

BANKRUPTCY ALERT

RULE 2019 DOES NOT APPLY TO STEERING GROUPS

In another important decision for the distressed investment community, on February 4, 2010, Chief Judge Stephen Raslavich of the Bankruptcy Court for the Eastern District of Pennsylvania ruled, in the *Philadelphia Newspapers*¹ bankruptcy cases, that the members of an ad hoc committee, referred to in this case as a steering group of lenders, are not required to comply with the disclosure requirements of Bankruptcy Rule 2019. Judge Raslavich's written ruling on the applicability of Rule 2019 to ad hoc committees comes on the heels of last month's favorable decision in *Six Flags*² and constitutes a significant departure from recent decisions in *Northwest Airlines Corporation*³ and *Washington Mutual*⁴.

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.⁵ 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 disclosure requirements and disclose individual holdings and specific trading information.

In the *Philadelphia Newspapers* cases, Akin Gump Strauss Hauer & Feld LLP, on behalf of a steering group of lenders, filed periodic statements pursuant to Rule 2019 that disclosed the names of the members of the steering group and the aggregate holdings of the members of the steering group. The debtors filed a motion to compel each of the members of the steering group to disclose (a) the amount of its respective claims, (b) the dates such claims were acquired, (c) the amount paid therefore and (d) the dates and circumstances of any subsequent disposition thereof. Finding persuasive the reasoning in *Six Flags*, Judge Raslavich adopted the same approach taken in that case and held that, based on its plain language, Rule 2019 does not apply to steering groups because the ordinary meaning of "committee" denotes a subset of a larger group authorized by the larger group to act on its behalf.

¹ *In re Philadelphia Newspapers, LLC*, Case No. 09-11204 (Bankr. D. Del. Feb. 4, 2010).

² *In re Premier International Holdings, Inc.* Case No. 09-12019 (Bankr. D. Del. Jan. 9, 2010).

³ *In re Northwest Airlines Corp.*, 363 B.R. 701 (Bankr. S.D.N.Y. 2007).

⁴ *In re Washington Mutual, Inc.* Case No. 08-12229 (Bankr. D. Del. Dec. 2, 2009).

⁵ Fed. R. Bankr. P. 2019(a).

On the same day that Judge Raslavich issued his ruling, the debtors filed a notice of appeal to the District Court for the Eastern District of Pennsylvania. The debtors' appeal follows the appeals that have been filed in the District Court of Delaware in both *Six Flags* and *Washington Mutual*.

While these diametrically opposed decisions wind their way through the appellate process, the Advisory Committee on Bankruptcy Rules continues to consider proposed amendments to clarify the scope and applicability of the disclosure requirements of Rule 2019. On February 5, the Advisory Committee held a public hearing at which Akin Gump financial restructuring partner Abid Qureshi testified.

CONTACT INFORMATION

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