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OCTOBER 2010

VOLUME 24, NUMBER 10

Ridings To Receive Miller Award For Outstanding Achievements in Restructuring

by David Buzzell

Colgate University, where Barry Ridings studied as an undergraduate, and Cornell University, where he earned an MBA in Finance, are an hour's drive apart in upstate New York. However, both universities, in an area where winters of 100 or more inches of snow are common, can seem a world apart from New York City, the world's economic capital.

Ridings's career has spanned an equally long distance. Ridings, who majored in Religion at Colgate, attended Cornell Business School in part because he wanted to be near his girlfriend, a student at Syracuse University. That personal move paid off, as his girlfriend became his wife and together they raised a family of five sons. His professional moves have also paid off, with Ridings having reached the pinnacle of his

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Don't Ask, Don't Tell? Rule 2019 Compliance Unravels

by Julie Schaeffer

Informal committees could do better in large bankruptcies under a revised Rule 2019 that provides transparency and avoids undue barriers to participation in the bankruptcy process.

Holders of a debtor's securities or bank debt frequently form "ad hoc" or "informal" committees in large Chapter 11 cases. These informal committees provide a way for like-minded stakeholders to negotiate or litigate as a group, maximizing their influence over the reorganization process.

Generally, these informal committee members do not want to disclose details about their positions – but under Rule 2019, they may have to do so.

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Trampling Creditors' Rights Dodd-Frank a Departure from Bankruptcy Framework

by Julie Schaeffer

Many aspects of the recently enacted Dodd-Frank Act are just coming to light, including an area that is of particular concern to restructuring professionals: the immense power granted to the Federal Deposit Insurance Corporation (FDIC) and potential trampling of creditors' rights authorized by the bill.

"Parties to Chapter 11 bankruptcies who are used to debtors having to go to court to get permission to do anything are going to be really surprised by proceedings under the Dodd-Frank Act," says Renee Dailey, a partner in the financial restructuring group at Bracewell & Giuliani.

Dailey has been reviewing this issue and found some startling implications: "The

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profession. He wears, as he puts it, “three hats” as Co-head of Lazard’s Global Restructuring practice, Chairman of its Capital Markets Group, and Chairman of its middle-market M&A practice. He is also the 2010 recipient of the Harvey R. Miller Outstanding Achievement Award for Service to the Restructuring Industry. Ridings will be honored on November 29 at the 17th Annual Conference on Distressed Investing in New York City.

Back in the mid-1970s, Ridings went straight from Cornell to work for Chase Manhattan. “The training program only had 10 guys in it,” Ridings recalls. “My first day there, David Rockefeller shook our hand and welcomed us to ‘his’ bank.”

When the trainees had to choose their area of interest, Ridings picked workouts. “No one else wanted to go there. Everyone was picking other areas. I thought workouts sounded kind of interesting, so I took the contrarian view and said I’ll try that.”

Ridings went to work for Jeff Sell at Chase Manhattan as a member of the bank’s workout group. “It was a pretty good way to learn how to do workouts and bankruptcy,” he says. “Interstate Store (now Toys R Us) filed. Grant filed. Penn Central filed. We were working under the old Bankruptcy Code, and it was pre-hedge funds. It was really the Dark Ages.”

The Todd Shipyards restructuring played a role in Ridings’s next career move. He was working on the case for Chase Manhattan. Representing Todd Shipyards was Bear Stearns, which later offered him a job. “One meeting, I’m on the bank side of the table, the next meeting I’m on the client’s side.”

Ridings later moved from Bear Stearns to Drexel Burnham Lambert and then, when Drexel imploded, Ridings and a team of restructuring pros went to Alex Brown. Ridings’s career journey continued. As he recounts: “Alex Brown was acquired from Bankers Trust, and then Bankers Trust was acquired by Deutsche Bank. In our business, you can’t be a lender and an adviser. Alex Brown was obviously an investment bank, but it wasn’t a commercial bank. When Banker’s Trust and then Deutsche Bank became involved, it was a problem because we were always conflicted on the deals.”

He and his business partner, Terry

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That’s because Rule 2019 requires members of committees that are not “official” to put detailed disclosures on the public record, including the price they paid for their position.

“For active traders in distressed securities or bank debt, Rule 2019 disclosures amount to trade secrets, and for no good reason,” says Bennett J. Murphy, co-head of the business reorganization & bankruptcy department at Hennigan, Bennett & Dorman LLP in Los Angeles, and who has written on the topic for the *Journal of Bankruptcy Law*. “Many traders believe that providing price information would encourage misbehavior by advocates who might disparage their opposition as vulture investors out to make a quick buck.”

Murphy says that for many years, in the absence of clear precedents, informal committees have made limited disclosures or simply ignored Rule 2019 – even though doing so could result in an informal committee being barred from any further participation in a case.

This risk was accepted, Murphy says, because litigation over Rule 2019 has been relatively rare. “Rule 2019 litigation tended to be limited to circumstances where an informal committee represented an ‘out-of-the-money’ class or lacked sufficient numbers to be useful in the process,” says Murphy. “On occasion, other stakeholders sought to improve their leverage by ‘taking out’ the opposition on technical grounds.”

Several years ago, the era of “don’t ask, don’t tell” under Rule 2019 began to unravel. In the 2007 Chapter 11 case of Northwest Airlines, the Southern District of New York ordered an informal committee of equity security holders to make full disclosure under Rule 2019. In the 2009 bankruptcy of Washington Mutual, the Delaware Bankruptcy Court reached the same conclusion.

More recently, however, informal committees have been found not subject to Rule 2019. In the 2009 bankruptcy of Premier International Holdings (also known as Six Flags), the Delaware Bankruptcy Court looked at the historical context of Rule 2019 and ruled that because a modern informal committee did not represent the interests of a larger group by consent or by operation of law and merely represented its members, it was not subject to Rule 2019. In the 2009

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FDIC gets to be receiver, judge and jury all rolled into one.”

The Dodd–Frank Act, formally known as the Dodd–Frank Wall Street Reform and Consumer Protection Act, is a federal statute signed into law by President Barack Obama on July 21, 2010.

The most sweeping change to financial regulation in the United States since the Great Depression, the Act impacts almost every aspect of the nation’s financial services industry and has wide implications in bankruptcies.

“Dodd-Frank creates an ‘orderly liquidation authority,’ which vests the FDIC with the prerogative to exercise control over a financial entity whose precarious financial health is believed to endanger the national financial system as a whole,” says Jeffrey C. Hampton, co-chair of the Bankruptcy and Restructuring Department at Saul Ewing, who has written about the topic in the firm’s client alert, “What Keeps You Up At Night?”

“The Secretary of the Treasury looks at a number of factors, such as whether a company is in default or in danger of becoming in default, and what impact that failure could have on the country’s financial stability,” says Dailey. “Then, considering the recommendation of the FDIC and the Federal Reserve, the Secretary determines whether the company should be liquidated.”

“Once a receivership under the orderly liquidation authority is commenced, traditional bankruptcy proceedings are no longer an option,” says Hampton.

“No one would argue against the need for financial stability, but the price of stability under the Dodd-Frank Act is creditors’ rights,” says Dailey.

To understand why, she explains that Chapter 11 and Dodd-Frank represent two vastly different approaches. “The goal of Chapter 11 is to reorganize a business, which has the side benefit of preserving jobs while at the same time protecting creditor’s rights,” says Dailey. “In contrast, the stated purpose of the Dodd-Frank Act is to prevent taxpayer bailouts and protect the country’s financial stability, so the only option for companies is liquidation.”

This, says Dailey, creates a major departure from the traditional bankruptcy framework. “With a traditional bankruptcy, creditors’ committees have opportunities

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Research Report

Who's Who in Innkeepers USA Trust

by Françoise C. Arsenault

Innkeepers USA Trust (Innkeepers) is a self-administered Maryland real estate investment trust with a primary business focus on acquiring premium-branded upscale extended-stay, mid-priced limited service, and select-service hotels. The company, through its indirect subsidiaries, owns and operates a portfolio of 72 hotels, consisting of approximately 10,000 rooms located in 19 states and the District of Columbia. Nearly all of the company's hotels are leased by the management company, Island Hospitality. About one-half of the company's hotels are operated under the Residence Inn by Marriott brand. Other brands include Hampton Inn, Hyatt Summerfield Suites, and Hilton. Innkeepers' primary customer base consists of business travelers, employees on temporary work assignments or enrolled in training programs, and individuals engaged in corporate relocations.

Innkeepers USA Trust is owned by Apollo Investment Corporation, which purchased Innkeepers for \$1.5 billion in June 2007. The Lehman Brothers Holding Inc. unit lent Apollo Investment \$1.2 billion to finance the buyout of Innkeepers in 2007.

In 2009, Innkeepers' consolidated revenues were approximately \$292 million and adjusted EBITDA was \$85 million. The company's consolidated assets for 2009 were in the range of \$1.5 billion. As of July 19, 2010, Innkeepers and its affiliates had incurred approximately \$1.29 billion of secured debt. Innkeepers, headquartered in Palm Beach, Florida, has about 800 employees.

According to company officials, a number of factors impaired Innkeepers' ability to meet its debt obligations and certain current obligations under its franchise agreements. The factors included operating losses resulting from decreased room revenue over the past few years, significant liquidity constraints, and considerable funded debt burden resulting from unprecedented adverse changes in the economy and hospitality industry. During this same timeframe, supply also increased within the hospitality industry, exacerbating the negative impact of decreased demand within the industry.

Innkeepers USA Trust and 91 debtor

affiliates filed for Chapter 11 reorganization in the United States Bankruptcy Court for the Southern District of New York (Manhattan) on July 19, 2010. In September, Innkeepers received court approval of DIP financing in the amount of \$50.75 million from Five Mile Capital Partners and \$17.5 million from Solar Finance, Inc., an affiliate of Lehman ALI, Inc.

Innkeepers and Lehman ALI, Inc., an affiliate of Lehman Brothers Holding Inc., entered into a plan support agreement before the bankruptcy filing. The terms of the agreement provided that Lehman ALI, in full and final satisfaction of its approximately \$238 million secured claim with respect to the floating rate mortgage loan agreement, would receive 100 percent of the new shares of common stock issued by Innkeepers, subject to dilution by a management equity incentive program.

Subsequent to the bankruptcy filing, an ad hoc committee of preferred shareholders requested that the court appoint an examiner in the case on the basis that the Innkeepers and Apollo Investment Corporation engineered the plan support agreement to allow Apollo and a single chosen creditor, Lehman ALI, to retain or obtain equity interests in Innkeepers while wrongfully or needlessly extinguishing preferred shareholders. In September, the court denied the motion of Innkeepers to assume the plan support agreement, ruling that the agreement was not a "disinterested business transaction" and that Innkeepers and its debtor affiliates had not demonstrated they had acted in good faith, among other reasons.

The ad hoc committee of preferred shareholders also has asked the court to direct the appointment of a statutory committee of preferred shareholders pursuant to Section 1102(a)(2) of the Bankruptcy Code. According to the ad hoc committee filing, Innkeepers has four hotels that are valuable enough to pay creditors and leave \$47.5 million for preferred shareholders. The court scheduled a hearing for September 30, 2010, to consider the request.

The Debtor

Tim Walker is the Chief Executive Officer and President of Innkeepers USA

Trust. **Marc A. Beilinson** is the Chief Restructuring Officer. **Dennis Craven** is the Chief Financial Officer, Treasurer, and Vice President. **Richard F. Fenton** is Vice President of Financial Planning and Analysis. **Mark A. Murphy** is General Counsel and Secretary. **Linda K. Price** is Vice President and Controller.

Kirkland & Ellis LLP is bankruptcy counsel to Innkeepers. **James H.M. Sprayregan**, a partner in the firm's Chicago and New York offices, directs the work. The Kirkland & Ellis team includes **Paul M. Basta**, a partner in the firm's New York office, and **Anup Sathy** and **Marc J. Carmel**, partners in the Chicago office.

AP Services, LLC is acting as crisis manager and restructuring advisor to Innkeepers. **Nathan J. Cook**, a managing director at AlixPartners LLP, is serving as interim Chief Financial Officer. **Todd B. Brents**, a senior member of the firm's Case Management Services practice, and **Raymond Adams**, a director in the Dallas office, also are working on the engagement.

Moelis & Company is serving as the financial advisor and investment banker. **William Q. Derrough**, a managing director and co-head of the Recapitalization & Restructuring Group, directs the work.

The Official Committee of Unsecured Creditors

The Committee includes **JMC Global**; **PDQ Consulting, Inc.**; **Triangle Renovations USA**; **American Hotel Register Company**; and **The Eric Ryan Corporation**.

Morrison & Foerster LLP is serving as the general bankruptcy counsel to the Committee. **Brett H. Miller**, **Lorenzo Marinuzzi**, **Stefan W. Engelhart**, and **Mark S. Edelstein**, partners with the firm, are working on the case.

Jefferies & Company, Inc. is providing financial advisory services to the Committee. **Leon Szlezinger**, a managing director of Jefferies & Company, leads the engagement.

The Trustee

The Acting U.S. Trustee is **Tracy Hope Davis**.

The Judge

The judge is the **Honorable Shelley C. Chapman**. ☐

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Savage, the other co-head of Lazard's Global Restructuring practice, have been together since their Chase Manhattan days, and together ran the group at Alex Brown/Deutsche Bank. After the Deutsche Bank merger, Ridings and Savage took the team of about two dozen people to Lazard. It was 1999, and they have remained at Lazard ever since.

It is a close-knit group. Ridings and Savage have one of the largest running partnerships on Wall Street and other senior members of the team have been together for nearly 15 years. Lazard's restructuring group has now grown to about 100 professionals globally.

Through it all, Ridings has been in the mix of many of the country's largest and most prominent restructurings: Lehman, Madoff Securities, Trump Casinos, Six Flags, iStar, Owens Corning, Marvel Entertainment, Fruit of the Loom, Calpine, Vlasic Foods, Boston

Chicken, and Tower Automotive, to name but a few. He has also found time to serve as Chairman of the Committee on Securities for NYSE/AMEX and the Board of Directors of AMEX. He is a frequent lecturer and is a respected voice in the industry, regularly quoted in major newspapers and magazines.

Ridings is quick to credit his partners and colleagues for the work they are doing on Lazard's representations. "We've got guys here who are superstars. I like to say we're like the New York Yankees. We have a great bench with the largest team and the best players in the business."

Ridings has no plans to hang up his glove. "I like coming to work. I'm on the 5:13 train every morning and in the office at 6:30. I usually take the 6:40 train on the way back. Most of the guys who work with me have been together for a long time. They're my friends. I get to go to work and see my friends every day and we work on interesting things. I really enjoy and love what I do." □

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bankruptcy of Philadelphia Newspapers, the Eastern District of Pennsylvania Bankruptcy Court reached the same decision, albeit by a simpler reasoning.

While the Premier International Holdings and Philadelphia Newspapers rulings certainly gave some comfort to informal committees, they left unresolved questions about what a committee is and

what its rights and obligations are.

"Courts enjoy multiple layers of discretion under Rule 2019, including the express discretion to do nothing at all," says Murphy. "Oddly, the recent round of Rule 2019 jurisprudence ignores this."

As if that's not confusing enough, a revised version of Rule 2019 that would overrule the Premier Holdings and

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to be heard, and you have court oversight, which provides a measure of transparency. With the Dodd-Frank Act, the FDIC has total authority. It doesn't have to get court permission to do anything, and it doesn't have to consider creditors' rights; it's charged with winding up the business and it can do that by selling any assets any time it wants."

"The sweeping powers of the FDIC include the right to establish a bridge company that will acquire assets, procure liquidation financing, and make payments to claimants; act as receiver of related subsidiaries; invoke subpoena powers; and dispose of assets," says Hampton.

Moreover, says Dailey, liquidation under the Dodd-Frank Act supersedes any existing restructuring efforts, such as Chapter 11 proceedings. "A debtor and its creditors could be days away from a

consensual reorganization plan, but if the Secretary of the Treasury decides the company should be liquidated, Dodd-Frank Act trumps Chapter 11 proceedings," she says.

Perhaps the most stunning aspect of the Dodd-Frank Act, says Dailey, is that any decision the FDIC makes cannot be appealed. "Essentially, creditors will be left out in the cold and lack any recourse," she says. "The review and appeal provisions are so limited in scope and so deferential to the Secretary's decision that they are appeal rights in name only."

Many companies think they won't be subject to the Dodd-Frank Act because they don't invest in banks, but that's not the case, according to Dailey.

That's because the act applies to a broad array of financial firms – not just banks,

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Calendar

American Bankruptcy Institute
International Insolvency &
Restructuring Symposium
October 29, 2010
The Savoy
London, England
Contact: www.abiworld.org

Beard Group and Renaissance
American Management, Inc.
FREE Pre-Conference Webinar
Navigating Today's Environment: The
Year Ahead
November 3, 2010, 11 a.m.-12 p.m. EDT
Contact: <http://events.cciconferencing.com/events/the-beard-group/navigating-todays-environment-webinar>

Association of Insolvency and
Restructuring Advisors
Advanced Restructuring
and Plan of Reorganization Conference
November 15, 2009
Union League Club
New York, NY
Contact: www.airacira.org

Beard Group and Renaissance
American Management, Inc.
17th Annual Conference on
Distressed Investing
November 29, 2010
The Helmsley Park Lane Hotel
New York, NY
Contact: www.renaissanceamerican.com

American Bankruptcy Institute
22nd Annual Winter Leadership
Conference
December 9-11, 2010
Camelback Inn
Scottsdale, Arizona
Contact: www.abiworld.org

Turnaround Management Association
TMA 2011 Spring Conference
April 27-29, 2011
JW Marriott Chicago
Chicago, IL
Contact: www.turnaround.org

Special Report

Major Chapter 11 Cases by Industry Sector*

Industry Sector	Company	Date Filed	Court	Assets	Debtor's Counsel
Accommodation & Food Services	Uno Restaurant Holdings	January 21	New York, S. Dist.	\$100-\$500 Million	Weil Gotshal & Manges
Arts, Entertain. & Recreation	Centaur	March 7	Delaware	\$500 Million-\$1 Billion	Fox Rothschild
	Sea Island Company	August 11	Georgia, S. Dist.	\$500 Million-\$1 Billion	King & Spalding
	Movie Gallery	February 3	Virginia, E. Dist.	\$100-\$500 Million	Sonnenschein Nath & Rosenthal
Construction	Brundage-Bone Concrete	January 19	Colorado	\$325,708,000	Sender & Wasserman
Finance	CORUS Bankshares	June 16	Illinois, N. Dist.	\$314,145,000	Kirkland & Ellis
	Briarwood Capital	February 24	California, S. Dist.	\$292,789,000	Mintz Levin Cohn Ferris Glovsky & Popeo
Health Care	Saint Vincent Catholic Medical Centers of NY	April 15	New York, S. Dist.	\$100 to \$500 Million	Kramer Levin Naftalis & Frankel
Information	Penton Business Media	February 11	New York, S. Dist.	\$500 Million-\$1 Billion	Jones Day
	Truvo USA	July 2	New York, S. Dist.	\$500 Million-\$1 Billion	Jenner & Block
	Affiliated Media	January 23	Delaware	\$100-\$500 Million	Hughes Hubbard & Reed
	Morris Publishing Group	January 20	Georgia, S. Dist.	\$100-\$500 Million	Neal Gerber & Eisenberg
	Hights Cross Communication	January 12	Delaware	\$232,388,000	Brown Rudnick
Manufacturing	Xerium Technologies	March 31	Delaware	\$813,168,000	Cadwalader Wickersham & Taft
	Garlock Sealing Tech.	June 16	N. Carolina, W. Dist.	\$585,738,000	Rayburn Cooper & Durham
	Almatis BC	May 1	New York, S. Dist.	\$500 Million-\$1 Billion	Gibson Dunn & Crutcher
	Chemtura Canada	August 7	New York, S. Dist.	\$500 Million-\$1 Billion	Kirkland & Ellis
	Grant Forest Products	April 11	Delaware	\$500 Million-\$1 Billion	Elliott Greenleaf
	US Concrete	April 30	Delaware	\$389,160,000	Kirkland & Ellis
	Neenah Enterprises	February 4	Delaware	\$286,000,000	YoungConaway Stargatt & Taylor
Real Estate	Innkeepers USA Trust	July 20	New York, S. Dist.	More than \$1 Billion	Kirkland & Ellis
	Sargent Ranch	January 5	California, S. Dist.	\$500 Million-\$1 Billion	Smaha Law Group
	Arlie & Company	January 21	Oregon	\$227,191,000	Tonkon Torp
Rental & Leasing	Blockbuster, Inc.	Sept. 21	New York, S. Dist.	\$1,107,035,000	Weil, Gotshal & Manges
	Neff Corp.	May 17	New York, S. Dist.	\$609,000,000	Kirkland & Ellis
Retail	OTC Holdings	August 26	Delaware	\$463,000,000	Debevoise & Plimpton
Transportation	Mesa Air Group	January 6	New York, S. Dist.	\$975,487,000	Pachulski Stang Ziehl & Jones
	Las Vegas Monorail	January 14	Nevada	\$395,959,000	Gordon Silver
Utilities	Boston Generating	August 19	New York, S. Dist.	More than \$1 Billion	Latham & Watkins
	Bosque Power Company	March 25	Texas, W. Dist.	\$666,658,000	Proskauer Rose

* Chapter 11 filings between January 1-September 30, 2010

Worth Reading

Ten Cents on the Dollar, Or the Bankruptcy Game

Author: Sidney Rutberg

Publisher: Beard Books

Softcover: 189 pages

List price: \$34.95

Reporting on bankruptcy courts for more than 30 years for Fairchild Publications and also as a business columnist and editor for *Women's Wear Daily* and *Daily News Record*, Rutberg came away with a jaundiced view of bankruptcies. Perhaps because he was a journalist covering events in a fast-paced, urban environment, Rutberg writes in an informal, breezy style. *Ten Cents on the Dollar* reads like a gossip column with its witty and colorful observations. Rutberg recounts situations and incidents in rapid-fire succession, offering tidbits of information with a loose logical, chronological, and narrative connection.

Rutberg's stories are grouped into general headings relating to various aspects of bankruptcy. Among these are liquidation auctions; creditors; legal procedures; Chapter 7, 11, and 13 bankruptcies; and key players in bankruptcies, such as accountants and lawyers. Rutberg's irrepressibly casual, often inventive, style extends to the names of the chapters. The first chapter on auctions is titled "A Kipper Is Not a Herring." Another chapter is entitled "Ten Cents on the Dollar, Or Reading Between the Lies." "Even Millionaires Go Broke" is the title of a third.

Rutberg's casual style belies the fact that he has an unerring, seasoned eye for what bankruptcy, the bankruptcy system, and the individuals – from debtors to judges – are like. *Ten Cents on the Dollar*, first published in 1973, offers a balanced perspective based on firsthand knowledge. The informal style does not undermine the basic points Rutberg makes about bankruptcy. For example: "Professionals who play the bankruptcy game [like professionals in other fields]...lie a little, they cheat a little, they steal a little, but mostly they work hard." Elsewhere, Rutberg writes that, while "attorneys in the bankruptcy field are looked upon by some...[as being] rungs below the ambulance-chasing negligence lawyer..., the bankruptcy lawyer is a specialist in a rough-and-tumble business, and, by and large, he'll perform as well as the attorneys in any other specialized field."

While Rutberg does not pull punches, he avoids passing judgment on the bankruptcy field and its participants. If this book had been no more than a screed, it would have been of little use to readers who wanted to learn something about bankruptcy. Rutberg, for instance, is not calling for reform. There are enough other books doing that.

Individuals on both sides of the bankruptcy issue will be amused by Rutberg's informal writing style, stream of vignettes, and wry point of view. For those foreseeing or initiating bankruptcy, it is an informative guide not only to various options and requirements, but also to the players. Readers who are not involved in the bankruptcy business can learn how they might profit from bankruptcy proceedings, such as purchasing property at an auction or providing services to those in bankruptcy.

Lay readers, as well as bankruptcy professionals, will find Rutberg's book engaging. *Ten Cents on the Dollar* is a wide-ranging, incisive picture of a bankruptcy game played by everyone from business owners and decision-makers to investors and individuals looking for depressed-priced items.

Besides being a columnist and journalist concentrating on financial affairs, Sidney Rutberg is a contributing editor to the magazine The Secured Lender, published by the Commercial Finance Association. □

This book may be ordered by calling 888-563-4573 or by visiting www.beardbooks.com or through your favorite Internet or local bookseller.

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Philadelphia Newspapers decisions is under consideration.

The rule is being reviewed by the Rules Committee of the Administrative Office of the United States Courts, a group of federal judges and practitioners charged with promulgating new or revised procedural rules for bankruptcy and other federal courts. The rule might be left as, amended as proposed, or amended in some other way.

Douglas Bartner, a partner at global law firm Shearman & Sterling LLP, says the proposed amendments will certainly add clarity to the applicability and disclosure requirements of the rule. "Given the confusion generally in the marketplace and conflicting court decisions on 2019, this is a good development," he says.

Specifically, Bartner thinks that "the proposed amendments should operate in a way so as to allow creditors to keep certain important proprietary information – such as the price at which a claimholder acquired its interest – out of the public domain."

This, he says, "should provide a considerable degree of comfort to the distressed trading community and further the public policy interests of fostering active involvement among groups of constituents in working toward a consensual resolution to a Chapter 11 case."

On the other hand, the proposed new rule would apply to every "entity, group, or committee that consists of or represents more than one creditor or equity security holder" – meaning any modern informal committee.

This, says Murphy, means that Rule 2019 would expand to cover not only claims against or equity interests in the debtor, but any disclosable economic interest, such as a short interest, credit default swap, or other financial arrangement that is tied to the value of a claim or interest. "Members of official committees would become subject to the rule," Murphy adds. "And if an informal committee has been authorized to represent third parties, those parties would have to disclose as well."

"It is a rare thing that a pending rule amendment presents the opportunity to resolve a recent spate of contrary decisions on a matter of great significance to bankruptcy practice – but sadly, it seems likely the amendments could make a bad situation worse," says Murphy. □

Special Report

Major European Law Firms with Restructuring Practices

Firm	Senior Professionals	Representative Clients
Addleshaw Goddard London Tel. +44 20 7606 8855 www.addleshawgoddard.com	John Joyce Graham Briggs Ged Barnes Daniel Redstone	Jean Boldero Andrew Smith Fraser Ritson Alison Goldthorp
Allen & Overy London Tel. +44 20 3088 0000 www.allenoverly.com	Mark Sterling	Gordon Stewart
Ashurst London Tel. +44 20 7638 1111 www.ashurst.com	Giles Boothman David von Saucken Matt McDonald Simon Baskerville	Dan Hamilton Ingo Scholz Jean-Pierre Farges Jesús Almoguera
Clifford Chance London Tel. +44 20 7006 1000 www.cliffordchance.com	Michael Bray Mark Campbell Adrian Cohen Nicholas Frome Philip Hertz	Mark Hyde Geeta Khehar John MacLennan David Steinberg Iain White
DLA Piper London Tel. +44 8700 111 111 www.dlapiper.com	Stephen Halladay Ernesto Apuzzo Peter Jark Marc Molhuysen	Ilse Van de Mierop Michael Fiddy Paul Fleming Simon Neilson-Clark
Eversheds London Tel. +44 20 7497 9797 www.eversheds.com	Simon Waller	Richard Tripp
Freshfields Bruckhaus Deringer London Tel. +44 20 7936 4000 www.freshfields.com	Ken Baird Catherine Balmond Adam Gallagher Neil Golding	Chris Howard Nick Segal Richard Tett Anne Sharp
Herbert Smith London Tel. +44 20 7374 8000 www.herbertsmith.com	Laurence Elliott Stephen Gale Kevin Lloyd	Gary Milner-Moore Kevin Pullen Kirsten Massey
Hogan Lovells London Tel. +44 20 7296 2000 www.hoganlovells.com	Joe Bannister Laurence Crowley Stephen Foster Deborah Gregory	Paul McLoughlin Robin Spencer Alexander Wood Geoffrey Yeowart
Linklaters London Tel. +44 20 7456 2000 www.linklaters.com	Tony Bugg Bruce Bell Richard Bussell Euan Clarke	David Ereira Iain Fenn Richard Holden
Norton Rose London Tel. +44 20 7283 6000 www.nortonrose.com	Hamish Anderson Mark Bankes Richard Calnan John Challoner	Anthony Dutton Radford Goodman Raj Karia James Stonebridge
Pinsent Masons London Tel. +44 20 7418 7000 www.pinsentmasons.com	Jonathan Jeffries Jamie White Richard Williams	Séamas Gray Alastair Lomax
Simmons & Simmons London Tel. +44 20 7628 2020 www.simmons-simmons.com	Peter Manning Alan Gar Gerhard Gispen Christian Pascoet	Hans-Hermann Aldenhoff Paulo Gnignatti Andres Mochales Antonio Lombardo
Slaughter and May London Tel. +44 20 7600 1200 www.slaughterandmay.com	George Seligman Sarah Paterson	Ian Hodgson
		Barclays, 3i, BDO Stoy Hayward, Baker Tilly, Begbies Traynor, Deloitte, DTE Leonard Curtis, Ernst & Young, GE Commercial Finance, GMAC, Grant Thornton, HSBC, KPMG, Lloyds TSB, National Australia Group, Northern Rock, PKF, PwC, and others.
		Eksportfinans ASA, GIEK, DVB Group Merchant Bank (Asia), non-affiliated lenders to the Allco Aviation Portfolio, BNP Paribas S.A. and various lenders in restructuring of two facilities for Compañía Sud Americana de Vapores S.A.
		General Atlantic, BNP Paribas, Commerzbank AG, CM-CIC, Crédit Agricole CIB, ING, Bank of Ireland, Majedie Investments, PLBank of America, Religare Capital Markets, Merlin Entertainments, Candover Investment, Chloride Group, Gala Coral, Apax Partners, and others.
		Large lender groups (including steering groups and coordinators), financial institutions, corporate debtors, insolvency practitioners. Majority of work involves cross-border restructurings and insolvencies.
		Advisors to banks, international corporates and their managers, asset based lenders and other financial service providers. In appropriate jurisdictions, partners from continental European offices accept appointments as insolvency office holders.
		Absalon & Co, Mitchells & Butlers, Spice, Croda International, NCC Group, Morningstar UK, Inflexion Private Equity, Glisten, Daisy Group, Four Seasons Health Care, Leeds College of Building.
		Lenders, investors, insolvency practitioners, creditors, and directors on banking and insolvency issues. Banks, investment banks, and debtors on consensual restructurings.
		Friends Provident Life and Pensions Limited, informal steering committee of the noteholders in the Fleet Street Finance Two CMBS, Yell Group, BG Group.
		Corporate debtors and all stakeholders in distressed corporate debtors, including major clearing and investment banks, financial institutions, accountancy firms, insolvency practitioners, suppliers, and pension trustees.
		Allied Irish Banks, Almatiss, Zain.
		Predominantly banks (clearing, overseas, and investment), corporations and insolvency practitioners. Much of the work concerns cross-border insolvencies and restructurings.
		Nortel, JJB Sports, LG Philips Displays, Dairy Farmers of Britain, Castlemore, PRG Powerhouse, Alexandra, Heywood Williams, Trutex Limited, ScS Upholstery.
		All types of creditors and debtors, mainly financial institutions (clearing and investment banks), hedge funds, distressed investors, private equity funds, and insolvency practitioners. A great deal of work concerns cross-border insolvencies and restructurings.
		Carl Zeiss Vision Group, General Motors UK Limited on the sale of the Saab business to Spyker Cars N.V., Resolution Committee of the Icelandic bank Glitnir, Palamon Capital Partners, Raymarine.

Gnome de Plume

Price and Performance

by Christopher Beard

Earlier this month, Microsoft filed a lawsuit against Motorola alleging patent infringement and seeking licensing fees for the use of the open-source Android operating system enhanced and given away free by Google. Last week, Sanjay Jha, co-CEO of Motorola, said “I am open to finding ways to work with Microsoft, but it has to be a compelling offer.” Sounds to me like Motorola won’t find an offer compelling unless there is a gun at its head.

I guess Microsoft sees things the same way. There’s nothing soft and fuzzy about their business development. This week, Microsoft launches its Windows Phone 7 software, its latest and probably final attempt to establish a market position in the cell phone market. Management desperately needs a breakout product after years of being outflanked by competitors.

Their heavy-handed tactics with Motorola in a critical new initiative is not an aberration. Microsoft has been involved in other ugly situations where the risks seemed remote.

Earlier this month, *The New York Times* ran a piece on Microsoft’s association with the Russian police in suppressing dissent. Plainclothes police confiscated the computers of Baikal Wave, a prominent environmental group that was organizing protests against a government decision to reopen a paper factory that had polluted Lake Baikal. The computers were confiscated because the police were looking for pirated Microsoft software. A collateral benefit for them was information stored on the hard drives on Baikal Wave’s supporters and financiers.

The New York Times reported that, “In politically tinged inquiries across Russia, lawyers retained by Microsoft have staunchly backed the police.” In recent cases, Microsoft argued “that criminal charges should be pursued.” In the same article, *The Times* pointed to a number of other circumstances that suggested Microsoft had a very close relationship with Russian authorities implementing political agendas.

Microsoft executives in Moscow and Redmond, Washington, “asserted they did not initiate the inquiries and that they took part in them only because they were required to do so under Russian law.” The company also issued press releases saying they were concerned about the issues raised, and they were looking into the matter.

I certainly don’t know if *The New York Times* got the story straight, but the newspaper is probably on to something.

I had a financial interest in a company with offices in another country with a reputation for corruption. Also, similar to Russia, the country has a reputation for disregarding intellectual property rights, and pirated software was openly sold in public markets. Without warning, the company, managed and staffed by locals but known to be financed by foreigners, was raided by the national police looking for pirated software, and the computers were confiscated. The company was advised by the police that criminal charges would be pursued unless an agreement was made with Microsoft. I personally negotiated a settlement with Microsoft’s lawyers pursuant to which a payment was made and the computers were to be returned. The equipment was never released.

Microsoft’s management is a very bright and capable group, and I’m certain their hardball tactics have produced results for them in the past. However, the company won’t be successful competing with new competitors like Google and Oracle unless they deliver on price and performance. There’s a reason their stock is cheap. □

Christopher Beard is the publisher of Turnarounds & Workouts

Future Issues:

- *Special Report: Nation’s Largest Claims Administrators*
- *Special Report: Outstanding Turnaround Firms 2010*
- *Research Report: Who’s Who in Blockbuster, Inc.*

Dodd-Frank, from p. 4

bank holding companies, and certain insurance companies, but also non-bank financial companies that engage predominantly in financial activities.

“The latter category is the problematic one because it’s broad and amorphous,” says Dailey. “It includes any company that has 85 percent of its revenues or assets come from activities that are financial in nature, which include lending, underwriting, investing, etc.”

As a result, says Dailey, it’s possible that investors, creditors and bondholders may not realize that a company is subject to the Dodd-Frank provisions until that company is in receivership.

The Act is currently in a one-year rulemaking period, but many questions remain, says Dailey.

As one example, she points to the unsecured claims waterfall – i.e., the pecking order in which claims are paid.

As is the case in bankruptcy, administration costs are paid first. The surprising priority, says Dailey, is the second one: all claims of the United States.

“We can speculate that means taxes, pension obligations, and Securities and Exchange Commission fines, but we don’t know for sure,” Dailey says.

Additionally, says Dailey, claims are not limited as they are by the U.S. Bankruptcy Code. “Under bankruptcy, there are qualitative and quantitative limits: Claims have to be of a certain type, incurred over a certain time period, and under a certain amount,” Dailey says. “Under the Dodd-Frank Act, there’s no such limitations.”

That, Dailey says, will have far-reaching implications for investors, in particular, if it is not resolved by rulemaking. “It will be almost impossible for an investor to factor that risk into an investment.” □