

BANKRUPTCY ALERT

RULE 2019 DOES NOT APPLY TO AD HOC COMMITTEES

In an important decision for the distressed investment community, on January 9, 2010, the Bankruptcy Court for the District of Delaware ruled in the *Six Flags*¹ bankruptcy cases that the members of an ad hoc committee of noteholders are not required to comply with the disclosure requirements of Bankruptcy Rule 2019. Judge Christopher Sontchi's ruling on the applicability of Rule 2019 to ad hoc committees constitutes a significant departure from recent decisions in *Northwest Airlines Corporation*² and *Washington Mutual*³ and raises important questions about future disclosure requirements that will be imposed on participants in Chapter 11 cases.

Bankruptcy Rule 2019 provides that "every entity or committee representing more than one creditor" must file a verified statement disclosing information about its claims including, among other things, (i) the nature and amount of its claims or interests, (ii) the date of acquisition of its claims or interests acquired in the year before filing of the bankruptcy cases, (iii) the amount paid and (iv) any subsequent sales of claims or interests.⁴

Historically, law firms representing ad hoc committees have complied with Rule 2019 by disclosing the names of the members of their group and the aggregate amount of claims held by such members. However, recent decisions in the *Northwest Airlines Corporation* and *Washington Mutual* cases required the members of ad hoc committees to comply strictly with all of Rule 2019's disclosures requirements and disclose individual holdings and specific trading information.

In the *Six Flags* cases, Akin Gump Strauss Hauer & Feld LLP, on behalf of an ad hoc committee of noteholders, filed a statement pursuant to Rule 2019 that disclosed the names of the members of the ad hoc committee and the ad hoc committee's aggregate holdings. The Official Committee of Unsecured Creditors filed a motion to compel each of the members of the ad hoc group to disclose (a) the amount of its respective claims, (b) the

¹ *In re Premier International Holdings, Inc.* Case No. 09-12019 (Bankr. D. Del. Jan. 9, 2010).

² *In re Northwest Airlines Corp.*, 363 B.R. 701 (Bankr. S.D.N.Y. 2007).

³ *In re Washington Mutual, Inc.* Case No. 08-12229 (Bankr. D. Del. Dec. 2, 2009).

⁴ Fed. R. Bankr. P. 2019(a).

dates such claims were acquired, (c) the amount paid therefore and (d) the dates and circumstances of any subsequent disposition thereof. In disagreeing with the reasoning in the *Northwest* and *Washington Mutual* cases, Judge Sontchi held that, based on its plain language, Rule 2019 does not apply to ad hoc committees because the ordinary meaning of “committee” denotes a subset of a larger group authorized by the larger group to act on its behalf. Judge Sontchi intends to issue a written opinion setting forth in more detail the basis for his decision.

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