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# turnarounds & workouts

News for People Tracking Distressed Businesses

MAY 2010

VOLUME 24, NUMBER 5

## **Chrysler's Impact Future Implications for Creditors**

by Julie Schaeffer

When a bankruptcy court authorized the sale of Chrysler's assets, it used a *sub rosa* analysis that may be cause for concern among senior creditors who receive less than full payment on their claims when junior creditors receive debt from or equity in the purchasing entity, says Elliot M. Smith, an attorney in the Cincinnati office of Squire, Sanders & Dempsey LLP.

Approximately 30 days after Chrysler Group LLC filed for bankruptcy, the United States Bankruptcy Court for the Southern District of New York authorized a \$2 billion sale of substantially all of the company's assets.

Those assets were to be sold free and clear of liens, claims, and encumbrances under

*continued on page 2*

## **A Scary Place to Visit Four Reasons BAPCPA Forces Liquidations or Asset Sales**

by Julie Schaeffer

Four changes to bankruptcy law in the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) may force companies into liquidation or asset sales.

"Bankruptcy was never a nice place to visit, but it has become a scarier place after the passage of the BAPCPA," says Harlan Platt, a professor of finance at Northeastern University, who detailed the issue in the *Journal of Bankruptcy Law*. "Companies have discovered that bankruptcy has become a quicksand of unexpected surprises that may forestall firms whose situation is not entirely dire from filing for bankruptcy."

While restructuring professionals are well aware of how the BAPCPA has changed the rules of the game, the playing field is nowhere near the same as it was a few years ago.

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## **2019 Disclosure Required Fiduciary Duties Owed to Ad Hoc Committees, Others**

by Julie Schaeffer

Members of a class of creditors who act as a group may owe fiduciary duties to other members of that class even when they're not claiming to represent them, according to a recent bankruptcy court ruling.

It all pertains to Rule 2019, which provides that "every entity or committee representing more than one creditor or equity security holder" must disclose certain information.

This information includes the amount of each claim, the date of acquisition for each claim, the amounts paid for each claim, a description of any claim sales or other dispositions, and a recital of the facts and circumstances relating to the formation of the group.

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## Chrysler, from page 1

Section 363 of the bankruptcy code.

The buyer: the so-called “New Chrysler,” an entity formed by Chrysler and Fiat Automobiles SpA, which was to be controlled 68 percent by a healthcare trust aligned with the United Auto Workers union, 20 percent by Fiat, and 12 percent by the U.S. and Canadian governments.

There were more than 350 objections to the sale, including one by a group of Indiana pension funds that held a small portion of Chrysler’s secured debt. The pension funds argued that Chrysler’s plan to distribute stock in the “New Chrysler” while paying senior lenders only 29 cents on the dollar was an illegal *sub rosa* plan of reorganization – in other words, a Chapter 11 plan of reorganization disguised as an asset sale.

The court rejected the Indiana pension funds’ objections on two primary grounds.

First, it pointed to the fact that Chrysler’s valuation expert had presented un rebutted testimony that the sale proceeds would exceed the liquidation value of Chrysler’s assets – and, as a result, Chrysler would receive fair value for its assets, with no sale proceeds allocated to anyone other than Chrysler’s first-lien lenders.

Second, it noted that Chrysler would continue to administer its estate after the asset sale by disposing of remaining assets, so Chrysler was not attempting to evade plan confirmation procedures.

But Smith says perhaps the most noteworthy aspect of the ruling was the fact that the court’s *sub rosa* analysis did not change based on certain unsecured creditors (including the United Automobile Workers union and the U.S. Department of the Treasury) receiving equity in New Chrysler.

“The ‘absolute priority rule’ prohibits any junior creditor from receiving any form of consideration (including equity in an asset purchaser) on account of its pre-petition claims prior to more senior creditors being paid in full,” says Smith. “In this case, however, the court found that these creditors, who were essential to New Chrysler’s viability, were not receiving equity in New Chrysler on account of their pre-petition claims. Rather, the equity was in exchange for new, substantial consideration under separately negotiated agreements with New Chrysler. This was neither a diversion of value from Chrysler’s estate nor an allocation of the

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## Scary Place, from page 1

### 1. 20-day goods

In an attempt to prevent companies from stocking up on goods immediately prior to filing for bankruptcy, BAPCPA requires debtors to pay vendors in full for goods received within 20 days of filing. “This might not be a problem for a piano retailer who makes few weekly sales, but for any other company with high inventory turnover, the administrative bill to vendors may be enormous,” says Platt. “This discourages companies in severe distress from maintaining adequate inventories, which may facilitate their failure.”

### 2. Claims of utilities

Second, says Platt, BAPCPA gave utilities tremendous power to alter, refuse, or terminate utility service unless they receive adequate assurance of payment, usually in the form of a two-month deposit. This is of particular concern for large utility customers such as retail chains and manufacturing companies. “If the utility does not receive adequate assurance within 30 days following the filing, it may discontinue service without relief from the automatic stay and without court approval,” Platt says. “This is money that must be expended by the bankrupt firm within the first 30 days of a case being filed, and represents a great challenge.”

### 3. Unexpired leases of non-residential real property

Third, says Platt, unexpired leases of non-residential property need to be rejected or accepted within 210 days of filing. This may have made sense when BAPCPA was passed in 2005, because the economy was strong and there were plenty of new tenants waiting to occupy vacant space. But today, as a result of the economic slowdown, the situation is different. “Large complex retailing companies entering bankruptcy have too few days to make an adequate assessment of their need for and willingness to assume leases,” says Platt. “It is often easier for them to liquidate and walk away from the problem. This can result in premature rejection of potentially valuable leases, or even worse, the erroneous assumption of leases that the debtor later needs to reject. In the latter situation, the lessor is now entitled to an administrative expense claim for a period of two years following

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## Disclosure, from page 1

Rule 2019, according to Richards, Layton & Finger, P.A. has been “a much-discussed issue over the last few years because [it] contains significant disclosure obligations that hedge funds and private equity firms, which often form *ad hoc* committees, often wish to avoid.”

But in *In re Washington Mutual*, however, Judge Walrath of the United States Bankruptcy Court for the District of Delaware took Rule 2019 a step further. “The decision is particularly important for financial institutions and investment funds...because members of the group could be found to be fiduciaries of all other members of the class, thereby exposing the *ad hoc* group to potential liability for any breach of that duty,” says Douglas P. Bartner, a partner in Shearman and Sterling’s Bankruptcy & Reorganization group.

Washington Mutual, Inc. (WMI), the former holding company of Washington Mutual Bank, began Chapter 11 proceedings in Delaware in September 2008.

At that time, counsel for a group of noteholders filed a notice of appearance and a verified statement listing 23 entities collectively holding more than \$1.1 billion in notes issued by WMI.

The notice indicated that each member of the noteholder group should make “its own decisions as to how it wishes to proceed and does not speak for, or on behalf of, any other creditor, including the other participants.”

The statement did not include the disclosure required by Rule 2019, so in response, in August 2009, JPMorgan Chase Bank, which had acquired the assets of Washington Mutual, filed a motion to compel the noteholder group to comply with Rule 2019.

The noteholder group first objected to the JPMorgan Chase request on the grounds that it was not subject to Rule 2019 because it was not an “entity or committee representing more than one creditor.” Instead, it claimed it was a “loose affiliation of creditors who, in the interests of efficiency, are sharing the cost of advisory services in connection with the case.” The court sided with JPMorgan Chase, reasoning that, because an *ad hoc* committee is a “loose affiliation” of creditors with an “at-will” membership, the noteholder group featured “virtually all the characteristics typically found in

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# Research Report

## Who's Who in Cooper-Standard Holdings Inc.

by Francoise C. Arsenault

*Cooper-Standard Holdings Inc. (Cooper-Standard) is a Delaware corporation with its primary place of business in Novi, Michigan. Cooper-Standard and its affiliates and subsidiaries are a leading global manufacturer of fluid handling, body sealing, and noise, vibration, and harshness control components, systems, subsystems, and modules, primarily for use in passenger vehicles and light trucks for global original equipment manufacturers (OEM) and replacement markets. Cooper-Standard conducts substantially all of its activities through its subsidiaries, which design and manufacture the company's products in each major region of the world. The company operates in 68 manufacturing locations and 10 design, engineering, and administrative locations around the world. The company operates in two divisions, North America and International, covering Europe, South America, and Asia. Cooper-Standard's main customers are OEMs, including Ford Motor Company, General Motors Company, Chrysler Group LLC, Audi, Volkswagen, BMW, Fiat, Honda, Mercedes Benz, Porsche, PSA Peugeot Citroen, Renault/Nissan, Toyota, and other Tier I and Tier II automotive suppliers.*

*In 2008, the company's products were found in 22 of the 25 top-selling models in North America and in 24 of the 25 top-selling models in Europe. As of August 4, 2009, Cooper-Standard employed approximately 18,000 workers worldwide. In its bankruptcy filing, Cooper-Standard listed approximately \$1.8 billion in debts and about \$1.7 billion in assets. The company, which was acquired by Goldman Sachs and the Cypress Group in 2004, reported revenues of approximately \$2.6 billion in 2009.*

*Cooper-Standard and 12 of its affiliates filed for Chapter 11 reorganization in the United States Bankruptcy Court for the District of Delaware on August 4, 2009. Cooper-Standard subsidiaries outside of the United States and Canada were not included in the filing. The company's Canadian subsidiary, Cooper-Standard Automotive Canada Limited, filed for reorganization on the same day under the Companies' Creditors Arrangement Act in the Ontario Superior Court of*

*Justice in Toronto, Ontario, Canada. The bankruptcy court approved up to \$200 million in DIP financing from a group led by Deutsche Bank for Cooper-Standard on September 2, 2009.*

*Cooper-Standard filed its first joint Plan of Reorganization and Disclosure Statement on February 1, 2010. An amended joint Plan of Reorganization was filed on March 20. On March 26, the bankruptcy judge approved the Disclosure Statement describing the amended joint Plan of Reorganization. A hearing date has been scheduled for May 12, 2010, to consider confirmation of the plan.*

### The Debtor

**James S. (Jim) McElya** is the Chairman and the Chief Executive Officer of Cooper-Standard Holdings Inc. **Lawrence Johnson** is Vice President for Operations. **Allen J. Campbell** is Vice President and Chief Financial Officer. **Timothy Hefferon** is Vice President, General Counsel, and Secretary.

The law firm of **Fried, Frank, Harris, Shriver & Jacobson LLP** is serving as the bankruptcy counsel to Cooper-Standard. **Gary L. Kaplan**, a partner in the New York office, and **Richard J. Slivinski** and **Peter B. Siroka**, associates in the New York office, are working on the case.

**Richards, Layton & Finger, PA** is acting as local bankruptcy co-counsel. The team includes **Mark D. Collins** and **Michael J. Merchant**, partners, and **Chun I. Jang**, **Drew G. Sloan**, and **Dana L. Reynolds**, associates.

**Foley & Lardner LLP** is serving as special counsel to Cooper-Standard for issues related to automotive restructuring. Working on the case are **Judy A. O'Neill**, **Steven H. (Steve) Hilfinger**, and **Ann Marie Uetz**, partners, and **John A. Simon**, senior counsel.

**Alvarez & Marsal North America LLC** is providing restructuring advisory services to Cooper-Standard, led by **Robert A. Campagna**, a Managing Director in the firm's New York office.

**Lazard Freres & Co. LLC** is acting as financial advisor and investment banker to Cooper-Standard. **Eric R. Mendelsohn**, a Managing Director with the firm, is part of the team.

**Ernst & Young LLP** is providing Cooper-Standard with tax advisory services. **Paul D. Chevalier**, a partner, leads the engagement.

**Jones Lang LaSalle Michigan LLC** is real estate consultant to Cooper-Standard. **James C. Becker**, head of the firm's business in Canada and Managing Director in the Detroit office, is directing the work.

**Duff & Phelps LLC** is providing Cooper-Standard with asset valuation services. **Steven Shanker**, a Managing Director in the Detroit office and leader of the firm's Enterprise Industry Program, heads up the team.

**Sitrick and Company Inc.** is acting as the corporate communications consultant to Cooper-Standard. **Michael S. Sitrick**, the firm's Chairman and Chief Executive Officer, leads the engagement.

### The Official Committee of Unsecured Creditors

The Committee includes **Wilmington Trust Company**, as indenture trustee; **Pioneer High Yield Fund**; **U.S. Bank National Association**, as successor indenture trustee; **TD High Yield Income Fund**; **United Steelworkers**; **EMS-CHEMIE (North America) Inc.**; and **Pension Benefit Guaranty Corporation**.

**Kramer Levin Naftalis & Frankel LLP** is serving as counsel. **Kenneth H. Eckstein**, **Thomas Moers Mayer**, and **Robert T. Schmidt**, partners, are working on the case.

**Young Conaway Stargatt & Taylor, LLP** is acting as co-counsel to the Committee. The team includes **M. Blake Cleary**, a partner.

**Bennett Jones LLP** is special counsel to the Committee to monitor the Canadian bankruptcy proceedings. **Kevin J. Zych**, a partner with the firm, directs the work.

**FTI Consulting Inc.** is providing the Committee with financial advisory services. **Michael Eisenband**, a Senior Managing Director in FTI's Corporate Finance practice, leads the engagement.

### The Trustee

The U.S. Trustee is **Roberta A. DeAngelis**.

### The Judge

The judge is the **Honorable Peter J. Walsh**. □

## Chrysler, from page 2

sale proceeds.”

On appeal, the Court of Appeals for the Second Circuit affirmed the bankruptcy court’s decision, holding that the asset sale was not a *sub rosa* plan and Chrysler’s secured lenders had consented to the sale free and clear of their liens despite their assertions to the contrary.

Smith says that the Second Circuit’s opinion made clear that while the facts in Chrysler were remarkable, the use of Section 363 to achieve the sale fell within precedent, including its 1983 *In re Lionel Corp.* decision.

The court did acknowledge the criticism of Section 363 asset sales – namely, “fear that one class of creditors may strong-arm the debtor-in-possession, and bypass the requirements of Chapter 11 to cash out quickly at the expense of other stakeholders, in a proceeding that amounts to a reorganization in all but name, achieved by stealth and momentum.”

However, the court noted that where the assets are perishable and a good business opportunity exists, a sale of those assets under Section 363 is warranted.

That was the case, said the Second Circuit, in Chrysler’s asset sale, because “the only possible alternative to the sale was an immediate liquidation that would yield far less for the estate – and for the objectors.”

Smith says it is unclear what impact the Chrysler sale will have on the use of Section 363 sales in future bankruptcies, given that the circumstances in this case were extraordinary.

But he does think the bankruptcy court’s *sub rosa* analysis is cause for concern by senior creditors who find themselves receiving less than full payment on their claims when junior creditors are receiving debt from or equity in the purchasing entity.

“The court has seemingly recognized an exception to principles of ‘absolute priority’ applied in the non-plan sale context,” he says. “A junior creditor may be able to receive equity or other consideration prior to senior creditors being paid in full if the junior creditor negotiates for such consideration directly from the purchaser itself, rather than from the debtor. How this arguable departure from well-settled principles of creditor ranking will develop in future cases involving asset sales remains to be seen.” □

## Scary Place, from page 2

the rejection date or date of turnover of the premises. Even while the debtor is considering whether to assume or reject, it is obligated to pay post-petition rent.”

### 4. DIP financing

Fourth, says Platt, debtor-in-possession (DIP) financing is limited and most lenders are unwilling to provide financing for anything other than a going-out-of-business sale. This, says Platt, leads to enormous pressure to liquidate. “A going-out-of-business sale takes approximately three months which consumes a substantial piece of the seven months (i.e., 210 days) maximum time before a lease must be assumed or rejected,” he says. “Where else can a going-out-of-business-sale be held than the debtor’s own stores? So there is enormous pressure to liquidate. This pressure is further exacerbated if the prime selling season – Christmas – is at all close. Consequently, there is little money available for a restructuring effort.”

All of these surprises, says Platt, may force companies into liquidation or asset sales under Section 363 of the Bankruptcy Code.

But the first two changes – payment of vendors in full for goods received within 20 days of filing and claims for utilities – are particularly problematic because they may easily lead a company to become administratively insolvent, a state that occurs when administrative expenses (which include professional fees and amounts owed for post-petition obligations) are so large that the estate is unable to pay them.

“The ideal reorganization outcome typical of the pre-BAPCPA Bankruptcy Code has become a relic from the past,” Platt laments. “In many cases, sales proceeds go to pay professional fees, some of the secured lender’s obligations and little else.”

According to Platt, if this occurs, a case may be converted to a forced Chapter 7 liquidation despite the fact that the firm might be economically solvent after reorganization because its future cash flows exceed the liabilities created as the firm exits bankruptcy. □

# Calendar

## Association of Insolvency & Restructuring Advisors

AIRA’s 26th Annual Bankruptcy and Restructuring Conference  
June 9-12, 2010  
Hyatt Regency La Jolla  
San Diego, CA  
Contact: [www.airacira.org](http://www.airacira.org)

## Turnaround Management Association

TMA 8th Annual Mid-Atlantic Regional Symposium

June 9-11, 2010  
Borgata Hotel, Casino & Spa  
Atlantic City, NJ  
Contact: [www.turnaround.org](http://www.turnaround.org)

## American Bankruptcy Institute

17th Annual Northeast Bankruptcy Conference  
Ocean Edge Resort  
Brewster, Massachusetts  
July 8-11, 2010  
Contact: [www.abiworld.org](http://www.abiworld.org)

## National Association of Bankruptcy Trustees

2010 Annual Conference  
September 29-October 3, 2010  
The Fairmont  
San Francisco, CA  
Contact: [www.nabt.com](http://www.nabt.com)

## Turnaround Management Association

TMA 2010 Annual Convention  
October 6-8, 2010  
JW Marriott Grande Lakes  
Orlando, FL  
Contact: [www.turnaround.org](http://www.turnaround.org)

## National Conference of Bankruptcy Judges

84th Annual Conference  
October 13-16, 2010  
New Orleans, LA  
Contact: [www.acbj.org](http://www.acbj.org)

## Renaissance American Management, Inc. and the Beard Group

17th Annual Conference on Distressed Investing  
November 29, 2010  
The Helmsley Park Lane Hotel  
New York, NY  
Contact: [www.renaissanceamerican.com](http://www.renaissanceamerican.com)

# Special Report

## Major Trade Claim Purchasers

<b>Firm</b>	<b>Location</b>	<b>Contact</b>	<b>Phone/Fax</b>
Acquisition Management, Inc. www.acqmgmt.com	Macon, GA	Don S. Morrow dsmorrow@acqmgmt.com	Tel. (478) 471-6484 Fax (478) 471-0367
Argo Partners www.argopartners.net	New York, NY	Matthew A. Gold matthew@argopartners.net	Tel. (212) 643-5444 Fax (212) 643-6401
Avenue Capital Group www.avenuecapital.com	New York, NY	David S. Leinwand dleinwand@avenuecapital.com	Tel. (212) 850-7524 Fax (212) 850-7584
Bankruptcy Creditors' Service, Inc. www.bankrupt.com	Fairless Hills, PA	Peter Chapman peter@bankrupt.com	Tel. (215) 945-7000 Fax (215) 945-7001
Bid4Assets, Inc. www.bid4assets.com	Silver Spring, MD	Catherine Norton cnorton@bid4assets.com	Tel. (301) 562-3407
Debt Acquisition Company of America www.daca4.com	San Diego, CA	Howard Justus hjustus@daca4.com	Tel. (619) 220-8900 Fax (619) 220-8112
Hain Capital Group, LLC www.haincapital.com	Rutherford, NJ	Robert J. Koltai rkoltai@haincapital.com	Tel. (201) 896-6100 Fax (201) 896-6102
Liquidity Solutions www.liquiditysolutions.com	Hackensack, NJ	David Fishel	Tel. (201) 968-0001 Fax (201) 968-0010
Madison Capital Management www.madisoncap.com	Greenwood Village, CO	Barbara A. O'Hare bohare@madisoncap.com	Tel. (303) 957-2000
Pioneer Funding Group, LLC www.pioneerfundingllc.com	New York, NY	Adam D. Stein-Sapir adam@pflc.com	Tel. (646) 237-6969
Riverside Claims www.riversideclaims.com	New York, NY	Neil Herskowitz info@riversideclaims.com	Tel. (212) 501-0990 Fax (212) 501-7088
Silver Point Capital www.silverpointcapital.com	Greenwich, CT	Brian A. Jarmain bjarmain@silverpointcapital.com	Tel. (203) 542-4032 Fax (203) 542-4100

# Worth Reading

## The Executive Guide to Corporate Bankruptcy

**Authors:** Thomas J. Salerno, Jordan A. Kroop, and Craig D. Hansen

**Publisher:** Beard Books

**Hardcover:** 724 pages

**List Price:** \$174.95

by Douglas Bacon, Partner, Latham & Watkins

The newly revised edition of *The Executive Guide To Corporate Bankruptcy* is perfectly timed. As the global economy continues to deteriorate, more and more companies are sinking into insolvency with executives at their helm who need a crash course in bankruptcy realities. This excellent book will quickly get both the seasoned executive and the uninitiated lawyer up to speed on the bankruptcy process.

Salerno, Kroop, and Hansen understand that the reorganization process can be intimidating, puzzling, and generally unpleasant. They penetrate the opaque gloom that some lawyers tend to perpetuate. Each chapter of this book addresses a different aspect of the reorganization process, beginning with an overview of the origins and purpose of U.S. bankruptcy laws and ending with a debunking of common myths about reorganization. In between, they discuss each chapter of the bankruptcy code, discussing the gamut from liquidations through Chapter 11 sales and full-blown reorganizations. The authors' ability to distill the bankruptcy code's complex language into comprehensible and manageable blocks of information makes the book extremely readable.

*The Executive Guide* is full of pragmatic advice. After laying out the essential elements and key players in the restructuring process, the authors get down to the nitty gritty of navigating a distressed company through reorganization. They realistically assess the challenges that an executive should expect to face in Chapter 11. They discuss how to assuage and balance the concerns of employees and key vendors, address the inevitable creditor dissatisfaction with executive compensation, deal with members of their professional team and work effectively as an executive whose actions will be constantly scrutinized and second-guessed. The authors also provide the cautionary note that "executives preparing to embark on a reorganization are usually too preoccupied with business emergencies to think about the personal toll that the process will exact."

One common flaw in books that try to be accessible while dealing with technical topics is that they fall short in providing the reader with a substantive understanding of the subject matter. *The Executive Guide to Corporate Bankruptcy* avoids this pitfall. The book's fourth and fifth chapters provide in-depth analysis of the strategic decisions and steps that should be taken during the restructuring process. The authors explain the importance that venue can have in a case, the intricacies of first day motions, and how to prepare for confirmation. There is a detailed discussion of the sale of assets during the course of a Chapter 11 restructuring and the importance of making sure that major constituencies are a part of the decision-making process. They also walk the reader through the specifics of a plan of a reorganization, explaining the dynamics of the negotiation process, especially how to understand and appreciate the needs of your constituents and how to get a plan confirmed.

The final section of the book includes a user-friendly glossary of commonly used bankruptcy terms and a reorganization timeline. It also includes sample documents such as debtor-in-possession financing agreements, operating reports, first day motions and orders, management severance agreements, and more. The summary of management incentive stock plans implemented in recent restructuring transactions is particularly informative. □

*Thomas Salerno is a partner in, and co-chair of, the International Reorganization Practice Group of Squire, Sanders & Dempsey. Jordan Kroop and Craig Hansen are partners in the firm's Bankruptcy Restructuring Group.*

This book may be ordered by calling 888-563-4573 or by visiting [www.beardbooks.com](http://www.beardbooks.com) or through your favorite Internet or local bookseller.

## Disclosure, from page 2

an ad hoc committee, save the name."

The noteholder group also objected to the JPMorgan Chase request on the grounds that Rule 2019, from a legislative perspective, was only intended to apply to "a body that purports to speak on behalf of an entire class or broader group of stakeholders in a fiduciary capacity with the power to bind the stakeholders that are members of such a committee." The court rejected this argument, claiming that because Rule 2019 was clear on its face, resorting to legislative history was not necessary (nor did it support the noteholder group's argument, anyway).

On January 20, 2010, in *In re Premier International Holdings*, another Delaware Bankruptcy Court judge, Judge Sontchi, also addressed the issue of what constitutes "a committee representing more than one creditor" under Rule 2019 – and came up with a different answer.

Finding the plain meaning of Rule 2019 dispositive of the issue, Sontchi held that a committee consists of "a group representing the interests of a larger group with that larger group's consent or by operation of law."

Essentially, the court held that if an informal committee does not represent anyone other than its members, then it is not a committee under Rule 2019 – and is thus not subject to Rule 2019's rigorous disclosure requirement.

However, Richards, Layton & Finger, P.A. notes that until the issue is resolved on appeal, there is now a split of authority in the Delaware Bankruptcy Court – and until the split is resolved, bankruptcy professionals will be in a quandary to decide whether to file Rule 2019 statements.

According to Bartner, the primary significance of Washington Mutual may be that the court observed *in dicta* that members of a class of creditors who act as a group may owe fiduciary duties to other members of that class even when they are not purporting to represent them. The Washington Mutual court cited three cases to support this proposition: *Young v. Higbee Co.*, *Official Committee of Equity Security Holders of Mirant Corp. v. The Wilson Law Firm, P.C. (In re Mirant Corp.)*, and *In re Northwest*

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# Special Report

## Top Internet Bankruptcy Resources

On-Line Source	URL	Summary of Site Contents
American Bankruptcy Institute	<a href="http://www.abiworld.org">www.abiworld.org</a>	Bankruptcy headlines and statistics, courts and opinions, conference information, bankruptcy research center, legislative news, bankruptcy-related organizations, international bankruptcy laws and news, online publications and resources, bankruptcy blog exchange.
The Bankruptcy LawTrove	<a href="http://www.lawtrove.com/bankruptcy">www.lawtrove.com/bankruptcy</a>	Hosted by the law firm of Swiggart & Agin. F/K/A The Bankruptcy Lawfinder. Contains statutes, regulations, courts and cases, government resources, products and services for bankruptcy professionals, as well as links to other bankruptcy sites and Internet resources.
Beard Group	<a href="http://www.beardgroup.com/bankruptcyInsolvency.php">www.beardgroup.com/bankruptcyInsolvency.php</a>	A definitive bankruptcy and restructuring resource with all-inclusive newsletters, books, conferences, audio conferences, prospectors, and one of the most comprehensive bankruptcy archives online.
BKInformation	<a href="http://www.bkinformation.com">www.bkinformation.com</a>	Source for Chapter 11 bankruptcy case information. Links to Chapter 11 cases, code, and rules. News link aggregation service providing links to bankruptcy-related news stories from publications around the world.
InterNet Bankruptcy Library	<a href="http://www.bankrupt.com">www.bankrupt.com</a>	Resource for worldwide troubled company information. Includes detailed information on commercial bankruptcies updated daily. Wide range of search functions. Detailed case-specific newsletters. Links to bankruptcy forums, local bankruptcy rules, conferences, periodicals, and books.
Legal Information Institute	<a href="http://www.law.cornell.edu">www.law.cornell.edu</a>	Academic source for federal statutes, agency regulations, judicial decisions, and rules. Site also covers state statutes, judicial decisions, and appellate decisions; links to other Internet bankruptcy resources.
Lexis-Nexis	<a href="http://www.lexisnexis.com">www.lexisnexis.com</a>	Provides authoritative legal sources, public records, company data, and business information. Tax and regulatory publications available online, in print, or on CD-ROM. Fee service.
New Generation Research	<a href="http://www.turnarounds.com">www.turnarounds.com</a>	Provides general information on commercial bankruptcy filings and the status of bankruptcy cases nationwide; most data available via subscription service, pay per document, and customized research.
PACER	<a href="http://www.pacer.psc.uscourts.gov">www.pacer.psc.uscourts.gov</a>	A service of the Administrative Office of the U.S. Courts, PACER (Public Access to Court Electronic Records) allows users to obtain case and docket information from U.S. district, bankruptcy, and appellate courts, and from a U.S. party/case index. Fee service.
Troubled Company Reporter	<a href="http://www.bankrupt.com/periodicals/tcr/tcr.html">www.bankrupt.com/periodicals/tcr/tcr.html</a>	Vital source of daily news and updates about companies throughout the United States, with assets of US\$10 million or more, that are reorganizing, restructuring, or showing signs of financial strain. Separate editions cover North America, Asia Pacific, Europe, and Latin America. Subscription service.
U.S. Courts	<a href="http://www.uscourts.gov/bankruptcycourts.html">www.uscourts.gov/bankruptcycourts.html</a>	Provides comprehensive menu of official bankruptcy forms, voluntary and involuntary petitions, schedules, proof of claim, notices and orders, and forms used in Chapter 7, 9, 11, 12, 13, and 15 cases. Source of bankruptcy statistics, federal court fees, and bankruptcy rules and regulations.
U.S. Trustee's Program	<a href="http://www.usdoj.gov/ust">www.usdoj.gov/ust</a>	A service of the Department of Justice's U.S. Trustee's Program. Links to each U.S. bankruptcy district. Nationwide office locator for U.S. trustees; regional staff directory. Information on bankruptcies, trustee's program, trustee's role in Chapter 11 cases.

## Gnome de Plume

### Play Defense

by Christopher Beard

A week ago, the European Central Bank together with the IMF finally made the big move and announced a massive bailout of the peripheral economies in the EU. They nearly lost control of the situation. While they were putting the bailout together, the weaknesses in the EU monetary structure became apparent to everyone. There are fiscal targets for individual countries, but no enforcement provisions. The Greeks don't want to take their medicine, and the Germans don't want to pony up for bailouts of spendthrifts.

When the crisis was in its infancy, Greece's Deputy PM Theodoros Pangalos told Reuters that the Germans took gold from the Bank of Greece during World War II and never gave it back. Last week, another Greek politician pointed out that Greece gave the world democracy and the world owes them. Just in case you thought there was some chance the Greeks were going to knuckle-down and change their self-indulgent ways.

A few weeks ago, the *New York Times* ran a drawing of the intra-country web of debt among members of the EU. It looked like a bowl of spaghetti. Everybody has borrowed money from everybody else, and the structure stays together so long as nobody talks about the quality of the obligations. Put the EU dysfunctional monetary system on your list of macro risks with short fuses.

I understand how the Germans feel. California has been over-spending in recent years too, and the state surely will be coming around for a handout soon. I don't want to contribute. Most states and municipalities are coming up short. Revenues are down, retiree benefits are huge, and infrastructure repairs can't be deferred forever. Add state and local governments to your list of systemic risks with short fuses.

Speaking of deficits, when the federal government announced its budget in January, President Obama said the U.S. deficits are unsustainable. A month later, under his leadership, the healthcare reform bill was passed, extending broad insurance coverage to 31 million new people, and Obama assures us the cost will be paid through the elimination of waste, fraud, and abuse, a program to be run by those same bureaucrats under whose leadership the waste, fraud, and abuse became a problem. Better add the federal government deficit to your list of systemic risks with short fuses.

Notwithstanding these evolving risks, many larger business enterprises have recovered from the recent financial crisis and the markets have enjoyed a big bounce. However, the stimulus has been an important factor, and low interest rates make businessmen and bankers look brilliant and give governments a breather. High unemployment, higher taxes, and normalized interest rates will present challenges to future performance and growth. And higher interest rates will send many equity investors back to bonds.

Taken together, there is a high probability there will be another financial crisis in the near future. There is no political will to reign in government spending. Shades of the obliviousness to the causes of the housing crisis remain, when generous mortgage loan terms were extended to bad credits. Expect political leadership to consist of aggressive Congressional investigations after the fact. And then there are black swans. And some are big.

Play defense. In the next few years you could lose whatever you salvaged from the 2008 financial crisis. □

*Christopher Beard is the publisher of Turnarounds & Workouts*

#### Future Issues:

- *Special Report: Bankruptcy Tax Specialists in Major Law Firms*
- *Special Report: U.S. Turnaround Firms With European Offices*
- *Research Report: Who's Who in Xerium Technologies, Inc.*

#### Disclosure, from page 6

*Airlines Corp.*

Bartner says the decision, while not binding on other courts, raises many intriguing questions. "How can creditors who are not purporting to represent an entire class of similarly situated creditors be saddled with the responsibility of representing the interests of creditors outside their group (particularly without compensation)? Must the members of a group forego their own individual interests for the collective good of the entire class? What liability attaches to members of a group who breach their involuntarily-assumed fiduciary duty?" he ponders. "It will be interesting to see how courts address these and other related issues."

Until the dust settles, Bartner says the court's ruling "should give pause to financial institutions and investment funds that are considering acting in concert with other similarly situated creditors in a Chapter 11 case."

First, he notes that membership in such a group may require disclosure of sensitive data – and a counterparty may gain an advantage by learning the acquisition cost of assets the fund is trying to sell.

Second, he notes that the disclosure requirement is a continuing obligation that requires periodic updating, thereby imposing administrative burdens.

Finally, he notes that the decision may impose fiduciary obligations upon members of a group to act in the interests of similarly situated creditors who are not part of the group – and this would inhibit members' ability to act in their own self-interest and expose them to potential liability for breach of duty.

"These disadvantages need to be weighed against the benefits of acting as a member of a group, such as the increased leverage that is gained in litigation and settlement negotiations, as well as a sharing of legal and financial advisory expenses," says Bartner. □