 11

DEBTOR : HON: _____

COVER SHEET FOR MOTION TO USE CASH
COLLATERAL OR TO OBTAIN CREDIT

The debtor has filed a motion to use cash collateral or to obtain postpetition financing, which is attached to this Cover Sheet. In accordance with LBR 4001-2(b) (E.D.M.), the debtor has identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

Provision	Contained in Proposed Order	Location in Proposed Order
(1) Provisions that grant liens on the estate's claims and causes of action arising under Chapter 5 of the Code.	_____ Yes _____ No	Page __, ¶ __
(2) Provisions that grant cross-collateralization protection to the prepetition secured creditor (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by the secured party's lien prepetition) other than liens granted solely as adequate protection against diminution in value of a prepetition creditor's collateral.	_____ Yes _____ No	Page __, ¶ __
(3) Provisions that establish a procedure or conditions for relief from the automatic stay.	_____ Yes _____ No	Page __, ¶ __
(4) Provisions regarding the validity or perfection of a secured creditor's prepetition liens or that release claims against a secured creditor.	_____ Yes _____ No	Page __, ¶ __

Provision	Contained in Proposed Order	Location in Proposed Order
(5) Provisions that prime any lien without that lien holder's consent.	_____ Yes _____ No	Page __, ¶ __
(6) Provisions that relate to a sale of substantially all of the debtor's assets.	_____ Yes _____ No	Page __, ¶ __
(7) Provisions for the payment of professional fees of the debtor or any committees, including any carve-outs for such payments.	_____ Yes _____ No	Page __, ¶ __
(8) Provisions for the payment of prepetition debt.	_____ Yes _____ No	Page __, ¶ __
(9) Provisions that waive the debtor's exclusive right to file or solicit acceptances of a plan during the time periods specified in 11 U.S.C. § 1121.	_____ Yes _____ No	Page __, ¶ __
(10) Provisions that require the debtor's plan to be on terms acceptable to the secured creditor.	_____ Yes _____ No	Page __, ¶ __
(11) Provisions that require or prohibit specific terms in the debtor's plan.	_____ Yes _____ No	Page __, ¶ __
(12) Provisions establishing that proposing a plan inconsistent with the order constitutes a default.	_____ Yes _____ No	Page __, ¶ __
(13) Provisions that waive surcharge under 11 U.S.C. § 506(c).	_____ Yes _____ No	Page __, ¶ __
(14) Provisions that address the rights and obligations of guarantors or co-obligors.	_____ Yes _____ No	Page __, ¶ __
(15) Provisions that prohibit the debtor from seeking approval to use cash collateral without the secured creditor's consent.	_____ Yes _____ No	Page __, ¶ __

Provision	Contained in Proposed Order	Location in Proposed Order
(16) Provisions that purport to bind a subsequent trustee.	_____ Yes _____ No	Page __, ¶ __
(17) Provisions that obligate the debtor to pay any of a secured creditor's professional fees.	_____ Yes _____ No	Page __, ¶ __

Date: _____ _____

[Debtor's counsel]

Exhibit II-7. Sample Order Authorizing Payment of Prepetition Wage Claims

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____

In re	)	
	)	Case No.
	)	through
	)	inclusive
	)	Consolidated for
	)	Administration at
Debtors	)	

Order Authorizing Payment of Prepetition Wages, Salaries, and Commissions, Reimbursement of Prepetition Employees' Business Expenses and Payment of Other Prepetition Employee Benefits

Upon the foregoing application (the "Application") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and no adverse interest being represented; and sufficient cause appearing therefor, it is

NOW, on motion of [debtors' attorney's name], counsel for Debtors,

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to pay to their employees all wages, salaries and commissions (including holiday pay, contributions to thrift or other savings plans and all federal, state and local payroll-related taxes, deductions and withholdings pertaining to payments made pursuant to this order) which have accrued by virtue of the services rendered by the employees to the Debtors within the forty-five (45) days immediately prior to the filing of the Chapter 11 petitions (the "Filing Date"); and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to pay, in the ordinary course of business and in accordance with existing policies and practices, vacation pay and sick pay on account of services rendered by employees to the Debtors, whether before or after the Filing Date; and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to reimburse employees for all out-of-pocket business and business-related expenses whether incurred by them before or after the Filing Date in accordance with existing company policies and practices; and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to pay to or for the benefit of active and laid-off employees the following claims and expenses whether incurred before or after the Filing Date:

1. all health, medical, dental, disability and death claims;
2. all premiums on policies of insurance pertaining thereto;
3. premiums on policies of travel and accident insurance; and

4. all costs and expenses incurred in connection with the servicing and processing of such claims whether the claims arose or accrued before or after the Filing Date;

and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to continue to service and make all payments on or in connection with credit, savings, benefits and thrift plans, union dues and other wage or salary checks-offs and deductions in accordance with the prior requests and instructions of their employees and past practices; and it is further

ORDERED, that [debtor's name] be, and each of them hereby is, authorized and empowered to pay severance pay (excluding severance pay under executive employment contracts or at the executive level but including severance pay as to non-executive employees who become entitled before the Filing Date), on account of services rendered by their employees, whether before or after the Filing Date, in the ordinary course of business and in accordance with existing policies and practices; and it is further

ORDERED, that [debtor's name] be and hereby is permitted to pay severance pay (excluding severance pay, under executive employment contracts or at the executive level but including severance pay as to non-executive employees who become entitled before the Filing Date), on account of services rendered by their employees, whether before or after the Filing Date, in the ordinary course of business and in accordance with existing policies and practices, with respect to any present employee who may be laid off post-petition, except that no severance pay for a period longer than three (3) months may be paid to any employee without further Order of Court.

Dated: _____

_____

UNITED STATES BANKRUPTCY JUDGE

Exhibit II-8. Sample Order Appointing an Examiner

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:	)	Case No. _____
	)	(Jointly Administered)
Divine, Inc., et al.,	)	Chapter 11
	)	
	)	
Debtors.	)	
_____	)	

ORDER GRANTING EXPEDITED RELIEF
ON OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION
FOR ORDER APPOINTING AN EXAMINER AND FOR RELATED RELIEF

Upon consideration of the Motion for Expedited Relief, filed January 22, 2004, of the Official Committee of Unsecured Creditors (the "Committee") of the above-referenced debtors and debtors in possession (collectively, "Divine") seeking an Order appointing An Examiner and for Related Relief (the "Motion"); and the Court having jurisdiction to consider the Motion and all relief requested therein, as well as all related proceedings; and due and sufficient notice of the Motion having been given under the circumstances; and the Court having convened a hearing at which counsel for all interested parties had an opportunity to appear and be heard; and good and sufficient cause appearing, the Court finds that the Motion should be, and thereby is, Granted. It is, therefore,

1. ORDERED that an Examiner be appointed for Divine in the captioned matter for the purposes set forth herein; and it is further
2. ORDERED that the United States Trustee for the District of Massachusetts, Eastern Division (the "United States Trustee"), shall timely file its Application for Order Approving the Appointment of an Examiner and a proposed Order thereon (the "UST Appointment Application Order"); and it is further
3. ORDERED that immediately upon the entry of the UST Appointment Application Order, the Examiner is authorized to investigate all potential claims and causes of action against the present and/or former officers and directors of Divine (the "Claims"); and it is further
4. ORDERED that, if the Examiner determines that Claims exist and should be brought the Examiner is authorized and is directed to provide appropriate notice of the Claims and, further, is authorized and directed and shall have standing to bring the Claims against officers and directors, after notice to and consultation with the Committee, by filing and prosecuting such Claims in such manner and in such forums as are necessary, or, in the alternative, the

Examiner, upon application and approval by the Court, may assign to the Committee the right to bring the Claims.

5. ORDERED that the Examiner shall have the duties, powers and responsibilities of an examiner under Section 1106(b) of the Bankruptcy Code; *provided, however*, that the scope of the Examiner's duties, unless expanded or limited by further order of this Court, shall be limited to the investigations and bringing of Claims as set forth herein; and it is further
6. ORDERED that the Examiner shall be a "party in interest" under Section 1109 of the Bankruptcy Code with respect to matters that are within the scope of the duties set forth in this Order and shall be entitled to appear at hearings held in these cases and to be heard at such hearing with respect to matters that are within the scope of the Examiner's duties; and it is further
7. ORDERED that nothing contained in this Order shall diminish the powers and authority of the Committee under the Bankruptcy Code, including the powers to investigate transactions and entities, commence contested matters and adversary proceedings, and object to claims, and it is further
8. ORDERED that neither communications between the Examiner and Debtor nor communications between the Examiner and the Committee shall be deemed a waiver of any attorney–client or work product privilege otherwise belonging to the Examiner, the Debtor or the Committee; and it is further
9. ORDERED that any and all objections to the relief granted herein are overruled; and it is further
10. ORDERED that this Court shall retain exclusive jurisdiction over any dispute concerning this Order.

SIGNED this ____ day of
February, 2004

_____

THE HONORABLE JOAN N. FEENEY
UNITED STATES BANKRUPTCY JUDGE

Exhibit II-9. Sample Procedures for Interim Compensation and Reimbursement of Professionals

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at _____

In re:	)	
	)	Case No.
	)	(Chapter 11)
	)	
Debtor	)	

ADMINISTRATIVE ORDER PURSUANT TO 11 U.S.C. §§ 105, 328, AND 331 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF PROFESSIONALS

Upon consideration of the Motion of the above-captioned debtors and debtors-in-possession herein (collectively, the "Debtors") for an administrative order pursuant to Sections 105, 328 and 331 of Title 11 of the United States Code (the "Bankruptcy Code") establishing procedures for interim compensation and reimbursement of professionals (the "Motion"); and after consideration of any objections filed thereto, and any hearings held thereon; and appearing that adequate notice of the Motion was provided and that no further notice is necessary; and for good cause shown; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their creditors and the estates; it is this _____ day of _____, 20___, by the United States Bankruptcy Court for the District of Maryland, hereby

ORDERED, that, except as may otherwise be provided in Orders of this Court that authorized the retention of specific professionals on different terms, all professionals employed under Sections 327 or 1103 of the Bankruptcy Code (the Professionals) in these cases may seek interim compensation in accordance with the following procedures:

a. No earlier than the fifteenth day, and no later than the last day, of each month following the month for which compensation is sought, each Professional will file with the Court and serve via facsimile, e-mail, overnight mail, or hand delivery, a monthly statement (the "Monthly Statement") (Form CCP-5), together with (1) the cover page referenced in paragraph (k) below and (2) as an exhibit to each Monthly Statement, the detailed daily time entries and summaries of time normally submitted with an interim fee application (redacted as may be necessary and appropriate), as well as a detailed summary of all disbursements and expenses for which the Professional is seeking reimbursement (said detailed summary of all disbursements and expenses to be in conformity with paragraph C of Appendix D of the Local Bankruptcy Rules for the District of Maryland) on the following: (A) Debtors counsel, _____; (B) Office of the United

States Trustee, _____, Attention: _____; (C) counsel for any Committee appointed pursuant to Section 1102 of the Bankruptcy Code (the "Committees"); and [such other parties as the Court may direct] (collectively, the "Reviewing Parties").

b. In the event any of the Reviewing Parties has an objection to any portion of the Fees or Expenses sought in a particular Monthly Statement, based on a preliminary view that such fees and expenses are not properly allowable, they or it shall, on or before the fifteenth calendar day after the date of the filing of the Monthly Statement at issue, serve by facsimile, overnight mail or hand delivery upon the Professional whose Monthly Statement is objected to, and the other Reviewing Parties, a written "Notice of Objection to Fee Statement" setting forth, at a minimum, the specific items and amount of Fees and Expenses to which the Reviewing Party objects and the basis for the objection. Thereafter, the Professional can seek payment of objected-to Fees and Expenses through the Professional's next interim fee application, as described below;

c. If no objection to any respective Professional's Monthly Statement is served by the deadline set forth in paragraph (b) above, the Debtors shall pay the amount of such Fees and Expenses less a 20% Holdback of the Fees, not later than the fifteenth calendar day after the last day on which any objections to the Monthly Statement were to be served and filed in accordance with paragraph (b) above;

d. If an objection to any respective Professional's Monthly Statement is served by the deadline set forth in paragraph (b) above, the Debtors shall pay the amount of such Fees and Expenses requested in the Monthly Statement less any amount objected to and less a 20% Holdback of the Fees not objected to, by not later than the fifteenth calendar day after the last day on which any objections to the Monthly Statement were to be served and filed in accordance with paragraph (b) above. If following the service of an objection to a Monthly Statement the Professional and the party serving the objection are able to resolve their dispute in whole or in part, the Professional may serve on the Reviewing Parties a notice describing the terms of the resolution and the Debtors shall pay the balance of the Fees and Expenses no longer objected to (still applying a 20% Holdback as to Fees not subject to an objection) not later than the fifteenth calendar day after the date of service of the notice of resolution provided that such notice is served by facsimile, e-mail, overnight mail or hand delivery;

e. The first Monthly Statement submitted by a Professional under this Order shall cover all periods from the Petition Date through _____, and it may be filed no earlier than the 15th of the following month and no later than the end of the following month. Other than the first Monthly Statement submitted by each of the Professionals pursuant to this Order, each Monthly Statement will cover a single calendar month;

f. Neither an objection nor a failure to object shall prejudice a party's right to object to an interim or final fee application on any ground. Resolution of an objection shall not constitute a waiver of a party's right to object to an interim or fi-

nal fee application, nor shall it prejudice the right of a Professional to seek full allowance of the balance of all fees and expenses in an interim or final fee application.

g. The monthly Fees and Expenses paid pursuant to Monthly Statements under this Order shall not be deemed allowed or disallowed for purposes of Sections 330 or 331 of the Bankruptcy Code. Rather, for each "Fee Period" set forth in paragraph (i) below, each Professional shall file with the Court and serve on the Reviewing Parties an application for interim approval and allowance of the Fees and Expenses requested pursuant to Section 331 of the Bankruptcy Code (the "Interim Fee Applications") and in conformity with Appendix D to the Local Bankruptcy Rules for the District of Maryland; and serve notice of the filing of such Interim Fee Application on those parties set forth in paragraph (a) above as well as parties who have requested notice pursuant to Federal Bankruptcy Rule 2002;

h. If a Professional fails to serve a Monthly Statement timely, said Professional may not incorporate it into the next Monthly Statement, but the Professional may seek said fees in the next Interim Fee Application;

i. Each professional shall file its first Interim Fee Application covering the period from the Petition Date through and including _____ on or before _____. Thereafter, each Interim Fee Application will cover one of three Fee Periods in each calendar year. An Objection to an Interim Fee Application shall be filed on or before the 25th day on the month following the filing and serving of the Interim Fee Application. The three Fee Periods (following the first Fee Period) and the deadlines for filing, or objecting to an Interim Fee Application for each such Fee Period, are as follows:

Fee Period	Deadline to File Interim Fee Application	Deadline to File Objection to Interim Fee Application
Jan. 1–Apr. 30	May 31	June 25
May 1–Aug. 30	September 30	October 25
Sept. 1–Dec. 31	January 31	February 25

j. If a Professional fails to file and serve an Interim Fee Application timely, then said Professional may incorporate said fees into the next Interim Fee Application, but the Professional may not receive payment on any intervening Monthly Statements until the next Interim Fee Application is filed;

k. Each Professional's Monthly Statement and Interim Fee Application shall be divided into discrete service categories in conformity with Appendix D to the Local Bankruptcy Rules for the District of Maryland or as otherwise agreed upon by the United States Trustee and the Professional;

l. Each Monthly Statement and Interim Fee Application shall be accompanied by a summary sheet (Form CCP-6);

m. To the extent that any deadline set forth herein would fall on a Saturday, Sunday or "legal holiday," as that term is defined by Federal Bankruptcy Rule 9006, such deadline shall be extended to the next day that is not a Saturday, Sunday or legal holiday;

n. If a Professional's application to be employed is pending but has not yet been granted by the Court, said Professional shall nonetheless timely submit all Monthly Statements and Interim Fee Applications during such pendency; however, all payments under said Monthly Statements and Interim Fee Applications shall be held back by the Debtors pending approval by the Court of the employment of said Professional;

o. Upon the agreement of a Professional and an objecting party, a deadline for objecting to a Monthly Statement or an Interim Fee Application may be extended with respect to such Professional without further Order of the Court, provided that notice of such agreement is served on the other Reviewing Parties and, in the case of an objection to an Interim Fee Application, filed with the Court on or before the deadline. Except as otherwise set forth herein, the terms and provisions of this Order may only be modified or amended by further Order of the Court;

p. Where the Debtors' Professionals utilize the services of a third-party copy service to reproduce and/or serve pleadings or other papers in these proceedings, the Debtor may directly pay (in advance or upon invoice) said third parties for said services, including among other things, any associated postage, overnight delivery or other charges, and thereafter report said expense on the Debtors' monthly reports. Alternatively, said third-party copy service charges may be paid by the Debtors' Professionals and included for reimbursement in their next Monthly Statement or Interim Fee Application; and it is further,

ORDERED, that all monthly Fees and Expenses paid pursuant to this Order shall be subject to the provisions of Sections 330 and 331 of the Bankruptcy Code. Further, such monthly Fees and Expenses are reviewable and subject to revision before and at the end of the cases in accordance with Section 330 of the Bankruptcy Code. In any proceedings conducted under Section 330, nothing contained in this Order shall be deemed to change the burden of proof under applicable law. The United States Trustee, the Debtors, the Committees, and other parties in interest may object to the final allowance under Section 330 of all or any part of the amounts requested, including those amounts already awarded and those subject to holdback.

_____

United States Bankruptcy Judge

cc: Debtor's Counsel
Office of the U.S. Trustee
Limited Service List
Applicant

Exhibit II-10. Local Forms for Fee Applications

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at _____

In re:	)	Case No.
	)	(Chapter 11)
	)	
	)	
Debtor	)	

MONTHLY STATEMENT OF SERVICES RENDERED AND EXPENSES INCURRED BY _____ FOR THE PERIOD _____THROUGH_____

Pursuant to the Administrative Order Pursuant to 11 U.S.C. §§ 105, 328, and 331 Establishing Procedures for Interim Compensation and Reimbursement of Professionals entered by the Court on _____, _____, counsel for _____, submits this Statement of Services Rendered and Expenses Incurred (the Statement) in this case for the period _____ through _____ (the Statement Period).

I. Itemization of Services Rendered by _____:

A. The following summary of the hours spent for which applicant seeks compensation, the hourly rate for each attorney and legal assistant and the resulting fees are as follows:

SUMMARY

Name	Position	Hours	Hourly Rate	Fees Earned
Total				

B. The time records of applicant are an exhibit consisting of a daily breakdown of the time spent by each person on each day, and detail as to the disbursements incurred.

C. The blended hourly rate for all services during the Statement Period is $_____ per hour.*

* The blended hourly billing rate per hour is derived by dividing the total fees of $_____ by the total hours of _____.

II. The Maryland Guidelines for Fee Applications

A. In accordance with the Maryland Compensation Guidelines for Professionals, applicant has organized its detailed breakdown of time entries by tasks. For the Statement Period, the time entries are divided into the following "Task Categories":

1.
2.
3.
4.
5.
6.
7.

B. Itemization of Services Rendered and Disbursements Incurred by Category
The following itemization presents the services rendered by applicant by Task Categories and provides a summary of disbursements incurred by form of disbursement.

C. Services Rendered
The following services were rendered in the following Task Categories:

Task Category	Hours Fees Earned	
1.		$
2.		
3.		
4.		
5.		
TOTAL		$

A detailed itemization of the services rendered in each of the above Task Categories is set forth in the exhibit.

D. Disbursements Incurred

The disbursements incurred by applicant for this Statement are as follows:

[List Categories of Disbursements]	[Amount]
	$
TOTAL	$

E. Total Requested for Services Rendered and Disbursements Incurred

1. The total requested for services rendered and disbursements incurred, after adjusting for billing judgment, is as follows:

Total Requested for Services Rendered	$
Total Requested for Disbursements	$
TOTAL	$

2. In the exercise of billing judgment, applicant has reduced the amount of fees requested herein for services rendered by $ _____.
3. The amount payable for this Statement Period, after adjusting for the twenty percent (20%) holdback, is $ _____.

Counsel respectfully requests that said amount be paid pursuant to the Court's Administrative Order.

Date: _____ Signed: _____

Signature of Professional

_____

[Name, address, and telephone number of professional]

Client _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at _____

In re:	)	
	)	Case No.
	)	(Chapter 11)
	)	
Debtor	)	

[FIRST] MONTHLY APPLICATION OF _____ AS COUNSEL FOR THE _____ FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD _____ THROUGH _____

Name of Applicant: _____

Authorized to Provide Professional Services to: _____

Date of Retention: _____

(Pursuant to Order dated _____)

Period for Which Compensation and Reimbursement is Sought: _____ Through _____

Amount of Compensation Sought as Actual, Reasonable and Necessary: $ ___

Amount of Expense Reimbursement Sought as Actual, Reasonable and Necessary: $ _____

This is a: ___ monthly ____ interim ____ final application.

Date Signed: _____Signature of Professional: _____

_____

[Name, address, and telephone number of professional]

Client _____

Exhibit II-11. General Order Concerning Guidelines for Compensation and Expense Reimbursement

Local Bankruptcy Order 2000-7 OF THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS

GUIDELINES FOR COMPENSATION AND EXPENSE REIMBURSEMENT OF PROFESSIONALS

Effective January 1, 2001

NOTICE

The following are guidelines governing the most significant issues related to applications for compensation and expense reimbursement. The guidelines cover the narrative portion of an application, time records, and expenses. It applies to all professionals with the exception of chapter 7 and chapter 13 trustees, but is not intended to cover every situation. All professionals are required to exercise reasonable billing judgment, notwithstanding total hours spent.

If, in a chapter 11 case, a professional to be employed pursuant to section 327 or 1103 of the Bankruptcy Code desires to have the terms of its compensation approved pursuant to section 328(a) of the Bankruptcy Code at the time of such professional's retention, then the application seeking such approval should so indicate and the Court will consider such request after an evidentiary hearing on notice to be held after the United States trustee has had an opportunity to form a statutory committee of creditors pursuant to section 1102 of the Bankruptcy Code and the debtor and such committee have had an opportunity to review and comment on such application. At a hearing to consider whether a professional's compensation arrangement should be approved pursuant to section 328(a), such professional should be prepared to produce evidence that the terms of compensation for which approval under section 328(a) is sought comply with the certification requirements of section I.G.(3) of these guidelines.

I. NARRATIVE

A. Employment and Prior Compensation. The application should disclose the date of the order approving applicant's employment and contain a clear statement itemizing the date of each prior request for compensation, the amount requested, the amount approved, and the amount paid.

B. Case Status. With respect to interim requests, the application should briefly explain the history and the present posture of the case, including a description of the status of pending litigation and the amount of recovery sought for the estate.

In chapter 11 cases, the information furnished should describe the general operations of the debtor; whether the business of the debtor, if any, is being operated at a profit or loss; the debtor's cash flow; whether a plan has been filed, and if not, what

the prospects are for reorganization and when it is anticipated that a plan will be filed and a hearing set on the disclosure statement.

In chapter 7 cases, the application should contain a report of the administration of the case including the disposition of property of the estate; what property remains to be disposed of; why the estate is not in a position to be closed; and whether it is feasible to pay an interim dividend to creditors.

In both chapter 7 and chapter 11 cases, the application should state the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration. On applications for interim fees, the applicant should orally supplement the application at the hearing to inform the Court of any changes in the current financial status of the debtor's estate since the filing of the application. All retainers, previous draw downs, and fee applications and orders should be listed specifying the date of the event and the amounts involved and drawn down or allowed.

With respect to final requests, applications should meet the same criteria except where a chapter 7 trustee's final account is being heard at the same time, the financial information in the final account need not be repeated.

Fee applications submitted by special counsel seeking compensation from a fund generated directly by their efforts, auctioneers, real estate brokers, or appraisers do not have to comply with the above. For all other applications, when more than one application is noticed for the same hearing, they may, to the extent appropriate, incorporate by reference the narrative history furnished in a contemporaneous application.

C. Project Billing. This is required in all cases where the applicant's professional fee is expected to exceed $10,000.00. The narrative should be categorized by subject matter, and separately discuss each professional project or task. All work for which compensation is requested should be in a category. Miscellaneous items may be included in a category such as "Case Administration." The professional may use reasonable discretion in defining projects for this purpose, provided that the application provides meaningful guidance to the Court as to the complexity and difficulty of the task, the professional's efficiency, and the results achieved. With respect to each project or task, the number of hours spent and the amount of compensation and expenses requested should be set forth at the conclusion of the discussion of that project or task. In larger cases with multiple professionals, efforts should be made by the professionals for standard categorization.

D. Billing Summary. Hours and total compensation requested in each application should be aggregated and itemized as to each professional and paraprofessional who provided compensable services. Dates of changes in rates should be itemized as well as reasons for said changes.

E. Paraprofessionals. Fees may be sought for paralegals, professional assistants and law clerks only if identified as such and if the application includes a resume or summary of the paraprofessional's qualifications.

F. Preparation of Application. Reasonable fees for preparation of a fee application and responding to objections thereto may be requested. The aggregate number of hours spent, the amount requested, and the percentage of the total request which the

amount represents must be disclosed. If the actual time spent will be reflected and charged in a future fee application, this fact should be stated, but an estimate provided, nevertheless.

G. Certification. Each application for compensation and expense reimbursement must contain a certification by the professional designated by the applicant with the responsibility in the particular case for compliance with these guidelines ("Certifying Professional") that (1) the Certifying Professional has read the application; (2) to the best of the Certifying Professional's knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with these guidelines, except as specifically noted in the application; and (3) the compensation and expense reimbursement requested are billed at rates, in accordance with practices, no less favorable than those customarily employed by the applicant and generally accepted by the applicant's clients.

H. Interim Compensation Arrangements in Complex Cases. In a complex case, the Court may, upon request, consider at the outset of the case approval of an interim compensation mechanism for estate professionals that would enable professionals on a monthly basis to be paid up to 80% of their compensation for services rendered and reimbursed up to 100% of their actual and necessary out of pocket expenses. In connection with such a procedure, if approved in a particular complex case, professionals shall be required to circulate monthly billing statements to the U.S. Trustee and other primary parties in interest, and the Debtor in Possession or Trustee will be authorized to pay the applicable percentage of such bill not disputed or contested by a party in interest.

II. TIME RECORDS

A. Time Records Required. All professionals, except auctioneers, real estate brokers, and appraisers, must keep accurate contemporaneous time records.

B. Increments. Professionals are required to keep time records in minimum increments no greater than six minutes. Professionals who utilize a minimum billing increment greater than l hour are subject to a substantial reduction of their requests.

C. Descriptions. At a minimum, the time entries should identify the person performing the service, the date(s) performed, what was done, and the subject involved. Mere notations of telephone calls, conferences, research, drafting, etc., without identifying the matter involved, may result in disallowance of the time covered by the entries.

D. Grouping of Tasks. If a number of separate tasks are performed on a single day, the fee application should disclose the time spent for each such task, i.e., no "grouping" or "clumping." Minor administrative matters may be lumped together where the aggregate time attributed thereto is relatively minor. A rule of reason applies as to how specific and detailed the breakdown needs to be. For grouped entries, the applicant must accept the Court inferences there from.

E. Conferences. Professionals should be prepared to explain time spent in conferences with other professionals or paraprofessionals in the same firm. Relevant explanation would include complexity of issues involved and the necessity of more in-

dividuals' involvement. Failure to justify this time may result in disallowance of all, or a portion of, fees related to such conferences.

F. Multiple Professionals. Professionals should be prepared to explain the need for more than one professional or paraprofessional from the same firm at the same court hearing, deposition, or meeting. Failure to justify this time may result in compensation for only the person with the lowest billing rate. The Court acknowledges, however, that in complex chapter 11 cases the need for multiple professionals' involvement will be more common and that in hearings involving multiple or complex issues, a law firm may justifiably be required to utilize multiple attorneys as the circumstances of the case require.

G. Travel Time. Travel time is compensable at one-half rates, but work actually done during travel is fully compensable.

H. Administrative Tasks. Time spent in addressing, stamping and stuffing envelopes, filing, photocopying or "supervising" any of the foregoing is generally not compensable, whether performed by a professional, paraprofessional, or secretary.

III. EXPENSES

A. Firm Practice. The Court will consider the customary practice of the firm in charging or not charging non-bankruptcy/insolvency clients for particular expense items. Where any other clients, with the exception of pro-bono clients, are not billed for a particular expense, the estate should not be billed. Where expenses are billed to all other clients, reimbursement should be sought at the least expensive rate the firm or professional charges to any client for comparable services or expenses. It is recognized that there will be differences in billing practices among professionals.

B. Actual Cost. This is defined as the amount paid to a third-party provider of goods or services without enhancement for handling or other administrative charge.

C. Documentation. This must be retained and made available upon request for all expenditures in excess of $50.00. Where possible, receipts should be obtained for all expenditures.

D. Office Overhead. This is not reimbursable. Overhead includes: secretarial time, secretarial overtime (where clear necessity for same has not been shown), word processing time, charges for after-hour and weekend air conditioning and other utilities, and cost of meals or transportation provided to professionals and staff who work late or on weekends.

E. Word Processing. This is not reimbursable.

F. Computerized Research. This is reimbursable at actual cost. For large amounts billed to computerized research, significant explanatory detail should be furnished.

G. Paraprofessional Services. These services may be compensated as a paraprofessional under § 330, but not charged or reimbursed as an expense.

H. Professional Services. A professional employed under § 327 may not employ, and charge as an expense, another professional (e.g., special litigation counsel employing an expert witness) unless the employment of the second professional is approved by the Court prior to the rendering of service.

I. Photocopies (Internal). Charges must be disclosed on an aggregate and per-page basis. If the per-page cost exceeds $.20, the professional must demonstrate to the satisfaction of the Court, with data, that the per-page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the copy machine and supplies therefor, including the space occupied by the machine, but not including time spent in operating the machine.

J. Photocopies (Outside). This item is reimbursable at actual cost.

K. Postage. This is reimbursable at actual cost.

L. Overnight Delivery. This is reimbursable at actual cost where it is shown to be necessary. The court acknowledges that in complex chapter 11 cases overnight delivery or messenger services may often be appropriate, particularly when shortened notice of a hearing has been requested.

M. Messenger Service. This is reimbursable at actual cost where it is shown to be necessary. An in-house messenger service is reimbursable, but the estate cannot be charged more than the cost of comparable services available outside the firm.

N. Facsimile Transmission. The actual cost of telephone charges for outgoing transmissions is reimbursable. Transmissions received are reimbursable on a per-page basis. If the per-page cost exceeds $.20, the professional must demonstrate, with data, to the satisfaction of the Court, that the per-page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the facsimile machine and supplies therefor, including the space occupied by the machine, but not including time spent in operating the machine.

O. Long Distance Telephone. This is reimbursable at actual cost.

P. Parking. This is reimbursable at actual cost.

Q. Air Transportation. Air travel is expected to be at regular coach fare for all flights.

R. Hotels. Due to wide variation in hotel costs in various cities, it is not possible to establish a single guideline for this type of expense. All persons will be required to exercise reasonable discretion and prudence in connection with hotel expenditures.

S. Meals (Travel). Reimbursement may be sought for the reasonable cost of breakfast, lunch and dinner while traveling.

T. Meals (Working). Working meals at restaurants or private clubs are not reimbursable. Reasonable reimbursement may be sought for working meals only where food is catered to the professional's office in the course of a meeting with clients, such as a Creditors' Committee, for the purpose of allowing the meeting to continue through a normal meal period.

U. Amenities. Charges for entertainment, alcoholic beverages, newspapers, dry-cleaning, shoeshine, etc., are not reimbursable.

V. Filing Fees. These are reimbursable at actual cost.

W. Court Reporter Fees. These are reimbursable at actual cost.

X. Witness Fees. These are reimbursable at actual cost.

Y. Process Service. This is reimbursable at actual cost.

Z. UCC Searches. These are reimbursable at actual cost.

Exhibit II-12. Order Establishing Fee Application Procedure and Fee Guidelines

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	Case No. 98-05162-R
COMMERCIAL FINANCIAL	)	Chapter 11
SERVICES, INC. and	)	
	)	
CF/SPC NGU, INC.,	)	Case No. 98-05166-R
	)	Chapter 11 Jointly
Debtors.	)	Administered
	)	with Case No. 98-05162-2

ORDER ESTABLISHING FEE APPLICATION PROCEDURE AND FEE GUIDELINES FOR PROFESSIONALS

This matter comes on before the Court *sua sponte*. A status conference and a case management conference were held on January 5, 1999, wherein the Court accepted comments from counsel regarding a procedure for applying for professional fees and expenses. The Court FINDS that good cause exists for establishing an orderly and uniform procedure for professionals seeking compensation and reimbursement of expenses from the estate.

Further, because of the size and complexity of the case, the possibility of numerous appeals, the number of professionals retained or to be retained by the estate, and the existence of various committees and creditors whose counsel may seek compensation from the estate for services benefiting the estate, the Court finds that good cause exists for establishing fee guidelines in order to (1) encourage professional to cooperate with other professionals in making assignments of tasks with the goal of minimizing duplication of efforts and cost to the estate; (2) inform professionals in advance as to the categories of fees and expenses the Court generally will or will not allow to be paid from the estate so that professionals may make informed decisions in the course of their employment; and (3) promote more expedient, beneficial and meaningful fee applications.

IT IS THEREFORE ORDERED that the Fee Application Procedure and Fee Guidelines set forth below are applicable and shall be followed in this case.

FEE APPLICATION PROCEDURE

1. Budgets

All professionals seeking to be employed by the estate shall file with the Court a projected quarterly budget. Quarterly budgets shall be filed and served on the 15th day of each March, June, September and December for the subsequent calendar quarter for as long as the professional remains employed by the estate. Each pro-

jected budget shall contain descriptions of services to be rendered and expenses to be incurred, the approximate dates and anticipated costs of such services and expenses, and a description of any actual expense incurred or service performed (or not performed) that deviated significantly from budgeted expenses or service. Budgets shall be served upon the Debtor-in-Possession and all persons and entities listed on the most recent Master Service List.

2. Allocation of Work and Preparation of Billing Statements

a. **Least Costly Means of Obtaining Desired Result.** Professional shall allocate the work to be performed by members of their firms in accordance with the best interests of their clients and shall exercise billing judgment especially with regard to time spent in inter- or intra-office communications, research, revision and editing. Work shall be assigned so as to obtain reliable results in the most economic fashion possible. **The rate charged for the service shall correspond to the expertise necessary to perform the task, rather than the ordinary rate charged by the person performing it.**

b. **Rules and Procedures Applicable to Preparation of Billing Statements.** Billing statements submitted to the Debtor-in-Possession and attached to the fee application shall comply in all respects with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, the Guidelines for Compensation of Professionals prepared by the Office of the United States Trustee, and the Fee Guidelines set forth below in this Order. To the extent possible, all professionals shall coordinate to establish uniform category designations for areas of representation in which more than one professional participates.

c. **Apportionment Between and Among Different Estates.** Professionals may apply for compensation only in connection with the scope of representation set forth in the application for retention, as modified by the retention order. Professionals authorized to perform services for more than one debtor shall apportion fees and expenses between such estates according to the relative benefit to each estate.

3. Fee Applications

a. **Interim fee applications.** Professionals shall file interim applications for the allowance and payment of fees and expenses pursuant to 11 U.S.C. § 331 every 120 days. All allowances of interim fees and expenses are subject to the Court's review of the same upon submission of a final fee application pursuant to 11 U.S.C. § 330.

b. **Review of Proposed Application.** Before filing an application for allowance and payment of compensation and reimbursement of expenses, the professional seeking compensation and/or reimbursement shall submit **a proposed application** and supporting billing statements (the "Proposed Application") to the Debtor-in-Possession, the Assistant United States Trustee and the Creditors' Committee(s) (the "Reviewing Entities") for review and comment. The professional and the Reviewing Entities shall confer in good faith to at-

tempt to clarify ambiguities and resolve objections to the Proposed Application.

c. **Apportionment Between and Among Different Estates.** Professionals may apply for compensation only in connection with the scope of representation set forth in the application for retention, as modified by the retention order. Professionals authorized to perform services for more than one debtor shall apportion fees and expenses between estates according to the relative benefit to each estate.

d. **Service of Notice of Hearing on Fee Application.** All Fee Applications will be set for hearing. Prior to filing the Fee Application, the professional/applicant should call [courtroom deputy, phone number] to obtain a hearing date for the Fee Application. The Fee Application submitted for filing shall be accompanied by a "Notice of the Filing of (Interim/Final) Fee Application and Notice of Opportunity for Hearing," which Notice shall contain the Following: (1) the contents of a "Notice of Hearing on Compensation" required by Bankruptcy Rule 2002(c)(2); (2) a statement that the Fee Application is available for inspection and copying at the office of the professional/applicant (or its designated copy service), giving the address and telephone number of the professional/applicant (or its designated copy service); and (3) the following language in bold type:

   You are hereby notified that you have until _____, 1999 (specific date calculated as seven days prior to the hearing date) to file a written response or objection to the relief requested in the above-described Fee Application. If no response or objection is timely filed, the Court may grant the requested relief without further notice.

e. **Reviewing Party in Interest.** The "Notice of the Filing of (Interim/Final) Fee Application and Notice of Opportunity for Hearing" shall be served upon the Master Service List at least 20 days prior to the date set for hearing, pursuant to Bankruptcy Rule 2002(a)(6).

f. **Objections.** A Reviewing Entity or any other party in interest having unresolved objections must file a **written objection** to the Fee Application at least seven (7) days prior to the date of the hearing on the Fee Application, or the objection may not be heard. The objection must identify the charges in dispute with sufficient specificity to direct the Court to the relevant page(s) and line item(s) at issue, state the reason for the objection, and provide any relevant legal authority. **Objections to the Fee Application shall be served upon the professional/applicant, the Reviewing Entities and the Master Service List.**

g. **Resolution of Objections.** In the event that an objection is resolved prior to the hearing, the professional/applicant shall immediately advise [courthouse deputy, phone number] and file a short supplement describing the modification to the Fee Application, if any, resulting from the resolution of the written objection. If the resolution results in no change to the Fee Application, the objecting party shall immediately file a pleading withdrawing its objection.

FEE GUIDELINES

These Fee Guidelines supplement the Bankruptcy Code and Rules, the relevant and binding case law interpreting the Bankruptcy Code and Rules, and the United States Trustee Guidelines, all of which apply in this case.

Criteria for Evaluating Fee Applications

The Court will consider the following criteria in evaluating Fee Applications filed in the case:

1. **Hourly Rates.** The primary criterion used to evaluate the reasonableness of the hourly rate charged will be the amount reasonably charged by a person possessing the skill, experience and expertise **required to perform the given task.** As stated in the Fee Application Procedures, **the rate charged for the service shall correspond to the expertise necessary to perform the task, rather than the ordinary rate charged by the person performing it.** The Court will consider the human resources of the firm seeking compensation (and the resources of local counsel, if applicable), including the availability of para-professionals, in determining an hourly rate appropriate for a task. Professionals shall consider this rule when exercising billing judgment in preparation of the billing statement.

2. **Locality.** Professionals and para-professionals may charge hourly rates consistent with those charged by a practitioner in the professional's geographic area possessing education, experience, expertise, and skills commensurate with the professional and para-professional seeking compensation. Local prevailing rates must be demonstrated by competent evidence at the hearing on the Fee Application.

3. **Travel Time.** Travel time will be compensated at the professional's regular hourly rate unless the professional is performing services for and billing another client during the travel time, in which case the professional will not be compensated for the time billed to another client. In light of the availability of telephone conferences, e-mail, facsimile transmission and other sophisticated communications technology that substantially reduces the necessity of being present in the locality where business is being transacted, the Court will compensate only **one** professional for travel time unless a showing is made that more than one professional was required for the meeting, court appearance or other event for which travel time is sought. The restriction on compensation for travel time does not necessarily restrict compensation for more than one professional working on a task if the task requires more than one professional.

4. **Duplication of Services.** Compensation will not be allowed for duplication of services. For instance, only those professionals who materially participate in a hearing will be compensated for the hearing, unless a showing is made as to why a second professional was required. The availability of local counsel, local counsel's human resources, and local counsel's familiarity with the issue will be considered.

5. **Billing Judgment.** A professional shall exercise billing judgment in presenting its Fee Application. The Court cannot determine whether billing judgment was exercised unless all services and expenses are included in the Fee Application presented to the Court; therefore, a professional shall make the Court aware of its billing judgment by indicating in the Fee Application the services that were performed but for which no compensation is sought. Examples of "no charge" entries include services that were not productive, excessive or duplicative, and services which primarily benefited another party or the professional, rather than the estate (not including Fee Applications, however).
6. **Expenses.** Copying costs shall be limited to $.20 per page if copying is performed in-house, or the actual cost if copying is performed by a service. Reimbursement of in-coming fax costs shall be limited to $.20 per page; out-going faxes will be reimbursed at actual cost. Absent a showing of necessity, overnight or courier service delivery will not be a reimbursable expense.

SO ORDERED this 7th day of January, 1999

DANA L. RASURE, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

Exhibit III-1. Sample Scheduling Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re:	)	Chapter
	)	Case No. JNF
Debtors	)	
	)	
Plaintiff	)	Adversary Proceeding
	)	No.
v.	)	
	)	
Defendant	)	
	)	

PRETRIAL ORDER

1. The parties are ordered to confer pursuant to Fed. R. Civ. P. 26, made applicable to this proceeding by Fed. R. Bankr. P. 7026, within 45 days of the date of this order and to file no later than _____, a certification that the Rule 26(f) conference has taken place, as well as a written report outlining a proposed discovery plan.
2. Discovery shall be completed on or before _____, unless the court, upon appropriate motion and consideration of the discovery plan, alters the time and manner of discovery.
3. The Parties are ordered to file by _____, a Joint Pretrial Memorandum approved by all counsel and unrepresented parties, which shall set forth the following:
   (A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises.
   (B) A list of witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.
   (C) A list of witnesses intended to be called as experts, together with a statement as to an objection to their qualification.
   (D) An appropriate identification of each document or other exhibit, other than those to be used for impeachment, in the sequence in which they will be offered, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.
   (E) A statement of any objections, together with the grounds therefor, reserved as to the admissibility of a deposition designated by another party and to the

admissibility of documents or exhibits. Objections not so disclosed, other than an objection under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(F) A statement confirming that the parties have exchanged copies of the exhibits.

(G) Facts which are admitted and which require no proof.

(H) The issues of fact which remain to be litigated (evidence at the trial shall be limited to these issues).

(I) The issues of law to be determined.

(J) A statement summarizing the Plaintiff's case.

(K) A statement summarizing the Defendant's case.

(L) The estimated length of the trial.

4. Any dispositive motions must be filed no less than seven business days prior the date fixed for the filing of the Joint Pretrial Memorandum or the relief sought in such motion shall be deemed to have been waived.

5. Failure to strictly comply with all of the provisions of this order may result in the automatic entry of a dismissal or a default as the circumstances warrant in accordance with Fed. R. Civ. P. 16, made applicable to this proceeding by Fed. R. Bankr. P. 7016.

6. A pretrial conference or trial shall be scheduled after the filing of the Joint Pretrial Memorandum.

By the Court,

_____
Joan N. Feeney
United States Bankruptcy Judge

Date:
cc:

Exhibit III-2. Sample Discovery Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re	)	Case No. 01-30923 DM
	)	
PACIFIC GAS AND ELECTRIC COMPANY,	)	Chapter 11 Case
	)	
	)	ORDER RE: DISCOVERY PROTOCOL AND SCHEDULING
Debtor.	)	
	)	
Federal I.D. No. 94-0742640	)	

Pursuant to Title 11 of the United States Code, Section 105, and Rules 7026(b)(2) and 9014 of the Federal Rules of Bankruptcy Procedure ("FRBP"), the Court adopts the following Discovery Protocol in connection with confirmation proceedings concerning the Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas & Electric Company ("PG&E") (dated April 19, 2002) filed by PG&E and Corp., on March 7, 2002 (the "PG&E Plan"), and the California Public Utilities Commission's Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company filed by the California Public Utilities Commission on April 15, 2002 (the "CPUC Plan"). For purposes herein, PG&E and co-proponent PG&E Corporation ("Corp.") are collectively referred to as the "PG&E Plan Proponents"[1] and each of PG&E, Corp. and the California Public Utilities Commission ("CPUC" or the "Commission") are each individually referred to as a "Proponent" and are collectively referred to as the "Proponents."

Discovery procedures set forth in the Federal Rules of Bankruptcy Procedure shall be available only to the Proponents, the Official Committee of Unsecured Creditors (the "Committee"), the United States Trustee ("UST") and to those persons or entities, other than the Proponents, who timely filed and served objections to confirmation of either or both the PG&E Plan or the CPUC Plan in compliance with this Court's May 20, 2002, Scheduling Order ("Objectors"). Objectors who object to the PG&E Plan are referred to herein as "PG&E Plan Objectors," and Objectors who object to the CPUC Plan are referred to herein as "CPUC Plan Objectors." The Proponents, the Committee, UST and the Objectors are collectively referred to herein as the "Parties." Any Party which is not a Proponent is referred to herein as a "Nonproponent."

1. For purposes of this Discovery Protocol, the PG&E Plan Proponents shall be considered one Party.

A. DEPOSITION PROTOCOL

The following protocol shall apply to depositions:

1. Counsel for the Committee, Milbank, Tweed, Hadley & McCloy, LLP ("Committee Counsel"), shall be responsible for coordinating the scheduling of all percipient and expert depositions and the Parties shall follow the Discovery Scheduling Procedure set forth in Exhibit A hereto in addition to the provisions of this Order.

2. Each Party shall notify Committee Counsel and the other Proponents of the date, time and location the witnesses it intends to call at trial will be available for deposition in accordance with the schedule set forth in Sections B & C below.

3. Except in circumstances where a deposition is sought by a Nonproponent not also by a Proponent or unless otherwise agreed by the Proponent that is not affiliated with the deponent, the examination of each non-expert deponent shall begin with one seven-hour day of questioning by that Proponent (for purposes of this Protocol, time taken for a lunch break during a deposition is not counted against the seven-hour period, however time taken for other reasonable breaks during a deposition is counted against the seven-hour period). If a deposition of a non-expert deponent is sought by a Nonproponent and not also by a Proponent, the examination of such non-expert deponent shall begin with questioning by the Nonproponent seeking the deposition. Only Parties and their agents, or anticipated expert witnesses and their agents, may attend depositions, and Parties shall participate in such depositions only in accordance with the Discovery Scheduling Procedure set forth in Exhibit A hereto.

4. Normally, the Court expects that non-expert depositions will conclude within two seven-hour days per witness, provided, however, that further time is permitted when necessary.

5. All Parties should attempt to coordinate their questioning of deponents, and should avoid using multiple examiners to cover similar subject matter.

B. DISCLOSURE OF NON-EXPERT WITNESSES

1. No later than August 15, 2002, Proponents shall file and serve on all other Parties a disclosure identifying the name, title and business address of each non-expert witness the Party intends to call at trial. On or before September 16, 2002, a Proponent may file and serve a supplemental designation of non-expert witnesses whom the Proponent in good faith determined after August 15, 2002, that it intends to call at trial. For each witness identified by a Proponent, the Proponent's disclosure shall also include a brief summary of the subject matter of such witness' expected testimony. No later than August 22, 2002, Proponents shall provide information concerning the availability for deposition of those non-expert witnesses identified on August 15, 2002. Availability for deposition of Proponents' non-expert witnesses identified thereafter shall be provided at the same time they are identified.

2. No later than September 16, 2002, Nonproponents shall file and serve on all other Parties a disclosure identifying the name, title and business address of each non-expert witness the Party intends to call at trial. On or before October 28, 2002, a Nonproponent may file and serve a supplemental designation of non-expert witnesses whom the Nonproponent in good faith determined after September 16, 2002, that it

intends to call at trial. For each witness identified by a Nonproponent, the Nonproponent's disclosure shall also include a brief summary of the subject matter of such witness' expected testimony. No later than September 23, 2002, Nonproponents shall provide information concerning the availability for deposition of those non-expert witnesses identified on September 16, 2002. Availability for deposition of Nonproponents' non-expert witnesses identified thereafter shall be provided at the same time they are identified.

C. EXPERT WITNESS DISCLOSURES

The following expert witness disclosures shall be made in addition to the service and filing of written direct testimony of expert witnesses, which shall be scheduled at a later date:

1. The CPUC and any other Party intending to offer direct expert testimony in support of the CPUC Plan at the confirmation hearing shall serve the disclosures required under FRBP 7026(a)(2)(A) & (B) with respect to such experts, together with a statement indicating the date, time and location such expert will be available for deposition, on all other Parties no later than September 20, 2002.

2. The PG&E Plan Proponents and any other Party intending to offer expert testimony to rebut or contradict the testimony of an expert disclosed pursuant to Section C.1 above or otherwise in opposition to confirmation of the CPUC's Plan shall serve the disclosures required under FRBP 7026(a)(2)(A) & (B) with respect to such experts, together with a statement indicating the date, time and location such expert will be available for deposition, on all other Parties no later than October 4, 2002.

3. The CPUC shall serve the disclosures required under FRBP 7026(a)(2)(A) & (B) with respect to the testimony of any expert witness it intends to offer solely to rebut or contradict the testimony of a non-rebuttal expert disclosed pursuant to Section G2 above, together with a statement indicating the date, time and location such expert will be available for deposition, on all other Parties no later than October 14, 2002.

4. The PG&E Plan Proponents and any other Party intending to offer direct expert testimony in support of the PG&E Plan at the confirmation hearing shall serve the disclosures required under FRBP 7026(a)(2)(A) & (B) with respect to such experts, together with a statement indicating the date, time and location such expert will be available for deposition, on all other Parties no later than October 18, 2002.

5. The CPUC and any other Party intending to offer expert testimony to rebut or contradict the testimony of an expert disclosed pursuant to Section C.4 above or otherwise in opposition to confirmation of the PG&E Plan shall serve the disclosures required under FRBP 7026(a)(2)(A) & (B) with respect to such experts, together with a statement indicating the date, time and location such expert will be available for deposition, on all other Parties no later than October 29, 2002.

6. The PG&E Plan Proponents shall serve the disclosures required under FRBP 7026(a)(2)(A) & (B) with respect to the testimony of any expert witness they intend to offer solely to rebut or contradict the testimony of a non-rebuttal expert disclosed pursuant to Section C.5 above, together with a statement indicating the date, time and

location such expert will be available for deposition, on all other Parties no later than November 8, 2002.

D. OTHER DISCOVERY MECHANISMS

1. Demands for Inspection. A Party may propound demands for inspection of documents on any other Party; however, a Party may respond in writing to any duplicative demands for inspection by reference to previous responses and objections, and shall not be required to produce documents responsive to duplicative requests if the non-privileged responsive documents have previously been made available to the Parties in a data room or document repository. Any Party may elect to produce documents by making them available for inspection and copying at a data room or document repository in San Francisco, California.

2. Subpoenas for Documents. Subject to the limitations on such discovery provided under the Federal Rules of Bankruptcy Procedure, any Party may subpoena documents from a person or entity that is not a Party.

3. Other Written Discovery.

(a) The total number of requests for admission that may be propounded by a Party on any other Party shall not exceed 25. Subparts to requests shall count against the limit of 25 requests.

(b) The total number of written interrogatories that may be propounded by a Party on any other Party shall not exceed 25. Subparts to interrogatories shall count against the limit of 25 interrogatories.

4. Service of Written Discovery. Subject to any limitations set forth in an applicable protective order, all written discovery requests propounded by Parties as well as any written responses thereto shall be served on all Parties at the time such request or response is made.

5. Written Discovery Cut Off. No Party may propound written discovery after October 8, 2002.

E. SCOPE OF DISCOVERY

Proponents, the Committee and the U.S. Trustee may seek discovery regarding any matter, not privileged, that is relevant to the Court's consideration of the PG&E Plan or the CPUC Plan. Each Objector may seek discovery relevant to any matter, not privileged, raised in its written objections to either the PG&E Plan or the CPUC Plan. This provision shall be liberally construed in favor of a broad scope of discovery.

F. INTERIM PROTECTIVE ORDER

The Proponents shall serve their proposed form(s) of protective order on all Parties on or before August 26, 2002, and the Court will hold a hearing regarding the entry of a protective order on September 4, 2002, at 1:30 p.m. Until such time as the Court enters a protective order governing the use and dissemination of information produced or furnished in discovery in the above-captioned action or September 26,

2002, whichever is earlier, all documents, written discovery responses, and deposition testimony produced or furnished in the above-captioned action in response to any deposition notice, subpoena or other discovery request related to plan confirmation proceedings and which has been labeled by a Party with the designation "Confidential—*In re Pacific Gas and Electric Co*., Na. 01 30923 DM (Bankr. N.D. Cal.) or otherwise designated "Confidential" by a Party (collectively, "Confidential Confirmation Discovery Information") shall be used by Parties receiving such Confidential Confirmation Discovery Information solely for the purpose of conducting litigation of the above-captioned action and for no other purpose whatsoever. No Party may disseminate Confidential Confirmation Discovery Information to any other person who is not also a Party, except that a Party may provide Confidential Confirmation Discovery Information to consultants, expert witnesses or other agents it has retained for purposes of the above-captioned litigation who have received a copy of this Protocol and executed a copy of Exhibit B hereto, which executed copy counsel of record for such Party shall retain.

G. DISCOVERY DISPUTES

If any dispute arises concerning discovery, the Parties shall try first to resolve such dispute in good faith on an informal basis. If the dispute cannot be so resolved, the Party seeking to obtain the discovery may request the Court to schedule a telephonic conference concerning the dispute. A Party requesting such a conference should contact [courtroom deputy, phone number], to obtain a date and time. Any dispute arising between October 4 and October 18, 2002, will be handled by Chief Judge Edward Jellen. A Party requesting a telephonic conference during that time period should contact [judge's judicial assistant, phone number].

As soon as a telephonic conference is scheduled, the Party requesting the conference shall provide the Court (and Chief Judge Jellen at U.S. Bankruptcy Court, 1300 Clay Street, Second Floor, Oakland, CA 94612, during the dates indicated above) with a written summary of the dispute and a confirmation of the date and time of the telephonic conference, with copies served promptly on all other Parties by e-mail or facsimile. If a Party desires to transmit the letter to the Court via facsimile, the Party should request from the Courtroom Deputy or Judicial Assistant permission to fax the letter directly to chambers.

The Court will make telephonic conference arrangements with Court Conference Center and all Parties desiring to participate on the conference should follow the procedures for telephonic conferences as published on the Court's website at http://www.canb.uscourts.gov, click on Pacific Gas and Electric Company Chapter 11 Case, then Instructions for Telephonic Appearances.

H. MODIFICATIONS OF DISCOVERY PROCEDURES

Any Party seeking relief from or modification to any provision of this Order shall try first to obtain agreement, which agreement if reached shall be binding without further order of the Court (except for changes to the hearing, status conference, and trial dates referenced herein), from the Parties who would be affected by such relief

or modification. If an agreement cannot be reached in good faith on an informal basis, the Party seeking such relief or modification may bring the matter to the Court's attention by contacting the Courtroom Deputy by telephone or by writing a letter to the Court. Such requests for relief or modification shall be granted by the Court upon reasonable and appropriate notice and a showing of good cause.

I. FURTHER STATUS CONFERENCE

The Court will convene a further status conference on Wednesday, September 25, 2002, at 9:30 a.m. to discuss procedures for the confirmation trial.

J. TRIAL DATE

The confirmation trial shall commence on Tuesday, November 12, 2002.

IT IS SO ORDERED.

Date: August 23, 2002

_____

HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A
Discovery Scheduling Procedure

1. Deposition discovery in this proceeding shall be scheduled pursuant to the procedures set forth herein and in the Court's Order Re: Discovery Protocol and Scheduling dated August 2002 ("Discovery Protocol"). Terms used herein shall have the same meanings as in the Discovery Protocol. The Discovery Coordinator shall be the firm of Milbank, Tweed, Hadley and McCloy, counsel to the Official Creditors' Committee. The primary contact for the Discovery Coordinator shall be [name].

2. For the purpose of this Paragraph, a "presumptive deponent" means an individual who (a) is listed on at least one filed witness list, or (b) submits an expert report or declaration. Also for the purposes of this Paragraph, "under the control of" means (a) employed by or otherwise serving as an agent to, or (b) anticipated to serve as a fact or expert witness on behalf of.

a. The Plan Proponents shall make reasonable efforts to reach agreement with each other on deposition schedules for presumptive deponents under their control. When a deponent is not under the control of a Plan Proponent, the Plan Proponents and the Party under whose control the deponent is found shall make reasonable efforts to reach agreement on a deposition schedule for that presumptive deponent.

b. If one or more Parties seek the deposition of another Party or of another person who is not a presumptive deponent, the Parties seeking the deposition and the deponent or, if applicable, the Party under whose control the deponent is found, shall make reasonable efforts to reach agreement on a deposition schedule for that person.

c. In the event that either (i) the relevant Parties cannot reach agreement on a deposition schedule pursuant to subparagraphs 2.a or 2.b above, or (ii) other deposition scheduling disputes arise, any Party involved in the dispute may ask the Discovery Coordinator to resolve the dispute, and the Discovery Coordinator shall make reasonable efforts to do so if asked. Subject to Paragraph 3 below, the Discovery Coordinator shall not schedule a deposition pursuant to this Paragraph 2.c such that the Parties do not receive at least 10 days' notice through the Deposition Calendar.

d. The schedule for all depositions in this proceeding shall be posted on a Deposition Calendar maintained by the Discovery Coordinator and available to all Parties herein through a website at www.milbank.com/clientweb (the "Deposition Calendar Website"), to which all Parties will have password access provided by the Discovery Coordinator. Once the availability of a deponent is provided as described in Sections B and C of the Discovery Protocol or an agreed deposition schedule for a deponent is proposed pursuant to subparagraphs 2.a or 2.b above, the Parties establishing the schedule shall give notice to the Discovery Coordinator pursuant to paragraph 8 below of such scheduling. Subject to Paragraph 3 below, such notice must be received by the Discovery Coordinator at least 11 days before the deposition is scheduled. The Discovery Coordinator shall post the scheduled deposition on the Deposition Calendar within 24 hours of either (i) receipt of such notice or (ii) the Discovery Coordinator's own scheduling of the deposition pursuant to subparagraph 2.c.

3. If extraordinary circumstances require that a deposition be scheduled on less than 10 days' notice to the Parties through the Deposition Calendar website, then in addition to posting the deposition on the Deposition Calendar website, the Discovery Coordinator shall give notice to all Parties of the scheduled deposition by email at the same time the deposition is posted.

4. Once a deposition appears on the Deposition Calendar, any other Party seeking to put questions to the deponent shall indicate through the Deposition Calendar website that it desires to do so and shall provide an estimated time for its examination and a description of the subject matter of such examination. Except with respect to a deposition scheduled pursuant to Paragraph 3 above, such indications must be made no later than the close of business Pacific Coast time the fourth business day before the deposition is to commence, or else the Party will not have the right to put questions to the deponent during the deposition. In the event of a deposition scheduled pursuant to Paragraph 3 above, the Party will provide its time estimate and subject matter description by 5 p.m. Pacific Coast time at least two days prior to the deposition commencement date. A Party intending to put questions to the deponent shall attend the deposition (in person or telephonically) on the day the Discovery Coordinator sets for that Party's examination, beginning at the commencement of that day's examination.

5. Any Party wishing to attend any deposition in person without asking questions may do so without notice. As a matter of professional courtesy to the Party hosting the deposition, however, a Party intending to attend in person without asking questions shall whenever possible indicate in advance that it intends to do so through the Deposition Calendar website, ideally no later than the close of business Pacific Coast time the fourth business day before the deposition is to commence.

6. Alternatively, a Party not seeking to ask questions may attend a deposition telephonically. Any Party wishing to attend telephonically shall indicate the name(s) of the individual person(s) who will attend telephonically through the Deposition Calendar website no later than the close of business Pacific Coast time the second business day before the deposition is to commence, or else the party will not have the right to attend the deposition telephonically. To those Parties indicating in a timely fashion their intent to participate telephonically, the Discovery Coordinator shall provide call-in instructions by e-mail no later than the close of business Pacific Coast time the business day before the deposition is to commence. Any Party attending telephonically shall ensure that speech or other sounds from his or her office are not audible while the deposition proceedings are on the record, through use of a "mute" button or any other effective means.

7. The Discovery Coordinator shall assign time for each participant to ask questions at any deposition and shall post the time assigned to each party on the Deposition Calendar website no later than 48 hours before the deposition is to commence. The Discovery coordinator may request that any witness be made available for additional days if it does not appear that it is possible to reasonably accommodate all persons wishing to interrogate within the originally scheduled time period.

8. Any notice to the Discovery Coordinator may be given to [name] by email at [email address], by facsimile at [fax number], or by mail at [address]. Oral notice to the discovery coordinator shall not be effective.

9. All discovery herein shall be governed by the Discovery Protocol, and the Discovery Coordinator shall have no power to alter the terms of the Discovery Protocol.

EXHIBIT B

AGREEMENT TO BE BOUND BY SECTION F OF DISCOVERY PROTOCOL

I, the undersigned, _____ (print or type name), of _____ (business/residence address) hereby acknowledge that I have received a copy of the Order Re: Discovery Protocol (the "Order") entered on_____, 2002, in the matter entitled *In Re Pacific Gas and Electric Company*, United States Bankruptcy Court, Northern District of California (the "Court"), Case No. 01 30923 DM.

I have read and understand the Order and agree to be bound, to the same extent as a Party, by all the provisions of Section F of the Order concerning the use and dissemination of Confidential Confirmation Discovery Information as that term is used in the Order.

I consent to personal jurisdiction over me by the Court for purposes of enforcing the Order. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this Agreement was executed on this ____ day of _____, 2002, at _____.

Exhibit III-3. Sample Order Requiring Presentation of Evidence by Declaration

TRIAL BY DECLARATION

by
BARRY RUSSELL
U.S. Bankruptcy Judge

The attached "Order re Presentation of Evidence by Declarations for Court Trial . . ." concerns a procedure which I have been using for several years with excellent results, in my opinion, for Court trials. The second introductory paragraph of the Order states:

> The purpose of this procedure is to ensure a fair and expeditious trial. The procedure is similar to a motion for summary judgment, except that the admissibility of a declaration is dependent upon the presence of the declarant at trial subject to cross-examination.

Using this procedure, I have been able to try matters that would normally take one to two weeks in one-half to one or two days. Since almost all direct testimony is admitted into evidence by the witnesses' declarations, the in-court time for this testimony is generally eliminated. This procedure does not work well unless both sides are represented by counsel.

Because counsel are forced to carefully prepare the declarations that are admissible under the Federal Rules of Evidence, I have found the declarations to be very brief and far more direct than if the direct testimony were given orally in open court. I have also found that cross-examination is much shorter and frequently waived. I believe this may be due in part to the fact that many attorneys feel compelled to cross-examine witnesses, especially when the client is present in Court, and after the other side's counsel has spent considerable time questioning its witnesses on direct examination.

This procedure is most beneficial to the Judge's needs. In addition to saving a great deal of time, I have found that I am much better prepared to decide the matter. By requiring that briefs be filed with the declarations, I am often ready to decide the matter on the declarations submitted prior to trial. That is to say, in many trials (usually the more simple matters) both sides submit on the declarations without any cross-examination and without argument (they have already argued in the pretrial briefs).

Naturally, to make the procedure work, the Judge must take the time to read the declarations and the briefs prior to trial. This can be done at the Judge's leisure, either in Chambers or at home relaxing by the pool, etc. An additional benefit is that by requiring the parties to be fully prepared, they often settle matters which I believe would otherwise have gone to trial.

The following comments relate to specific suggestions I have concerning certain aspects of the attached Order.

1. DECLARATIONS:

(a) Since this is a trial, the admissibility of evidence is governed by the Federal Rules of Evidence. I have found that "hearsay" and "irrelevant" are by far the most frequent objections and are easily determined by this procedure. Try not to waste your time by hearing arguments on these unless you are really unsure. In any case, you will decide the relevancy when you render your decision. I would suggest generally overruling objections relating to the form of the answer as opposed to those objections relating to substance. I have found that very few objections of any kind are made to the declarations, and the objections made are easily decided.

(b) Some counsel may hold back evidence that should have been in their declarations as part of their case-in-chief and claim it is merely rebuttal. If you strictly enforce your Order they will soon learn that you will not tolerate such attempts to circumvent your Order. I would stress this and other points at a status hearing with all counsel present.

(c) Requiring exhibits to be attached to the declaration makes the reading of the declaration easier and more understandable. You may have to modify this requirement if there are a large number of exhibits. In that case, the declarant should refer to the exhibits which should be provided to the Court and counsel as part of the Pretrial Order.

(d) The filing of a declaration by counsel, concerning witnesses for whom declarations cannot be obtained, helps to reduce surprises and is important for the Judge and opposing counsel to be aware of all the evidence to be presented by both sides.

(e) It is important to strictly adhere to the requirements of the Order. If a declarant does not appear at the trial, the declarant's declaration may not be introduced into evidence. The decision to continue the trial because of an unavailable witness is the same as it would be at a trial without declarations.

In the beginning you may encounter some counsel, as I have, who don't believe you mean it and will appear at trial with witnesses for whom they have not served and/or filed declarations. If you comply with your Order and refuse to allow the witnesses to testify, that particular counsel and others will quickly realize that you really mean it.

2. TIME FOR FILING DECLARATIONS, ETC.:

I generally set the time for filing the declarations so that the last one is filed two weeks before the trial or pretrial hearing. I usually give the plaintiff about three to four weeks to file its declarations; defendant, two to three weeks to file its reply declarations; and the plaintiff, one to two weeks to reply. Any evidentiary objections must be filed with that party's declarations with the defendant filing its objections, if any, to plaintiff's reply declarations, at least one week before trial or pretrial.

3. TIME FOR FILING BRIEFS:

I don't order the filing of briefs, but I do order that if they are filed, they may only be filed in accordance with the Order. Almost all counsel file briefs and it is nice not to have them handed to you as you start the trial.

4. PRETRIAL ORDERS:

I almost always, except in the simplest matters when everyone knows what is in-issue, require a Pretrial Order. In Los Angeles, we have a Local Rule which spells out the requirements. Many Judges issue their own order. In either case, I require the Pretrial Order to be filed on the same date as the plaintiff's declarations. I do that to force the parties to get together as soon as possible.

5. SETTING OF TRIAL OR PRETRIAL:

I generally order the reply declarations to be filed two weeks prior to trial. If I don't have a good idea how long the trial will take, I set it for a pretrial hearing with the reply declarations to be filed two weeks before the hearing. I have found it helps to emphasize to counsel that you will try their two day trial in one hour, or their one week trial in one-half a day. There is no need for opening statements, and closing arguments should be kept to a minimum unless the cross-examinations have revealed new facts.

I would advise issuing your Order at a status hearing with all counsel present to orally emphasize those points you wish to emphasize, and to answer any questions of counsel. This is especially important when you first initiate this procedure.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:	)	Chapter_____
	)	
	)	BK. NO._____ BR
	)	
	)	ADV. NO._____ BR
	)	
Debtor(s)	)	ORDER REPRESENTATION OF
_____	)	EVIDENCE BY DECLARATION FOR
	)	COURT TRIAL; FILING JOINT
	)	PRETRIAL ORDER PURSUANT TO
	)	LOCAL RULE 7016- 1
	)	Date:
	)	Time:
Plaintiff(s)	)	Place: Courtroom 1668
	)	255 E. Temple Street
	)	Los Angeles, CA 90012
Defendant(s)	)	
_____	)	

The following procedures are to be followed for the presentation of evidence to be offered at the trial of the above-entitled proceeding on _____.

The purpose of this procedure is to ensure a fair and expeditious trial. The procedure is similar to a motion for summary judgment, except that the admissibility of a declaration is dependent upon the presence of the declarant at trial subject to cross-examination.

1. DECLARATIONS:

(a) Except as herein provided, each party shall present the testimony of all its witnesses through declarations of said witnesses, under penalty of perjury, otherwise admissible under the Federal Rules of Evidence.

(b) The only oral testimony which may be offered at trial by a party through its witnesses will be **STRICTLY** limited to rebuttal testimony.

(c) If a portion of a witness' declaration concerns an exhibit to be admitted into evidence at trial, the exhibit must be attached to the declaration.

(d) If a party is unable to obtain a declaration of a witness, counsel for that party shall file a declaration stating the name of the witness and a detailed summary of the expected testimony and why counsel was unable to obtain the witness' declaration.

Failure to make every reasonable effort to obtain the declaration of any such witness will result in the exclusion of any oral testimony of such witness offered by the party.

If a party intends to present the witness' testimony by a transcript of a deposition of the witness only those portions of the transcript intended to be offered, should be attached to its counsel's declaration.

(e) The declaration of a witness for a party will be admissible at trial, subject to timely objections, and if the declarant is present at trial, and subject to cross-examination.

2. TIME FOR FILING DECLARATIONS AND OBJECTIONS TO DECLARATIONS:

(a) Plaintiff shall serve and file its declaration(s) on or before _____.

(b) Defendant shall serve and file its declaration(s) and any evidentiary objections it has to plaintiff's declaration(s) on or before _____.

(c) Plaintiff shall serve and file its reply declaration(s) and any evidentiary objections it has to defendant's declaration(s) on or before _____.

(d) Defendant shall serve and file any evidentiary objections to plaintiff's reply declaration(s) on or before _____.

(e) NO OTHER DECLARATIONS WILL BE ALLOWED. The only additional evidence a party may offer at trial is **TRUE** rebuttal evidence.

3. TIME FOR FILING BRIEFS:

If a party wishes to file a trial brief(s), such brief(s) must be filed with the party's declaration(s). A party may file its brief(s) at the time(s) designated for filing its declarations(s), even though the party chooses not to file a declaration(s). **NO OTHER BRIEFS WILL BE ALLOWED.**

4. PRETRIAL ORDER:

The parties shall file a joint pretrial order pursuant to Local Rule 7016-1 on or before _____.

IT IS SO ORDERED.

Dated:_____

_____
BARRY RUSSELL
U.S. Bankruptcy Judge

Exhibit III-4. Local Rule on Omnibus Objections to Claims

Delaware Local Bankruptcy Rule 3007-1
Omnibus Objections to Claims

(a) Scope of Rule. This Local Rule applies to any objection to the allowance of a claim under an omnibus objection (i.e., an objection to claims asserted by more than one claimant) ("Objection"). To the extent of any inconsistency between this Local Rule and Fed. R. Bankr. P. 3007, this Local Rule governs omnibus objections to claims.

(b) Effect of Rule. In addition to complying with those sections of the Code and those rules of the Fed. R. Bankr. P. generally applicable to an objection to the allowance of a claim, any Objection shall comply with the information and certification requirements listed in Local Rule 3007-1(c)-(f).

(c) Filed v. Scheduled Claim. If a claim has been scheduled on the debtor's schedules of liabilities and is not listed as disputed, contingent or unliquidated and a proof of claim has not been filed under Fed. R. Bankr. P. 3003, 3004 and/or 3005, the debtor may not object to the claim. Instead, the debtor must amend the schedules under Fed. R. Bankr. P. 1009 and provide notice as required by Local Rule 1009-2.

(d) Substantive v. Non-Substantive Objections. An Objection is deemed to be on a substantive basis unless it is based on one or more of the following:

(i) A duplicate claim; provided, however, that a claim filed against two different debtors is not a duplicate claim unless the cases have been substantively consolidated by order of the Court;

(ii) A claim filed in the wrong case;

(iii) An amended or superseded claim;

(iv) A late filed claim;

(v) A claim filed by a shareholder based on ownership of stock; provided, however, that an Objection with respect to a claim filed by a shareholder for damages shall be deemed a substantive Objection;

(vi) A claim that does not have a basis in the debtor's books and records and does not include or attach sufficient information or documentation to constitute prima facie evidence of the validity and amount of the claim, as contemplated by Fed. R. Bankr. P. 3001(f); *provided, however*, that if the Court determines that the claim attaches or includes sufficient information or documentation and is otherwise in compliance with applicable rules, then the Objection shall be deemed substantive. Any Objection under this subsection must be supported by an affidavit or declaration that states that affiant or declarant has reviewed the claim and all supporting information and documentation provided therewith, made reasonable efforts to research the claim on the debtor's books and records and believes such documentation does not provide prima facie evidence of the validity and amount of the claim;

(vii) A claim that is objectionable under 11 U.S.C. § 502(e)(1);

(viii) Incorrect classification of a claim; provided, however, that an Objection based on incorrect classification of a claim (A) is separately filed, (B) provides in its title (or otherwise conspicuously states) that substantive rights may be affected by this Objection and by any further Objection that may be filed and (C) otherwise complies with these Local Rules;

(ix) A claim that has been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;

(x) A claim for priority in an amount that exceeds the maximum amount under 11 U.S.C. § 507 of the Code; and

(xi) A claim that asserts an interest in property of the debtor that does not comply with the requirements of Fed. R. Bankr. P. 3001 (c) or (d).

(e) General Requirements for Objections.

(i) Objection. Each Objection shall conform to the following requirements:

(A) Each Objection shall be filed as either substantive or non-substantive, but not both. A particular claim may be subject to both a substantive and a non-substantive Objection;

(B) The title of the Objection shall clearly state whether the Objection is on substantive or non-substantive grounds;

(C) Objections shall be numbered consecutively regardless of basis, i.e., 1st Omnibus (duplicate), 2nd Omnibus (amended and superceded); not 1st Omnibus (duplicate), 1st Omnibus (amended and superceded);

(D) Exhibit(s) of claims to which the Objection relates, which exhibit(s) shall be consistent with Local Rule 3007-1(e)(iii) and must be attached to the Objection; and

(E) The Objection shall also contain a statement by the objector or the objector's counsel that the Objection complies with this Local Rule.

(ii) Affidavit or Declaration. If an affidavit or declaration is filed in support of the Objection, it shall state that the information contained in the exhibit is true and correct to the best of the affiant's or declarant's knowledge and belief.

(iii) Exhibits.

(A) Each exhibit attached to an Objection shall include, at a minimum, the information identified in the following table, with such information entered in the respective boxes as appropriate:

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	(4) Reason for Disallowance

(B) Each exhibit shall contain only those claims to which there is one common basis for objection (e.g., exhibit A duplicate claims; exhibit B amended or superseded claims).

(C) A claim for which there are two or more bases for objection (e.g., a claim that is both duplicative and late filed) shall be referenced on each applicable exhibit.

(D) Each exhibit shall have the claims listed alphabetically by the last name of the claimant (in the case of an individual) or the name of the entity (in the case of a corporation, partnership, limited liability company, etc.).

(E) If an Objection seeks to reduce the amount of a claim, a column shall be added between columns (3) and (4) titled "Modified Claim Amount" and column (4) shall be changed from "Reason for Disallowance" to "Reason for Modification."

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	**Modified Claim Amount**	(4) Reason for **Modification**

(F) If an Objection seeks to change the classification of a claim, two columns shall be added between columns (3) and (4) titled "Claim Classification Status" and "Modified Classification Status" and column (4) shall be changed from "Reason for Disallowance" to "Reason for Reclassification."

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	**Claim Classification Status**	**Modified Classification Status**	(4) Reason for **Reclassification**

(G) If an Objection seeks to change the priority of a claim, two columns shall be added between columns (3) and (4) titled "Claim Priority Status" and "Modified Priority Status" and column (4) shall be changed from "Reason for Disallowance" to "Reason for Modification."

(1) Name of Claimant	(2) Claim Number	(3) Claim Amount	**Claim Priority Status**	**Modified Priority Status**	(4) Reason for Modification

(H) If an Objection seeks to expunge amended or duplicate claims, the title of column (2) shall be changed from "Claim Number" to "Remaining Claim Number" and a column shall be added between columns (2) and (3) titled "Duplicate or Amended Claim to be Expunged."

(1) Name of Claimant	(2) **Remaining** Claim Number	**Duplicate or Amended Claim to be Expunged**	(3) Claim Amount	(4) Reason for Disallowance

(I) If an Objection seeks to expunge late filed claims, a column shall be added between columns (1) and (2) titled "Date Claim Filed."

(1) Name of Claimant	**Date Claim Filed**	(2) Claim Number	(3) Claim Amount	(4) Reason for Disallowance

(J) Where the Objection is based on substantive grounds, the exhibit must include a claim-specific declaration in the column titled "Reason for Disallowance" giving sufficient detail as to why the claim should be disallowed. The following are examples of "sufficient detail" necessary to sustain an Objection on a substantive basis:

(1) If the claim is against a non-debtor entity, then the non-debtor entity must be identified;

(2) If the claim has been paid or satisfied prepetition (not postpetition), then the check number and the date the check was issued must be identified. (An objection to a claim on the basis that the claim has been paid or satisfied postpetition is not a valid objection); and

(3) If the claim includes a postpetition claim, then the date the postpetition claim arose must be identified.

(iv) Proofs of Claim. If the Objection is non-substantive, then copies of the proofs of claim need not be provided to the Court, except that proofs of claim relating to an Objection based on Local Rule 3007-1(d)(vi) (i.e., a claim without any supporting documents) shall be provided to the Court as set forth in Local Rule 3007-1(e)(iv)(A)-(C). When the Objection is substantive, a copy of the proofs of claim and all supporting documentation shall be provided to the Court as follows:

(A) Proofs of claim shall be in a binder and separated by tabs;

(B) Proofs of claim shall be in the order as listed in the exhibit(s), with additional tabs indicating to which exhibit the claims relate; and

(C) At least two (2) weeks before the hearing on the Objection, a Notice of Submission of Proofs of Claim is to be filed and delivered to the respective Judge's chambers with copies of the claims (with all attachments) along with the Objection to those claims. The Notice of Submission of Proofs of Claim stating that the claims have been delivered to chambers and that copies can be requested from objector's counsel shall be served upon all parties requesting notice under Fed. R. Bankr. P. 2002.

(v) Notice of Objection to Claim Holder. Each claim holder whose rights are affected by an Objection shall receive a "Notice of Objection to Claim" that shall conform to Local Form 113 or a copy of the Objection.

(f) Requirements Relating to Substantive Objections.

(i) As authorized by Fed. R. Bankr. P. 3007(c), the Court hereby orders that an Objection which is based on substantive grounds may contain more than one but no more than 150 claims, unless the Court orders otherwise.

(ii) No more than two substantive Objections may be filed each calendar month, unless the Court orders otherwise.

(iii) An Objection based on substantive grounds shall include all substantive objections to such claim.

(iv) Fed. R. Bankr. P. 7015 shall apply to any substantive Objection and upon the filing of a response to such substantive Objection, the objector may only amend such Objection upon leave of court or written consent of the claimant; provided, however, that if an Objection to a particular claim is determined to be substantive under Local Rule 3007-1(d)(vi) or the claimant filed a response to an Objection made under Local Rule 3007-1(d)(vi) and the response included supporting documentation or information, then the Objection may be amended without written consent or leave of Court.

(v) The Court will not consider any substantive Objection to personal injury or wrongful death claims that would be in violation of 28 U.S.C. § 157(b)(2)(B).

(g) Pro Se. Any claimant may participate pro se (and telephonically) at a hearing on an Objection to his or her claim by following the telephonic appearance procedures located on the Court's website.

(h) Hearings on Objections. Hearings on Objections may ordinarily be held on the regularly scheduled omnibus hearing dates in Chapter 11 cases, consistent with these Local Rules. When the Court determines that the hearing on a particular claim Objection will require substantial time for the presentation of argument and/or evidence, then the Court, in its discretion, may reschedule the hearing on that claim for a different hearing date and time. The parties may also request that a separate hearing on an Objection(s) based on substantive grounds be separately scheduled for a date and time convenient to the Court and the parties.

Exhibit III-5. Sample Order on Omnibus Objections to Claims

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at _____

In re:	)	Case No.
	)	(Chapter 11)
	)	
	)	
Debtor	)	
	)	

ORDER FOR COMPLEX CHAPTER 11 BANKRUPTCY CASE

This bankruptcy case was filed on _____. A Request for Designation as Complex Chapter 11 Case was filed. After review of the initial pleadings filed in this case, the Court concludes that this appears to be a Complex Chapter 11 Case and issues this scheduling order, subject to rescission, revision, or modification as provided below:

***

10. **Procedures for Omnibus Objection to Claims:** Where the Debtor (or other party in interest) files an Omnibus Objection to Claims, the following procedures will apply:

    a. The Objection shall include an alphabetical list of creditors whose claims are objected to together with a cross-reference to the claim number of each such claim. If the objection to a claim is based on more than one ground, the alphabetical list shall include a cross-reference to the location of each ground within the omnibus objection.

    b. If the Objection is on a non-substantive basis that is clearly apparent from the claims docket (e.g., duplicate claims, amended or suspended claims, late-filed claims), copies of the proofs of claim need not be provided to the Court.

    c. Where the Objection is that the proof of claim does not contain any invoices or other documents supporting the claim, a declaration to that effect (together with a hard copy of the proof of claim) shall be filed with the Court at the time the Objection is filed.

    d. Without leave of court, no omnibus objection to claims is permitted on substantive grounds. A separate objection to each claim is required.

    e. At least 48 hours before the hearing on an Objection based on substantive grounds, a Notice of Submission of Copies of Proofs of Claim is to be filed stating that copies of the claims together with any attachments have been delivered to chambers and that copies can be requested from the Debtor's counsel.

f. Any claimant may request to participate telephonically in a hearing on an Objection to proofs of claim by calling the courtroom deputy at least 24 hours prior to the scheduled hearing time. If more than one party is appearing, the Debtor's counsel shall conference all interested parties and place on call to the Court.

g. Where a hearing on an Objection to a claim will involve substantial time, the Court may schedule it for a separate hearing date.

Exhibit III-6. Sample Order Establishing a Procedure for Resolution of Contested Claims

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re	)	
	)	Case No.
	)	
	)	
Debtors	)	

Order Establishing Procedure for the Resolution of Contested Claims

The Debtors herein have filed their objections to the claims of certain of the creditors and given notice of their objections to the creditors. Many of the creditors have objected to the proposed resolution of their claims and have requested hearings thereon. In order to expedite the process and to enable the parties to seek, in an orderly fashion, to resolve their disputes, it is hereby

ORDERED that the Debtors shall serve upon each creditor whose claim has been contested and who has requested a hearing thereon a copy of this order; and it is

FURTHER ORDERED that each such creditor shall, within twenty (20) days after service of this order on the creditor, explain to the Debtors by filing a written statement with Debtors' counsel the reason for asserting the claim that has been filed in these proceedings, which explanation must include any records or documents which support the claimant's position; and it is

FURTHER ORDERED that failure to respond to this order will result in the claimant's claim being allowed only in the amount proposed by the Debtors; and it is

FURTHER ORDERED that the Debtors and the Claimants must engage in at least one attempt to resolve their differences before any such disputed claim may be set for hearing with this Court; and it is

FURTHER ORDERED that the Debtors and any claimant may request a hearing only on certification to the Court that they were unable to resolve the disputed claim pursuant to their settlement discussions. Such certification will further include an estimate of the amount of time necessary to hear the claim matter.

Dated: By the Court:

_____

Charles E. Matheson, Chief Judge

Exhibit III-7. Sample Order Regarding Estimation of Claims Through Summary Trial

United States Bankruptcy Court, E.D. Missouri,
Eastern Division.
In re APEX OIL COMPANY, et al., Debtors.
In re UNITED STATES of America
DEPARTMENT OF ENERGY, Claimant.
Bankruptcy Nos. 87-03804-BSS, 87-03818-BSS, and 87-03805-BSS.

October 3, 1988.

Pursuant to *Rule 16 of the Federal Rules of Civil Procedure*, as incorporated by Bankruptcy Rule 7016, and *11 U.S.C. § 502*(c), the Court hereby orders that the following summary trial procedures shall apply for estimation of the above cited Claims:

Pretrial Procedures

I. Stipulation

1. The Claimant and Objectors shall meet, identify and stipulate in writing to the primary components of the Claims.

2. Components listed shall be identified by Roman Numerals.

3. This list shall be filed with the Court on or before October 14, 1988.

4. If the parties are unable to agree upon all of the components comprising the Claims, they shall file with the Court and serve upon the Examiner such stipulated list of components which have been agreed upon. Additionally each party and the Examiner shall file with the Court a concise list of components they believe should be included as comprising the Claims. Each party and the Examiner shall simultaneously file with the Court a memorandum in support of their respective lists, which shall not exceed two (2) pages (including exhibits) per proposed component. The memorandum in entirety (including the list and exhibits) may not exceed ten (10) pages. All lists and memoranda under this paragraph shall be filed with the Court on or before October 19, 1988.

II. Statement of Claim

5. Claimant shall identify with particularity all the elements of each component, in a numbered list. This list shall be filed with the Court and served upon opposing counsel and the Examiner no later than October 28, 1988.

6. Each element of Claimant's list should refer to the specific regulations upon which the element is based.

III. Objections

7. The Objectors shall jointly file a Response to the Claimant's list by either admitting or denying each element. With respect to each denial, the Objectors shall state the reason for such denial. The Objectors shall also admit or deny the applicability of the specified regulation. This Response is to be filed with the Court and served on opposing counsel and the Examiner no later than November 9, 1988.

8. Any element of Claimant's list not specifically objected to shall be deemed admitted for purposes of this estimation proceeding.

IV. Discovery

9. All parties shall be permitted to utilize full discovery procedures pursuant to *Rules 27-37 of the Federal Rules of Civil Procedure*, except that the total number of interrogatories propounded to each party shall be limited to twenty (20) pursuant to Rule 8(A) of the United States District Court Rules for the Eastern District of Missouri.

10. On or before November 16, 1988, all parties shall file with the Court a list of witnesses to be called to testify at the estimation trial. All persons identified as witnesses shall attend the trial regardless of whether he or she is called to testify by the offering party.

11. No witnesses other than those listed may testify at the estimation trial.

12. On or before December 14, 1988, all parties shall file with the Court and serve on opposing counsel their proposed findings of fact and proposed conclusions of law. Each shall be listed under the component of the Claims to which it applies.

13. On or before December 14, 1988, each party shall file with the Court and serve upon opposing counsel and the Examiner a trial brief, not to exceed 30 pages in length (including exhibits).

14. On December 14, 1988, each party shall file with the Court a written list of the components comprising the claim (see paragraphs 1 and 4 above). Each party shall assign to each component a value which they believe represents the allowed amount of such component, plus interest, if any, which may have accrued.

15. Any objections to discovery (e.g., interrogatories, requests, etc.) shall be made within five (5) business days of receipt of such discovery requests and parties will be available for expedited hearings to resolve such objections.

V. Examiner

16. The Examiner shall receive and monitor all written discovery and attend all depositions and meetings between the parties. The Examiner shall also attend the estimation trial.

17. The Examiner is charged with facilitating compliance with this Order within the context of his role as mediator. He shall continue his efforts to encourage settlement of this matter.

Trial Procedures

VI. Trial Structure

18. The estimation trial shall commence on December 21, 1988.

19. Claimant shall have a total of six (6) hours to present its case to the Court. The Objectors (collectively) shall have a total of six (6) hours to present their case to the Court.

20. The oral presentation shall be organized in the manner of a typical trial:

A. Each party shall make an opening statement and then present their respective case-in-chief in accordance with paragraph 21 below.

B. The attorneys may identify available witnesses, comment on any evidence and quote directly from depositions, interrogatories, requests for admissions, documentary evidence, and sworn statements of potential witnesses (hereinafter "Attorney Presentation"). However, witnesses' testimony or documentary evidence may not be referred to unless the reference is based upon one of the products of the various discovery procedures or upon a written sworn statement of the witnesses if such witness is in the Courtroom.

C. Each party may present testimony through witnesses.

D. Objections to Attorney Presentations will be received based upon counsel going beyond the limits of propriety in presenting statements as to evidence of argument thereon. All evidence presented or described by counsel shall be admissible if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without evidence, except that counsel may not introduce evidence if its probative value is substantially outweighed by the danger of undue prejudice or confusion of the issues.

21. The parties are free to divide their allotted time among the above segments as they see fit, but in no event shall the total time allotted to each party exceed six (6) hours.

22. Each party will have 45 minutes additional time within which to make any concluding remarks.

23. Each party must be represented at trial by an individual with full settlement authority and a thorough knowledge of the case. This individual must be present throughout the estimation trial. This requirement can be waived only by order of the Court and upon a showing of extraordinary circumstances.

24. Objectors shall number their trial exhibits with Arabic numbers. Claimants shall number their exhibits with letters. Joint exhibits shall be marked in Roman numerals. The parties shall exchange copies of their binders (identified in paragraph 25 below) and shall provide the Court with three (3) copies of each set, on or before December 14, 1988.

25. All exhibits shall be organized in the following manner:

A. All evidence supporting a component shall be bound together in a binder and identified by a Roman numeral corresponding to the Roman numeral assigned to that component under paragraph two (2) above.

B. Each binder shall be organized by the element of each component. Each binder shall contain an index listing the evidence therein and listing the proposed findings of fact and conclusions of law which each exhibit supports. Binders shall be filed with the Court on or before December 14, 1988.

C. Each binder shall contain a brief statement, not to exceed five (5) pages, summarizing the evidence therein.

D. Claimant's binders shall be under red cover.

E. Objectors' binders shall be under blue cover.

F. Portions of exhibits extrinsic to the element of a component shall be eliminated from the binder (e.g., only that portion of an affidavit, deposition or document supporting an element may be included in the binder).

26. Any pleading submitted shall bear the style as set forth on page one of this Order.

27. The Court reserves the right to order specific supplemental procedures, modification of these procedures or other relief for particular claims upon written motion of any party involved in the hearing of such claims.

Exhibit IV-1. Sample Confirmation Trial Scheduling Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Bankruptcy Case
	)	No. 01 -30923 SFM
PACIFIC GAS AND ELECTRIC	)	
COMPANY, a California Corporation,	)	Chapter 11
	)	
Debtor.	)	
	)	

CONFIRMATION TRIAL SCHEDULING ORDER

This order governs the trials on confirmation of two separate plans of reorganization filed in the bankruptcy case of Pacific Gas & Electric Company ("PG&E"). The court shall first conduct trial on the plan of reorganization (the "CPUC Plan") filed by the California Public Utilities Commission ("CPUC"). The Official Committee of Unsecured Creditors (the "Committee") has joined as a proponent of the CPUC Plan. The CPUC and Committee are collectively referred to as the "CPUC Plan Proponents." The court will thereafter proceed to trial on the confirmation of the plan of reorganization ("PG&E Plan"), filed by PG&E and its co-proponent, PG&E Corporation (collectively with PG&E, the "PG&E Plan Proponents"). The PG&E Plan Proponents and the CPUC Plan proponents are collectively referred to as "Proponents." Certain persons or entities—other than the Proponents—timely filed and served objections to the PG&E Plan or the CPUC Plan or both (the "Objectors"). The Proponents, the Objectors and the United States Trustees are collectively referred to herein as the "Parties," or a "Party." It is
ORDERED:

I. DATES AND TIMES OF TRIALS

1. Trial on confirmation of the CPUC Plan ("CPUC Trial") shall commence on November 18, 2002, at 9:30 a.m., at the United States Bankruptcy Court, 235 Pine Street, Twenty-Second Floor, San Francisco, CA 94104. The trial on confirmation of the PG&E Plan ("PG&E Trial") shall follow the CPUC Trial (although some objections common to both plans may be tried during the PG&E Trial).[1] The CPUC Trial and the PG&E Trial shall collectively be referred to as the "Trial."

1. With respect to such common objections, the Objectors shall follow the rules applicable to the PG&E Plan as it the CPUC Plan were being tried concurrently with the PG&E Plan instead of before the PG&E Plan, and the common objections, evidence, filings, and positions of the Objectors with respect to the PG&E Plan shall automatically apply equally to the CPUC Plan. Objectors with such common objections and the Proponents shall meet and confer in order to make arrangements necessary to avoid duplication of trial on common issues. This court will separately resolve any disagreements between such Objectors and the Proponents, if necessary, on application by any of them after such meet and confer extorts.

Tentatively the CPUC Trial shall be completed by December 5, and the PG&E Trial shall start on December 16. The four trial days of December 9–12 shall be held available in case the court permits the CPUC Trial to run longer, or directs the PG&E Trial to start earlier.

2. Unless otherwise ordered, the court will conduct the Trial from 9:30 a.m. through 12:30 p.m. and 1:30 p.m. through 4:30 p.m. (with fifteen-minute breaks in the morning and afternoon). If necessary, the times may be adjusted to facilitate completion of testimony of witnesses. The court will conduct trial on the following dates in 2002:[2]

- Monday, November 18 through Friday, November 22
- Monday, November 25 and Tuesday, November 26
- Monday, December 2 through Thursday, December 5
- Monday, December 9 through Thursday, December 12
- Monday, December 16 through Friday, December 20 (excluding the afternoon of Thursday, December 19)

II. PROPOSED FINDINGS OF FACT

3. All proposed findings and counter-findings shall be simple, declarative, non-argumentative, and consecutively numbered; supported by citations to or identification of the witnesses, declarations, documents or other evidence which shall support that finding; categorized by issue or elements of proof (i.e., facts supporting conclusion that a particular plan is feasible, that a particular plan has been filed in good faith, etc.); captioned to identify the party submitting them, the appropriate plan, and the date of the submission (e.g., "Proposed Counter-Findings of Fact (PG&E Plan-CCSF-12-9-02)"); served on all Proponents and Objectors; filed in a hard copy form; and e-mailed (preferably, but optionally, in WordPerfect format) with the title "Proposed Findings" to [judge's law clerk, email address].

The CPUC Trial

4. On or before November 1, 2002, the CPUC Plan Proponents shall file and serve proposed findings of fact in support of their case in chief. The CPUC Plan Proponents shall, based on their good-faith belief, identify each proposed finding as disputed or undisputed.

5. On or before November 8, 2002, the PG&E Plan Proponents shall file and serve counter-findings. Unless the PG&E Plan Proponents specifically dispute a finding labeled as "undisputed" by the CPUC Plan Proponents, that finding will be deemed undisputed. The PG&E Plan Proponents should propose any findings that may be contrary to or in addition to those proposed by the CPUC Plan Proponents.

6. On or before November 15, 2002, the Objectors shall file and serve counter-findings. An Objector should not propose counter-findings if the PG&E Plan Propo-

2. The court will add dates for 2003 by subsequent order after conferring with counsel during the Trial.

nents have already disputed a CPUC finding and proposed a counter-finding supported by evidence acceptable to the Objector. Unless the objectors specifically dispute a finding that is (1) labeled as "undisputed" by the CPUC Plan Proponents and (2) not opposed by the PG&E Plan Proponents, that finding will be deemed uncontested.

The PG&E Trial

7. On or before November 20, 2002, the PG&E Plan Proponents shall file and serve proposed findings of fact in support of their case-in-chief. Other than the deadline described therein, the PG&E Plan Proponents should comply with paragraph 4 above.

8. On or before December 4, 2002, the CPUC Plan Proponents shall file and serve counter-findings. Other than the deadline described therein, the CPUC Plan Proponents should comply with paragraph 5 above.

9. On or before December 11, 2002, the objectors shall file and serve counter-findings. Other than the deadline described therein, objectors should comply with paragraph 6.

III. TRIAL BRIEFS

10. Proponents' trial briefs in support of their own plans shall not exceed 45 pages; their responsive briefs shall not exceed 25 pages; Objectors' trial briefs shall not exceed 15 pages and shall not repeat legal arguments made by the Proponents in their briefs. Objectors may incorporate and join Proponents' arguments in a footnote. The page limitation may be adjusted for any Party only upon the receipt of prior permission from this court.

11. With respect to the CPUC Trial, the CPUC Plan Proponents shall file and serve their trial brief in support of their case-in-chief on or before November 1, 2002; the PG&E Plan Proponents shall file and serve any responsive trial brief on or before November 8, 2002; and the objectors shall file and serve their respective trial briefs on or before November 15, 2002.

12. With respect to the PG&E Trial, the PG&E Plan Proponents shall file and serve their trial brief in support of their case-in-chief on or before November 20, 2002; the CPUC Plan Proponents shall file and serve any responsive trial brief on or before December 4, 2002; and the Objectors shall file and serve their respective trial briefs on or before December 11, 2002.

IV. SUPPLEMENTAL OBJECTIONS

13. Within two weeks of the date of this order, objectors and the Proponents may file and serve supplemental bullet-point objections to the PG&E Plan, the CPUC Plan or both. These supplemental objections should succinctly identify grounds for denying confirmation that were not available prior to the previous deadline for filing objections.

V. EXPERT DECLARATIONS

14. Direct expert testimony shall be presented by declarations. To cross-examine any of the expert declarants, a Party shall notify the Party who has filed the expert declaration, in which case the declarant will be required to attend the Trial. Any Party who requests the right to cross-examine and then does not do so will be expected to reimburse the opposing Party no less than the expenses incurred in producing the declarant at the Trial, unless another Party has cross-examined the witness as well. If no cross-examination is requested, the declaration and testimony will be deemed submitted and the declarant will not be required to appear at trial. If cross-examination is requested, live testimony shall begin with a cross-examination by the opposing Party or Parties, followed by re-direct examination by the Party offering the witness.[3]

15. With respect to the CPUC Trial, the CPUC Proponents, the PG&E Proponents and the Objectors shall file and serve experts' declarations no later than November 1, 2002. Any Party wishing to cross-examine a declarant must notify the Party offering the declarant no later than November 8, 2002.

16. With respect to the PG&E Trial, the PG&E Proponents, the CPUC Proponents and the objectors shall file and serve experts' declarations no later than November 13, 2002. Any Party wishing to cross-examine a declarant must notify the Party offering the declarant no later than November 20, 2002.

VI. EXCHANGE OF WITNESS LISTS

17. By the deadlines set forth in paragraph 18, all Parties shall serve and file their list of trial witnesses, excluding those to be called purely for rebuttal or impeachment. The presence of a witness' name on the witness list is to alert the court and the other side that the witness may be called. It does not mean that a particular person will be called. Accordingly, each Party is responsible for ensuring the attendance of every witness the Party intends to call, whether or not named by the other side. Except in exceptional circumstances, and absent consent by the other side, a Party will not be allowed to call a witness not named on that Party's witness list. Counsel will be expected to advise the court during the Trial about those witnesses they expect to call in the following days.

18. With respect to the CPUC Trial, all Parties shall serve their list of trial witnesses no later than November 1, 2002. With respect to the PG&E Trial, all Parties shall serve their list of witnesses no later than November 27, 2002.

VII. EXCHANGE OF EXHIBITS AND EXHIBIT LISTS

19. Exhibit Lists: With respect to the CPUC Trial, all parties shall file and serve by November 1, 2002, their lists identifying exhibits they intend to introduce or use

3. A Party may also submit written declarations of its fact witnesses in lieu of live direct testimony, as long as the Party complies with the procedures and deadlines set forth in paragraphs 14–16; provided, however, declarations of fact witnesses for the CPUC Trial must be filed and served no later than October 21, 2002.

at trial, excluding exhibits to be presented for impeachment or rebuttal purposes. With respect to the PG&E Trial, all parties shall file and serve by November 27, 2002, their lists identifying exhibits they intend to introduce or use at trial, excluding exhibits to be presented for impeachment or rebuttal purposes.

20. Exhibits: By the deadlines set forth in paragraphs 23 and 24, all Parties shall make available their exhibits to Proponents, the Committee, and any Objector who requests in writing copies of the trial exhibits. The exhibits shall be exchanged in the form and format in which they will be used at trial, unless the Parties agree otherwise. All Parties shall provide to the court—but not file—two hard-copy sets of binders, tabbed and with numbered pages, containing the documentary exhibits to be introduced.[4] All exhibits shall be numbered, preceded by an easily identifiable abbreviation for each Party. For example, the PG&E Proponents should identify their exhibits as "PG&E #." Any paper(s) in the court's file of which a Party intends the court to take judicial notice must be copied and included as an exhibit(s). All declarations and supporting reports shall be pre-marked as exhibits.

21. In the event a Party objects to another Party's exhibit, the Parties must meet and confer before Trial to attempt to reach agreement regarding admissibility. The court expects the Parties to make good faith efforts to resolve all evidentiary issues. By the deadlines set forth in paragraphs 23 and 24 below, the Parties should file and serve any objections they may have with respect to admission of another Party's evidence or with respect to another Party's witness. Objections to evidence not raised in this form, other than objections under Fed. R. Evid. 402 and 403, shall be waived.

22. At the commencement of Trial, the Parties shall be prepared to stipulate into evidence all exhibits that are admissible for at least one purpose. Bona-fide objections may be reserved, with the issue of admissibility deferred until the exhibit is offered into evidence.

23. CPUC Trial: With respect to the CPUC Trial, the Parties shall exchange their exhibits no later than November 1, 2002. No later than November 15, all Parties should provide the court with the binders described in paragraph 20. Any Party objecting to any exhibits should file and serve such objections by November 8, 2002 (in accordance with the procedures described in paragraph 21) and the Party offering the exhibit should file a response by November 15, 2002.

24. PG&E Trial: With respect to the PG&E Trial, the Parties shall exchange their exhibits no later than November 27, 2002. No later than December 6, 2002, all Parties should provide the court with the binders described in paragraph 20. Any Party objecting to any exhibits should file and serve such objections by December 4, 2002 (in accordance with the procedures described in paragraph 21) and the Party offering the exhibit should file a response by December 11, 2002.

---

4. Parties who intend to present exhibits electronically or digitally at trial are encouraged, but not required, to provide the court with three sets of compact discs with electronic versions of the documents. Parties are encouraged to consult with counsel for the PG&E Proponents to coordinate formats (e.g., TIFF or PDF) and to facilitate compatibility and use of courtroom technology.

VIII. CROSS-EXAMINATION BY OBJECTORS

25. The court expects counsel for Objectors to confer and coordinate their cross-examination to minimize duplication and maximize efficiency.

IX. TRIAL OBJECTIONS

26. Any objections during trial as to the admissibility of exhibits or regarding the questioning of a witness will be deemed joined by all other opposing Parties, unless an opposing Party specifically opts out of that objection.

X. COURT SECURITY

27. All persons (counsel, witnesses and others) who intend to appear at court must show some type of governmental identification with picture to the marshals before going through security. Any person without such identification will not be allowed to go to the courtroom.

XI. PARTICIPATION BY TELEPHONE

28. Parties may monitor the Trial by telephone in the same manner as they have throughout this case, but they will not be permitted to examine witnesses by telephone.

Dated: _____, 2002

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit IV-2. Sample Order on Final Fee Application Procedures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

	)	Chapter 11
In re	)	Case No.
	)	
	)	Hearing
	)	Date: May 25, 1990
	)	Time: 9:30 a.m.
Debtor	)	

Order Setting Final Fee Procedures

This Court held a hearing on May 25, 1990, on its Order Setting Hearing on Post Confirmation Procedures, entered May 7, 1990, on various issues, including procedures for filing, hearing, and determining motions for allowance of final compensation. Based on the Order, on the Joint Statement of [debtor's name], the Unsecured Creditors Committee and the Equity Committee, which [acquiring company's name] supported, on the hearing, on the record in this case, and good cause appearing, it is

ORDERED:

1. The procedures set forth in this Order supersede paragraph 44 of the Order Confirming Third Amended Joint Plan of Reorganization.

2. For the purposes of the procedures established under this Order, parties and professionals who intend to seek payment by the estate of final compensation for services rendered in or in connection with this Chapter 11 case or reimbursement of costs or expenses (including attorneys' fees) incurred in or in connection with this Chapter 11 case ("final compensation") shall be divided into three categories:

a. **Nonreorganization Professionals:** All professionals employed at the expense of the estate, including those previously designated by this Court as "nonreorganization counsel," accountants, the Examiner, his counsel, and his financial analyst, and including specifically the law firms of [names], and entities (other than those included in the next two subparagraphs) who wish to have included as part of an allowed claim any such compensation or reimbursement, are hereby defined as "nonreorganization professionals" for present purposes;

b. **Nonestate Professionals:** Indenture trustees for any issue of outstanding securities of [debtor's name], the agents for [name] and [name] and all professionals retained or employed by them, are hereby defined as "nonestate professionals" for present purposes; and

c. **Reorganization Professionals:** Reorganization professionals whose employment has been authorized by court order at the expense of the estate (excluding any listed above) under sections 330(a) and 503(b)(2) of the Bankruptcy Code, or whose compensation is based upon a claim under either section 503(b)(3) or (4) of the Bankruptcy Code on account of a substantial contribution to the case or on a pro-

vision of the Third Amended Joint Plan or the Rate Agreement, including specifically:

i. the following professionals employed by [debtor's name]: [names] (for both its financial advisory services and its merger and acquisition services); by the Creditors Committee: [names]; and by the Equity Committee: [names];

ii. [creditors' names];

iii. the State of New Hampshire; are hereby defined as "reorganization professionals" for present purposes.

Nonreorganization and Nonestate Professionals

3. All nonreorganization professionals and all nonestate professionals who intend to seek payment by the estate of final compensation shall file a motion for allowance of final compensation, or, if appropriate, a request for payment of final compensation as an administrative expense, for all services rendered or costs or expenses incurred through April 30, 1990, on or before Friday, June 22, 1990, in the form and manner required by the Bankruptcy Rules.

4. All motions or requests filed under paragraph 3 of this order shall be served on the Full List, except that copies of billing detail attached to the motion or request need be served only on the United States Trustee, [debtor's name], counsel for [acquiring company's name], counsel for the Creditors Committee, and counsel for the Equity Committee and made available upon request to all other parties.

Nonreorganization Professionals

5. Any response, objection, or opposition to a request under paragraph 3 of this Order by a nonreorganization professional for final compensation shall be filed with this Court and served on the Short List and on the party requesting the compensation or reimbursement on or before Tuesday, July 31, 1990. Any reply by the requesting party shall be filed with this Court and served on the Short List and on the objecting party on or before Tuesday, August 21, 1990.

6. A hearing shall be held at 9:30 a.m. on Friday, August 24, 1990. At that time, this Court will hear any requests filed under paragraph 2 of this Order by a nonreorganization professional to which no objection is made or as to which the objection does not involve a substantial question of law or fact and will fix a hearing schedule for any such objection that does involve a substantial question of law or fact.

7. The orders of this Court regarding interim compensation procedures shall no longer apply to nonreorganization professionals for any services rendered or costs incurred after April 30, 1990. Any nonreorganization professional employed at the expense of the estate (other than the Examiner, his counsel, or his financial analyst) who renders services or incurs costs or expenses after April 30, 1990, may request payment from [debtor's name] in the ordinary course of business, without either prior or subsequent application to or approval of this Court, but payment for any such services rendered or costs or expenses incurred before the Effective Date of the Plan

is subject to the continuing jurisdiction of this Court and may be reviewed, either before or after payment, upon an appropriate noticed motion.

Nonestate Professionals

8. Any response, objection, or opposition to a request under paragraph 3 of this Order by a nonestate professional for final compensation shall be filed with this Court and served on the Short List and on the party requesting the compensation or reimbursement on or before Friday, August 17, 1990. This Court will hear and consider at 9:30 a.m., on Friday, August 24, 1990, any request to which no objection has been made and will determine a date in late September, calendar permitting, for a hearing on any request to which an objection has been made. Any reply by the requesting party need not be filed immediately but shall be filed with this Court and served on the Short List and on the objecting party at least 10 days before the date set after the August 24th hearing for the hearing on the objection.

9. Any indenture trustee who renders services or incurs costs or expenses (including attorneys' fees) after April 30, 1990, may bill [debtor] and [debtor] may pay any such bill, in the ordinary course of business, without either prior or subsequent application to or approval by this Court, but payment for any such services rendered or costs or expenses incurred before the Effective Date of the Plan remains subject to the continuing jurisdiction of this Court and may be reviewed, either before or after payment, upon an appropriate noticed motion.

Reorganization Professionals

10. On or before June 22, 1990, reorganization professionals shall give [acquiring company]'s counsel in writing a nonbinding estimate, for [acquiring company]'s use for cash planning purposes, of any final compensation in addition to payments already received that the professional intends to seek for services rendered or costs or expenses incurred through April 30, 1990. Copies of the estimate shall be sent to [debtor] (c/o [name], Assistant Treasurer) and to counsel for the Creditors Committee and the Equity Committee but shall not be filed with the Court.

11. This Court will hear and consider at 9:30 a.m., on Friday, August 24, 1990, the question of an appropriate time for the filing and hearing of motions for final compensation of reorganization professionals in light of when the Effective Date of the Plan is then expected to occur.

12. Pending the filing of motions for final compensation for reorganization professionals, all orders of this Court regarding interim compensation shall continue to apply to reorganization professionals, as defined in this Order.

DONE and ORDERED at Manchester, New Hampshire this 1st day of June, 1990.

_____

BANKRUPTCY JUDGE

Debtor to serve Full List