

Minutes of Lawyers Advisory Committee Meeting
June 4, 2013

Location: Steakhouse 85, New Brunswick, NJ

Members in Attendance: Honorable Gloria M. Burns, Chief Judge, Honorable Kathryn C. Ferguson, Chris Gravelle, Chair, Mark Hall, Vice Chair, Michael Viscount, Chapter 11 Subcommittee Chair, Henry Karwowski, Local Rules Subcommittee Chair, James Waldron, Clerk of the Court, William Mackin, Virginia Fortunato, Bruce Truesdale, Brian Nicholas, David Beslow, Andy Finberg, Martha Hildebrandt, Jeanne Naughton, Stacey Meisel, Shoshana Schiff, and Ellen McDowell

I. Call to Order and Introduction – Chris Gravelle, as Chair of the Lawyers Advisory Committee (“LAC”), called the meeting to order.

Chris asked for approval of the minutes from the March 5, 2013 meeting. Warren moved for approval, noting that “statute” was misspelled on page 3, and Stacey seconded the motion. The minutes from the March 5, 2013 meeting were approved; no objections were lodged.

II. Chapter 11 Subcommittee, Michael Viscount, Chair – Michael very briefly reviewed the four (4) issues as listed in the minutes from the last meeting related to the proposed combined individual Chapter 11 plan and disclosure statement (the “Combined Plan/DS”). Mike also discussed a new issue recently addressed by the Subcommittee in its deliberations related to treatment of post-petition administrative claims under 503(b)(1) to the extent not related to trade or business. Here, Mike reported that the Subcommittee determined that the language should remain broad enough to encompass all costs and expenses necessarily incurred for the preservation of any aspect of the estate, whether it be business or personal. There were no comments from the LAC on this point.

Mike also reported that the Subcommittee determined that nothing in the Bankruptcy Code or Rules prohibit use of the Combined Plan/DS form for individuals seeking confirmation of a plan in Chapter 11. Mike noted that whether the Local Rules should be amended or supplemented to address the procedures for a combined hearing is something we leave to others to determine. In response, Warren Martin raised the question whether a plan proponent for an individual chapter 11 case is in fact allowed under the Code/Rules to combine a disclosure statement and plan form in one document (as opposed to a small business chapter 11 debtor, where Section 1125(f) of the Code grants specific authority to combine the forms).

Mike responded by noting that there is some precedent for combining these forms into one document for individual chapter 11 debtors, but that the Subcommittee has not looked at the issue to determine if the Code or the national Bankruptcy Rules allow it, or if a Local Bankruptcy Rule is necessary. Judge Ferguson noted that the Local Rules Committee’s final work is too far out, so that it should be addressed by the LAC. Chris suggested that either the Local Rules Subcommittee or the Chapter 11 Subcommittee consider this issue. Warren suggested that an advisory note from the Board of Judges (“BOJ”) may be helpful on this issue. Bill Mackin asked whether other jurisdictions have considered this and Mike said N.D. Calif and

one of the Texas courts has sanctioned the use of a combined form. Mark agreed with Chris that one of the Subcommittees should consider this issue next term and propose a new local rule, if necessary.

Further, Mike noted that the US Trustee's Office gave him a few stylistic comments to the form Combined Plan/DS earlier that day (e.g. page 25 – remove references to “capital contributions”). Mike also noted that the State of New Jersey gave the following comments (indented) by email also earlier that day. These particular comments were not discussed by the LAC but, instead, were included in a submission to the BOJ – along with the US Trustee's stylistic comments - for its consideration of the Combined Plan/DS at its upcoming meeting:

“With regards to section 2.1(B), (Priority Tax Claims,) the State would like language/provision about the claim being paid with a rate of interest as defined by non-bankruptcy law.

Also, the State has concerns about after-filed claims. The government has 180 days to file a claim, and very often the Chapter 11 Plans are filed before then. Could the Plan add something about claims filed after the Plan filing date being allowed except as set forth in 2.3 Claims Objections. This would also take care of our concerns about administrative taxes which may be due right before confirmation, where it is not feasible to file a claim before confirmation.

Also, could we require that all claims be listed even if the debtor objects to them. The debtor can list the claim in this section and then state "objected" or something underneath so that if we are successful in defending the claim we already know how its going to be paid.

2.3 Could we add something that says that if the claim is not objected to within 90 days it is deemed allowed and shall be paid as provided in the plan.

Finally, with regards to Article 6, section 6.4:

The State usually prefers its default language to be included in the Ch 11 Plan. Most debtor's counsel are ok with the language, hence if the committee agrees it will be helpful.

The language reads:

‘Notwithstanding anything in this plan to the contrary, the Bankruptcy Court shall not retain jurisdiction with respect to tax claims except for (i) resolving the amount of any tax claims arising prior to confirmation, and (ii) enforcing the discharge provisions of the confirmed plan. A failure by the reorganized Debtor to make a payment to holders of tax claims pursuant to the terms of the plan shall be an event of default. If the reorganized Debtor fails to cure an event of default as to Plan payments on the tax claims within thirty days after receipt of written notice of default from a tax claimant, then the tax claimant may: (a) enforce the entire amount of its claim; (b) exercise any

and all rights and remedies such tax claimant may have under applicable non-bankruptcy law; and/or (c) seek such relief as may be appropriate in this Court.”

Chief Judge Burns noted that the form Combined Plan/DS is on the agenda for the BOJ’s next meeting (on June 6, 2013) and that although the form will not likely be fully considered by the BOJ at that meeting, the draft form and comments to date will at least facilitate a discussion on the form.

Bill moved for the submission of the draft Combined Plan/DS, with comments from 6/4/13 from the US Trustee and the State of NJ to be attached, to the BOJ. Ellen seconded the motion. The LAC unanimously approved this submission.

III. Local Rules Subcommittee, Henry Karwowski, Chair – Henry noted that at the last meeting he discussed his memo re: Stern v. Marshall, dated January 8, 2013, and the amended version circulated on March 4, 2013, as well as his memo on this case from a couple of years ago. At that last meeting, Henry’s Subcommittee recommended that the BOJ promulgate a Local Rule pending any clarification of the issue at the national level. Henry recommends that the BOJ should consider this issue in the form of a standing order.

Chief Judge Burns noted that this issue was discussed at their last BOJ meeting and it was carried to their next meeting, and she expected to have a report on the Subcommittee’s recommendation at the next LAC meeting.

IV. Chapter 13 Subcommittee, Brian Nicholas, filling in for Al Russo – Brian reported that the Chapter 13 Subcommittee is working on the following issues:

1. Review of Local Form, Certification Re Post-Petition Payment History (Note and Mortgage) (formerly Local Form 16): As previously informed, the five major Servicers entered into a settlement with the Department of Justice and other agencies, which required the filing of a different form. A suggestion was made to the Subcommittee to see if we could reconcile the National Form and the Local Form. Recently, a number of local Servicers entered into a discussion with the Department of Justice, which may address these issues on a national level. Accordingly, the Subcommittee will discontinue our efforts in this area.

2. Initial pay letter: In our previous report, the Subcommittee indicated that a review of the Initial Pay Letter, and possible revision, by the Clerk’s Office may be appropriate. This discussion continues and the Subcommittee will make future recommendation, if appropriate.

V. Status Report on Website Update, Stacy Meisel, Chair – Stacey advised that there was nothing new to report re: the website.

VI. Clerk’s Report, Jim Waldron – Jim reported on the following items:

1. In the last two years, the Clerk’s Office has lost 50 positions, and they are expecting to lose another 11 this year. Additionally, the national government’s sequestration may have an unintended impact on Chapter 7 Trustees, and not just the Clerk’s Office. There was a

discussion among Jim, Chris and Brian about potential ways the LAC or Clerk's Office could help with fallout from the sequestration and it was determined that the LAC could not take a formal position but that the Bankruptcy Section of the State Bar or the Trustee Association could write a letter/take a position that may aid Trustees on the panel in dealing with sequestration issues.

2. The Court's Next Generational (Next Gen) CM/ECF system should be operational by summer 2014.

VIII. Liaison's Reports

a. District Court, Mike Sirota – No report.

b. U.S. Trustee, Martha Hildebrandt – Martha reported that the US Trustee, Roberta DeAngelis, expressed gratitude for the tremendous support she received at the June 3, 2013 joint Inn of Court session held in Philadelphia, PA. Martha also advised that the new Chapter 11 fee guidelines would be implemented soon and her Office would be reporting on any issues raised as a result of the new guidelines. Further, Martha noted that likely starting in October 2013, the US Trustee's Office would have to furlough employees.

c. IRS, Wendy D. Gardner – No report.

d. NJ Attorney General, Ramanjit Chawla – No report, but Raman gave comments to the draft Combined Plan/DS, noted earlier in minutes.

e. NJ State Bar, Jerry Poslusny – Chris reported that next year's Bench/Bar conference is already scheduled for April 9, 2014, with several speakers already committed including Andy Soro (Fortune Magazine), Judge London and Hank Hildebrandt. Chris also noted that coming very soon was the NJBLF golf/tennis outing honoring Ben Becker (June 17, 2013).

IX. Old Business – No report

X. New Business – Chief Judge Burns reported on recent BOJ news, noting that the BOJ is still revamping the Court's/Bar's mediation program. She advised that Judge Wizmur has drafted a proposal which has been considered and discussed at the BOJ meeting. Judge Burns also noted that there has been some changes made to the form Application to void/discharge liens, but form could still use improvement. The Chapter 13 Transmittal Letter, however, may in fact be approved at the next BOJ meeting. Judge Burns also noted that the BOJ would consider the proposed Combined Plan/DS discussed earlier but not likely vote on it since there may be some additional work yet to do.

To conclude, Judge Burns thanked both Warren and Chris for all of their work on the LAC over the years. Meeting was adjourned.

XI. Next Meeting Date – TBD (likely in September 2013)

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