

**Minutes of Lawyers Advisory Committee Meeting**  
**January 8, 2013**

Location: Due Mari, New Brunswick, NJ

Members in Attendance: Honorable Gloria M. Burns, Chief Judge, Honorable Kathryn C. Ferguson, Honorable Raymond T. Lyons, Chris Gravelle, Chair, Mark Hall, Vice Chair, Warren Martin, immediate past Chair, Michael Viscount, Chapter 11 Subcommittee Chair, Henry Karwowski, Local Rules Subcommittee Chair, Al Russo, Chapter 13 Subcommittee Chair, Virginia Fortunato, Jerry Poslusny, Scott Liddle, Jim Waldron, David Beslow, Andy Finberg, Martha Hildebrandt, Jeanne Naughton, Shoshana Schiff, Stacy Meisel, Bruce Truesdale, Ellen McDowell, Raman Chawla

**I. Call to Order and Introduction** – Chris Gravelle, as Chair of the Lawyers Advisory Committee (“LAC”), called the meeting to order. The first words spoken were in honor of the esteemed and dearly missed dean of the NJ bankruptcy bar and Chris’s law partner, Joseph Markowitz, who died just a few days earlier on January 2, 2013 at the age of 91. All members toasted in Joe’s honor to start the meeting.

Chris asked for approval of the minutes from the October 16, 2012 meeting and received minor comments from Jeanne Naughton. With Jeanne’s comments included along with the draft minutes circulated prior to the meeting, Ellen McDowell moved for the approval of the minutes and Al Russo seconded the motion. The minutes from the October 16, 2012 meeting with Jeanne’s revisions were approved.

**II. Chapter 13 Subcommittee, Al Russo, Chair** – Al reported that his Subcommittee is working on the following issues:

- (1) Application and Order to Discharge Mortgage Lien – including proposing new forms.
- (2) Chapter 13 Transmittal Letter – a form letter to used to address Chapter 13 Plan confirmation issues.
- (3) Lenders’ response to Trustee’s Notice of Final Cure – filing a proposed Statement via claims register/docket. Subcommittee to communicate with Clerk’s Office in an attempt to adopt an administrative resolution rather than a formal Rule change.
- (4) Extension of time to file Schedules – Al reported that concern has been made regarding the granting of an automatic extension of time to file Schedules, particularly after the first extension is granted. Subcommittee to communicate with Clerk’s Office in an attempt to adopt an administrative resolution rather than a formal Rule change.
- (5) Form Chapter 13 Plan – Such plan has been proposed on the national level and is scheduled to be released for comment in August 2013. Judge Wizmur is on the national panel that proposed the Plan. Further, the Chapter 13 Trustees, including those from New Jersey, have offered comments to the draft Plan. Finally, there will be comments solicited from the Bar this

summer. Al's Subcommittee will track and report on the progress of this national Chapter 13 Plan form.

**III. Local Rules Subcommittee, Henry Karwowski, Chair** – Prior to the meeting, on January 8, 2013, Henry circulated a Memorandum detailing the Stern v. Marshall opinion and recommending certain action be taken by the New Jersey Bankruptcy Court in response to Stern.

At the meeting, Henry summarized the issue in his Memorandum as follows: there is a consensus emerging nationally that despite arguments raised by some that Stern should be interpreted expansively, most courts have interpreted Stern narrowly. Henry inquired specifically from the judges present whether parties are raising jurisdictional issues based on Stern. The judges responded that no practitioners/parties have raised the issue, although Judge Ferguson noted that she has raised the issue with practitioners.

Henry noted that the SDNY's Local Rules/procedures require parties to indicate whether they consented to the bankruptcy court's jurisdiction. Henry's Subcommittee recommends that NJ adopt the same procedures as the SDNY. Further, Henry recommended that any procedures promulgating any Stern-related procedures be done by way of a general order rather than local rule. A discussion ensued and Judge Lyons noted that anything we promulgate in NJ must be consistent with the national rules, which are currently under proposed revisions on this issue. Chris stated that we need to watch the progress on the national level on this issue and Henry noted that by mid-February there may be an update on the national level. Judge Burns added that the Board of Judges will take this issue up at their next meeting.

**IV. Local Rules Committee Update** – Judge Ferguson reported that the Local Rules Committee is plodding along and making slow but steady progress, with the next meeting scheduled for January 16, 2013.

**V. Chapter 11 Subcommittee, Michael Viscount, Chair** – Mike reported that his Subcommittee was currently considering a proposed combined plan and disclosure statement for individuals in chapter 11. As part of that, Mike noted that at least the following five issues were currently under discussion by the Subcommittee: (1) does the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure permit what is proposed the way both the Code and Rules contemplate this for small business debtors under Code Section 1125(f) and R. 3017.1; (2) should we include an anti-modification provisions re: home mortgages; (3) does Code Section 503(b)(9) apply other than in the context of business operations; (4) is the Chapter 13 means test applicable, and should the document provide for mandatory funding with 5 years of disposable income for individuals who do not operate a business; and (5) can an individual liquidate in a chapter 11 and receive a discharge if not in business post-confirmation.

As for issue number 4, Chris asked whether the Clerk's office ever kicks out a Chapter 11 petition that does not include a means test. Jim Waldron said they did not and Ellen McDowell confirmed Jim's comment.

As for issue number 3, Stacy Meisel asked whether consumer debt was ever involved as she has only seen individual chapter 11s with business debt. David Beslow noted that in his experience in individual chapter 11 cases, 99% of the time it is business-related debt. Judge Lyons agreed generally but noted that there certainly are cases that involve consumer debt.

Mike asked for a representative from the Committee-at large with consumer bankruptcy experience to join the Chapter 11 Subcommittee for purposes of revising the combined plan and disclosure statement. David volunteered. Further, Chris and Martha Hildebrandt also volunteered considering that they have significant experience with individual chapter 11 cases. Therefore, the Chapter 11 Subcommittee, for purposes of revising and proposing the combined plan and disclosure statement for individual Chapter 11s includes: Michael Viscount, Warren Martin, Ellen McDowell, Mark Hall, Jerry Poslusny, Chris Gravelle, David Beslow and Martha Hildebrandt.

**VI. Status Report on Website Update, Stacy Meisel, Chair** – Chris Gravelle noted that there is nothing new to report on the website generally but that the LAC is looking into both posting and approving the LAC meeting minutes via the Court’s website.

**VII. Clerk’s Report, Jim Waldron** – Jim reported that bankruptcy filings were down 17% for the year, and 22% for December 2012 from December 2011. The Clerk’s Office also continues to work on a new version of CM/ECF, version 5.1 (Next Gen). Judge Lyons asked whether they have noticed a Hurricane Sandy-related increase in filings and Jim said no, but it may be too early to tell, especially as those business most affected are currently off-season.

**VIII. Liaison’s Reports**

a. District Court, Mike Sirota – No report.

b. U.S. Trustee, Martha Hildebrandt – Martha thanked the Court/Clerk’s Office for its tremendous cooperation dealing with the multitude of technical and other issues in the wake of Hurricane Sandy. Jim Waldron noted that the Clerk’s Office did extensive advanced planning, including the transferring of information to an out-of-state server. Jim also said that they received great help from the Administrative Offices.

As part of this discussion, Jim also noted that the Clerk’s Office is taking over the process of assigning trustees in cases from the US Trustee’s Office. Jim said he hopes this will allow for a quicker assignment of trustees.

In response, Virginia Fortunato inquired with Jim about doclink. A conversation ensued primarily among Jim, Virginia, Stacy, Chris, Al and Martha about the various trustees’ use (or non-use as the case may be) of doclink, including Chris’s question whether the US Trustee could create a general form.

c. IRS, Wendy D. Gardner – No report.

d. NJ Attorney General, Ramanjit Chawla – No report, but Ramanjit noted her office’s appreciation to the Judges/Clerk’s Office for their patience and cooperation post-Hurricane Sandy.

e. NJ State Bar, Jerry Poslusny – Jerry reported that the Bench/Bar conference is April 5, 2013 and that under Judge Burns’ leadership there will be a new format this year which will bring more outside speakers in and rely less on local practitioner-driven panels. The Bench/Bar will also divide by way of consumer-focused and business-focused presentations in an attempt to appeal to all bankruptcy practitioners.

**IX. Old Business** – Chris previously presented a press release to highlight the role of the LAC and solicit comments from the Bar. Ellen, Mark, Michael and Al volunteered to be listed as points of contact in the press release. The press release was approved as presented with minor edits from Warren Martin to be inputted and by adding the additional above names as points of contact for the LAC.

**X. New Business** – Chris will be speaking with Brian Nichols regarding the LAC’s potential use of Google Drive. Jim Waldron noted that Google Talk may be worth looking into as well. Chris to follow up with Brian regarding both platforms.

**XI. Next Meeting Date – March 5, 2013 at 6:00 p.m.** (Due Mari, 78 Albany Street, New Brunswick, NJ)