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A Guide to the Judicial Management of Bankruptcy Mega-Cases

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This publication is a product of a study undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been reviewed by Center staff, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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Introduction

Imagine a hypothetical bankruptcy judge who sits in a medium-size city in the Southeast. She has been on the bench for eight months, following twenty years as a corporate lawyer with occasional bankruptcy practice. Just starting to feel comfortable in her role as a bankruptcy judge, she comes to work one day and discovers that a major Chapter 11 case has just been filed in her district and has been assigned to her. The case involves a debtor with $300 million in assets; thousands of creditors, including tort victims all over the country; and thousands of employees whose jobs are dependent on the company's successful reorganization. Members of the press are already crowding into the clerk's office, and attorneys for the debtor are waiting to present the judge with orders to sign. What does the judge do?

Her first thought might be that this is supposed to happen in New York City, not in her town. Judges in New York City are accustomed to this sort of case; her district is not equipped to handle one. But she soon realizes that there is no provision for the transfer of all mega-cases to the Southern District of New York and that wishing for the case's disappearance will not make it happen. She accepts that she will have to manage this monster case herself, and she vows to do so with as much efficiency and fairness as possible. She recognizes, however, that she will need help in achieving her goal.

Where does the judge turn for help? A quick perusal of the Bankruptcy Code and Rules confirms her impression that they contain no special provisions governing mega-cases. Moreover, she realizes that many of her immediate concerns deal with practical matters not likely to be addressed by statutes or rules. What she really wants to do is talk with judges who have been through this experience and find out from them what to expect and how various problems might be dealt with. Yet she is hesitant to bother an overworked judge whom she does not know, especially when she is not sure at this point what her problems might be.

Concerns such as those of this hypothetical judge were the stimulus for this guide. A mega-case can be overwhelming for any judge, whether the judge is newly appointed or has years of experience on the bench. Although each case is different, there are many issues that are common to all mega-cases. Thus, a pooling of knowledge held by the experts—judges who have successfully handled mega-cases—can provide a valuable resource, even if not a definitive blueprint, for all cases.

With the goal of developing such a resource, the Federal Judicial Center convened a conference of bankruptcy judges in Breckenridge, Colorado, in August 1990. Selected to attend were twenty-four bankruptcy judges from around the country who had handled or were in the midst of handling at least one mega-case. In the announcement of the conference, the term *mega-case* was defined as "a bankruptcy involving a debtor with assets of at least $100 million." The majority of the participants had handled only one or two such cases, but a few had handled ten or more. Included in the group of participants were some judges who were relatively new to the bench and others who had served for many years.

The participants spent three days in roundtable discussions, talking about the issues they had encountered in handling their mega-cases. On some issues, there was a consensus about how to deal with the problem; on many issues, a variety of approaches were suggested. Frequently it was concluded that there were no clear-cut answers, but ideas were exchanged about possible solutions. Most participants felt encouraged by talking with others who had struggled with the same problems

they had confronted and felt enlightened by the sharing of ideas.

This guide is an attempt by the reporter for the Breckenridge Conference to memorialize the substance of those discussions. It is intended to serve at least as a starting point for a judge faced with the difficulty of handling a bankruptcy mega-case. It is not and cannot be a do-it-yourself manual, with complete instructions for the court from case filing to case closing. Each mega-case is different and can present unique problems or legal issues never before confronted. Therefore, this guide points out issues likely to arise in mega-cases and indicates how courts have dealt with them. Sample orders and decrees are included to illustrate the approaches that some courts have taken.

Of course, much of what is said in this guide reflects general principles of litigation management and may be useful in smaller cases as well. The Center's forthcoming *Manual for Litigation Management and Cost and Delay Reduction* may serve as a general reference in managing litigation of any size and scope.

I. The Petition Hits

Handling Initial Problems

Pre-filing planning

Planning for a mega-case may begin before the petition is actually filed. Often the clerk's office will receive advance word that a big filing is being contemplated. Because some rumors of a bankruptcy filing turn out to be false or the debtor may decide to file the petition in another district, the bankruptcy court should probably not take any action until there is a real reason to believe that a mega-case will be filed in that district. Once the likelihood seems sufficiently great, the clerk's office can take some pre-filing steps that will contribute to the ease of proceedings in the early days of the case.

The clerk can assess the staff's capacity to handle the mega-case and determine the additional personnel and resources that will be needed. The clerk will then be prepared to make prompt requests of the debtor or others for necessary assistance. Preparations for the filing itself and the immediate aftermath can also be made. For example, the clerk may want to acquire an answering machine for responding to phone inquiries about the filing and may want to make arrangements with the debtor's attorney for a press release to be issued immediately upon filing. If a Chapter 9 case filing is anticipated, the clerk should alert the circuit executive in order to expedite assignment of the case by the chief judge of the court of appeals once the petition is actually filed. The clerk can also begin the steps necessary for securing an outside service to handle the copy requests in the case.

Of course, even if no advance word of the filing is received, a mega-case can be handled with less disruption to the court if thought has been given to the procedures that should be followed in the event that the district receives such a case.

The filing

Lawyers for the debtor might contact the clerk to make special arrangements for filing the mega-case. Often they will want to file in the evening or on weekends, when the clerk's office is closed, in order to minimize impact on the stock market or prevent imminent seizures of assets. Because Bankruptcy Rule 5001 provides that "[t]he courts shall be deemed always open for the purpose of filing any pleading or other proper paper," the clerk is authorized to permit a mega-case filing when the clerk's office is closed. Moreover, allowing such a filing may eliminate disruption in the clerk's office that might result from a filing during normal office hours.

Although attorneys might attempt to file the petition directly with a bankruptcy judge in order to get first-day orders signed immediately, it is good practice to require that the attorneys file with the clerk in order to eliminate the possibility of "judge shopping." Thus, if the lawyers contact a judge directly and seek to make arrangements to file, the judge should refer them to the clerk, who can determine whether there is a necessity for filing when the clerk's office is closed. If once the case is filed there is a need for a judge to rule on emergency motions, the clerk can locate a judge for this purpose. However, the case should be assigned during regular office hours, using the usual random system.

Case assignment

Districts use various methods of assigning cases, although most methods share the feature of being random. In districts that handle a large number of mega-cases, it is especially important that the randomness of the assignment system be apparent. Otherwise, attempts may be made to manipulate the system to obtain or avoid a particular judge, or

questions may be raised about whether such manipulation has occurred. To eliminate such possibilities, one district with an unusually large number of mega-cases uses a computerized random-selection system. A computer in Washington, D.C., randomly draws the names of the district's bankruptcy judges (limited by the restriction that a judge may not be selected more than two times in a row) and prints out each name on a sheet placed within a sealed envelope. The envelopes are then sent to the district, where the clerk's office assigns cases by stamping the case number on the envelope before it is opened. After a case is assigned, any necessary recusals can be made. If a mega-case consists of several related filings, as it often does, one judge should be assigned the entire group.

Organizational meeting

Shortly after the filing of a mega-case, it will frequently be useful for the clerk to meet with the debtor's lead attorney, the U.S. trustee (or assistant), a representative of the unsecured creditors' committee, if one has been designated, and court administrative personnel in order to formulate plans for the smooth handling of the case. If the clerk has not already communicated to the debtor the ways in which the debtor's assistance will be needed by the clerk's office pursuant to 28 U.S.C. § 156(c), this meeting will provide the opportunity to do so. In addition, a procedural order governing the responsibility for providing notice, the method of handling claims, and other special procedures for the case can be prepared at this time for submission to the bankruptcy judge to whom the case has been assigned.

Use of outside facilities and services

Because a mega-case imposes extraordinary burdens on a bankruptcy court, the court will need additional resources to handle the case. The Administrative Office of the U.S. Courts is unlikely to be able to provide all of these resources. The court will need to enlist the assistance of the bankruptcy estate itself in securing additional personnel, equipment, and facilities. Congress authorized such assistance in 1984, when it enacted 28 U.S.C. § 156(c). This provision permits a bankruptcy court to use facilities and services paid for out of the assets of a bankruptcy estate and not charged to the United States, subject to limitations imposed by the circuit council. The statute authorizes these facilities and services to be located on or off the court's premises and provides that this assistance may be used in connection with "the provision of notices, dockets, calendars, and other administrative information to parties" in bankruptcy cases.

In March 1989 the Judicial Conference of the United States promulgated guidelines to implement section 156(c). These guidelines are helpful in explaining what assistance a court may obtain from the estate and what procedures must be followed in doing so. The Judicial Conference acknowledged that "[t]he need for such outside services is most prevalent in so-called 'mega-cases' . . . [because] [t]he staffing levels of bankruptcy clerks' offices sometimes cannot absorb such dramatic increases in workloads." The guidelines, which are presented as Exhibit I-1, are referred to in this guide as each form of assistance they cover is discussed.

At the outset of a case, the extent to which there will be a need to invoke section 156(c) may not be apparent. The court may need to solicit information from the debtor concerning the magnitude of the case to determine whether outside assistance will be required. Exhibit I-2 is a packet of materials one district sends to debtors whose cases potentially necessitate use of section 156(c) procedures. Among other things, it seeks information that will enable the court to determine whether an outside agent for noticing and claims processing will be required and provides guidelines for using such an agent.

Personnel. The court may rely on section 156(c) to require the debtor to provide additional personnel to assist in the administration of the mega-case. Generally, these personnel are selected by the debtor, subject to the approval of the clerk or bankruptcy judge. To maintain impartiality, it is important that these employees understand that, although they are paid by the estate, they represent the clerk and are not to receive instructions from or provide favorable treatment to either the debtor or the trustee. They should not work for the debtor at the same time they are assisting the clerk's office, and to avoid the appearance of favoritism, it is desirable that they not be former employees of the debtor.

These persons are not government employees, since they are not paid by the United States. The Judicial Conference's guidelines provide that they should not be administered oaths of office, since doing so may give the erroneous impression that they are government employees. Instead, the guidelines suggest that these "special employees of the estate" be given a written waiver to sign, whereby they waive any claim or right to receive compensation from the federal government for their services. The waiver should also include the employees' agreement to refrain from engaging in public comment about a pending or impending matter before the court and from disclosing to anyone or using for personal gain any confidential information received in the performance of their duties. (Exhibit I-3 is a sample waiver form for special employees.) The guidelines also state that, because these persons are not government employees, the clerk may not fire them. The clerk may, however, instruct the debtor to do so if they do not adequately perform their duties.

Whether these special employees work on or off the premises of the bankruptcy court, the clerk is responsible for supervising their work. The comments accompanying the Judicial Conference's guidelines point out that for ease of supervision it is preferable that these employees work in the clerk's office. It is recognized, however, that there will not always be sufficient space to accommodate them. Depending on the background of the employees, the clerk may need to assign an experienced member of the clerk's office to supervise them and may find it desirable to provide a short training period for them.

Filing and claims processing. Section 156(c) provides authority for delegating various document-maintenance tasks to an outside agent paid by the estate. (Exhibit I-4 is a sample order appointing an outside claims agent.) Under section 156(e), however, the clerk remains the official custodian of the court's records and dockets. Accordingly, if an outside agent is used, the clerk will have to take steps to ensure the security and integrity of these records. (Exhibit I-5 is a sample memo to an outside claims agent regarding guidelines for implementation of 28 U.S.C. § 156(c).)

When the personnel employed by the estate work in the clerk's office, the clerk should supervise their work. If the records are maintained outside the clerk's office, the clerk will need to require the implementation of safeguards to protect the records and establish a system for monitoring the work of the outside agent. For example, if an outside claims processing agent is used, the clerk can insist that the agent provide acknowledgments of receipt of the claims. Creditors can be informed that they should contact the clerk if they do not receive an acknowledgment within a stated amount of time after filing a proof of claim. In addition, the clerk can perform random checks at the claims processing facility, pulling claims and checking to make sure information is properly recorded.

The Judicial Conference's guidelines provide that proofs of claim and all other papers in the case must be filed with the clerk's office, but once they have been filed and their receipt noted, the clerk, upon order of the court, may turn them over to an outside agent for maintenance. Because Bankruptcy Rules 3002(b) and 5005(a) require that case papers be filed with the bankruptcy clerk

(unless permitted by a judge to be filed directly with the judge), the guidelines do not allow the court to streamline this procedure by permitting filing directly with the outside agent. However, the debtor may be required to rent a special post office box for receipt of proofs of claim or other papers, thus permitting mega-case filings to be kept separate from all other mail. Special employees of the estate can be used to transport the papers from the post office box to the clerk's office. Once the papers are in the clerk's office, other special employees can date-stamp them and, if desired, microfilm them before they are permitted to be released from the clerk's custody. (Exhibit I-6 is a sample letter to the debtor's attorney from the clerk explaining the debtor's responsibilities under section 156(c).)

Section 107 of the Bankruptcy Code provides that papers filed in a bankruptcy case are public records and shall be open to examination by any entity at reasonable times without charge, unless the court orders otherwise. Accordingly, the clerk must ensure public access to papers even if they are maintained by an outside agent. The comments accompanying the Judicial Conference's guidelines state that papers maintained by an outside agent "should be available for review at that location during normal business hours." The comments also note, however, that because the agent's location may not be convenient for the parties, the clerk's office should "attempt to make as much information available as is possible." For example, if the claims are processed and maintained by an outside agent, the clerk's office should have available a current claims register, which can be examined by the public.

Once a mega-case is concluded, the clerk is responsible for the proper disposition of the papers filed in the case, including those maintained outside the clerk's office. Accordingly, the order authorizing the use of an outside agent or the guidelines the clerk gives the outside agent might specify the final disposition of the records. In any event, the clerk needs to consider in advance what ultimately will be done with the avalanche of papers filed.

Copying services. The clerk's office will not be able to handle all the requests for copies of filed documents in a mega-case, and thus it will be desirable for the clerk to contract with a commercial copy service to provide this service. Not only will use of an outside copy service free up the time of the clerk's office, it is also likely to result in a cost savings to persons requesting copies.

The Judicial Conference's guidelines stress the importance of avoiding the appearance of favoritism in the selection of a copy service. Because this can be a lucrative opportunity for the private business selected, the guidelines advise the clerk to obtain written proposals for the work from any qualified copy services that are interested. If the clerk anticipates that more than $25,000 worth of copies will be requested during the course of the mega-case and if time permits, written requests for proposals should be sent to each of the local copy services deemed capable of handling the needs of the case. The guidelines further suggest that, if time permits, the clerk send the written proposals that are received to the Contracts Branch of the Administrative Office's Contracts and Services Division for review. In many mega-cases, because of advance notice to the clerk's office, solicitation of a copy service can be made prior to the case filing on a contingent basis. If, however, a mega-case is filed without advance warning and time does not permit these more formal procedures, the clerk may solicit proposals orally and document that solicitation and the responses.

The outside copy service chosen for the mega-case should be designated by court order. (Exhibit I-7 is a sample order designating an outside copy service.) The order should require that the parties provide an extra copy of all case filings except proofs of claim, so that the copy service will be able to maintain a duplicate case file. The copy

service can send a messenger to the clerk's office on a regular basis (once or twice a day) to pick up its copies of case papers and a current docket sheet. Interested persons can then be informed that they must contact the copy service directly for any copy requests related to the mega-case. Requests can be made for copies of specific documents, or parties can place standing orders for copies of documents in the case. The request for proposals or the order designating the copy service might also require the service to make its case file available for inspection by interested parties during normal business hours at no charge.

Noticing. Because the number of parties that must be given notice of various actions taken in a mega-case will be quite large, the clerk's office will probably not be able to provide notices itself. Bankruptcy Rule 2002 provides that notice shall be given by "the clerk, or some other person as the court may direct." Thus, in a mega-case the clerk may ask the bankruptcy judge to place the noticing obligation on the debtor, or some third party hired by the debtor. This designation should be made by court order, which specifies the exact responsibilities imposed. (Exhibit I-8 is a sample order directing the debtor to give notices.)

Because the debtor's costs of providing notice will be payable as an administrative expense, efforts should be made to reduce the scope of notice to the extent practicable and permitted by the Bankruptcy Rules. The court should establish a hierarchy of service lists, specifying the applicability of each. (Exhibit I-9 is a sample order establishing notice procedure.) These lists can be updated and "swept clean" throughout the life of the case. Generally, courts will designate a "short list" of persons to receive all notices. For some matters notice will also be required to be sent to all persons who have served on the debtor and filed with the clerk a request to receive notices in the case. The court should specify those matters all scheduled creditors and equity security holders should receive notice of. Parties desiring notice under circumstances not required by the court's order may obtain copies of the docket sheet from the copy service and purchase copies of documents from it.

If the noticing duty is placed on the debtor or the debtor's agent, the clerk should take steps to ensure that the duty is properly carried out. The Judicial Conference's guidelines provide that the bankruptcy court or clerk should approve the form and content of any notice not provided by the clerk's office and should require for each notice served that a certificate of service be filed, including a copy of the notice and a list of persons served. If the service list is especially long, the court may require that it be provided on microfiche, so as to reduce the amount of file space devoted to the case.

Additional equipment and facilities. As authorized by section 156(c), the court may require that the estate provide or pay for additional equipment needed by the clerk's office to handle the mega-case. Such equipment might include computer hardware or software, filing cabinets, telephone answering machines, or microfiche equipment. Also within the scope of section 156(c) would be a court order requiring the estate to bear the cost of additional telephone lines dedicated exclusively to the mega-case. Such lines would enable the clerk's office to maintain a hot line, with a recorded message giving current information concerning the status of the mega-case, and would permit the regular clerk's office lines to be used for other court business. When a mega-case necessitates additional work or storage space for the clerk's office, the estate may also be required to pay for the rental of additional facilities.

The Judicial Conference's guidelines state that when the clerk's office procures equipment or facilities pursuant to section 156(c), the vendor or lessor should be informed that the estate, not the bankruptcy court, is responsible for payment. At the end of the mega-case or when the equipment is no longer needed by the clerk's office, any equip-

ment purchased by the estate should be returned to the debtor.

First-day orders

Typically, immediately upon filing a mega-case, the debtor will ask the bankruptcy judge to rule on a variety of motions affecting the debtor's ability to conduct the bankruptcy proceedings and to continue its business operations with minimal disruption. (Exhibit I-10 presents sample first-day orders.) In some instances the relief sought will be clearly authorized by existing law; in other instances the debtor may be seeking modification of normal requirements because of the unique circumstances presented by the mega-case.

Because the bankruptcy judge will be asked to rule on the motions with little or no notice to other parties in interest, the motions should be carefully scrutinized to determine not only whether the relief sought is justified, but also whether the debtor has shown a need to act without greater notice and opportunity for a hearing. Even if the judge determines that a particular motion should be granted, consideration should be given to placing time limits on the order's duration or to delaying implementation of the order so that notice can first be given to appropriate parties. In any event, notice of the entry of the orders should be immediately provided to at least the U.S. trustee and the twenty largest creditors, and any objections raised should be promptly considered.

Some of the motions will be for first-day orders of a routine nature. For example, the debtors in the related cases constituting a mega-case will undoubtedly seek court approval for joint administration of the cases. Bankruptcy Rule 1015(b) authorizes the joint administration of the estates of affiliated debtors if petitions are pending by or against them in the same court. The rule directs the court, in ruling on a request for joint administration, to consider how to protect creditors of the various estates against potential conflicts of interest. As the comments to Rule 1015(b) point out, the related cases are joined under a single docket number for administrative purposes only. By combining the listing of filed claims, the giving of notices, and the handling of other administrative matters, the court can complete the mega-case more expeditiously and at less cost than if it administered each related case separately.

Other routine first-day orders are approval of the debtor's retention of counsel or other professionals, pursuant to Bankruptcy Code §§ 327 and 1107, and a "belts and suspenders" order imposing by judicial restraining order the same injunctive relief made automatically applicable on filing by Bankruptcy Code § 362. The latter order, though legally redundant, serves to underscore the protection of the debtor and the estate provided by the bankruptcy filing. Before signing such an order, however, the court should ensure that it does not have the undesired effect of bringing within the scope of the restraining order acts excepted from the automatic stay by section 362(b).

Because of the complexity of a mega-case and the large size of a debtor's business enterprise, the debtor may seek to deviate from various requirements usually applicable in the bankruptcy court. For example, the debtor might seek a first-day order lengthening the time periods for filing various schedules or lists of information. In ruling on such a motion, the bankruptcy judge will have to balance the needs of the court and other parties against the practical difficulties inevitably encountered in a bankruptcy of this magnitude. Among other considerations the judge should take into account is the amount of pre-filing preparation time available to the debtor.

The debtor might also seek some relief from Bankruptcy Code or Rule provisions to minimize the disruption of its business operations. The bankruptcy court should be especially cautious about ruling on motions of this type on an ex parte basis. The court should consider whether and under what circumstances the court is authorized to allow departures from the requirement in question,

whether it is feasible to provide notice to some parties in interest before ruling on the motion, and whether time limitations should be imposed on the duration of the requested relief. Representative of this type of first-day order are cash-management orders, authorizing the continued consolidated management of the cash of affiliated companies; approval of the debtor's investment guidelines, including waiver of Bankruptcy Code § 345(b)'s bond requirement; orders authorizing the immediate payment of pre-petition wages and employee benefits out of estate assets; and orders permitting the debtor to maintain its pre-petition bank accounts and to use its existing checks and business forms.

Managing the Courtroom

Early hearing on administrative matters

Because lawyers involved in a mega-case are frequently from out of town, they will not be familiar with the local practices of the bankruptcy court and the preferences of the judge to whom the case has been assigned. For that reason, as well as the logistical complexity of a mega-case, it will be useful for the bankruptcy judge to hold a hearing on administrative matters as early in the case as possible. At this time, the court can set up noticing and filing requirements; establish procedures for scheduling and hearing motions; and announce ground rules concerning the need for local counsel, methods of presenting evidence, contacts with the court, and other administrative matters.

Recognizing that a mega-case has the potential to spin out of control, the court should use this administrative hearing to establish that it is in charge and that the attorneys will not be permitted to set the pace of the case. Establishing at the outset regular and frequent days for status conferences and motions hearings is often essential to the successful management of a mega-case. The matters resolved at the first administrative hearing should be set forth in an administrative order, which can be supplemented by additional orders as the case proceeds. (Exhibits I-11 and I-12 are sample initial administrative orders.)

Scheduling of motions

To handle the large volume of motions filed in a mega-case, many courts have found it useful to set aside certain days each month or each week exclusively for hearing motions in the case. Because the lawyers will know in advance what hearing days are available, they can schedule motions themselves, thus reducing the burden on the court and the clerk's office. By administrative order, the court can specify the amount of notice that the movant must give opposing parties and when any opposition must be filed. The required notice should be sufficiently long to ensure adequate opportunity to respond as well as adequate opportunity for the parties to explore settlement. (Exhibit I-13 is a sample administrative order for the scheduling of motions.)

The motions hearing procedure should specify who has the burden of informing the court of matters that have been settled and thus should be removed from the hearing calendar. For example, the day before each hearing date the debtor's attorney might be required to advise the court of the status of each scheduled motion. A method should then be established that would enable other attorneys to learn what will be heard the next day, so that unnecessary travel can be avoided. Some courts use a recorded phone message for this purpose; others use LEXIS or Westlaw to publish the agendas of mega-case motions hearings.

The location of the motions hearings can present problems because of the large number of lawyers and parties frequently in attendance. The bankruptcy judge's courtroom may not be adequate to handle the crowd. If so, the district court may be willing to make available a larger courtroom, or help might be available from the circuit executive. The judge should also consider in advance the seating arrangements for the various

parties and lawyers. To eliminate lawyers' attempts to jockey for position in the courtroom, the court should specify where the debtor and committees will sit and where the parties making or responding to motions will stand.

After all scheduled motions have been heard, the bankruptcy judge may use the hearing date for announcements in the case or consideration of any administrative details that need to be taken care of.

Case management

Generally, courts have found that keeping mega-cases separate from the regular flow of the clerk's office is an efficient practice. Ideally, one person in the clerk's office can be placed in charge of the case. This person, who may be a regular employee or someone hired by the debtor specially for the case, will become familiar with the case and its history, the lawyers involved, and the current status of the docket.

It is also desirable for the bankruptcy judge to have one law clerk and one courtroom deputy clerk who are responsible for the mega-case. It will be helpful for the judge to hire an additional law clerk and a courtroom deputy who will work exclusively on the mega-case so long as the workload justifies their full-time assistance. The circuit executive may be able to provide some assistance in making funds available to hire the additional personnel, although there are some practical problems involved in attempting to hire a highly qualified law clerk with little advance notice and uncertain job tenure. Some judges have successfully used law student interns to assist with mega-cases. The Administrative Office may be able to assist in the authorization of a temporary courtroom deputy clerk.

The complexity and number of matters to be litigated in a mega-case necessitate that the bankruptcy judge use effective case-management techniques. In an adversary proceeding, Bankruptcy Rule 7016, which incorporates Fed. R. Civ. P. 16, authorizes the judge to take actions to expedite the case, including facilitating settlement. The rule requires that the court issue a scheduling order for all actions except those falling within exempted categories. This order must set time limits for the joinder of parties, amendment of pleadings, filing and hearing of motions, and completion of discovery. The order may also set pretrial conference and trial dates and include "any other matters appropriate in the circumstances of the case."

Rule 7016 also authorizes the bankruptcy judge to conduct pretrial conferences to identify the factual issues worthy of trial and the legal issues to be resolved, dispose of pending motions, and explore settlement possibilities. Some pretrial conferences will be appropriate for chambers; others will involve so many parties that they will have to be conducted in the courtroom. Although Bankruptcy Rule 9014 does not make Rule 7016 applicable to contested matters, it does provide that the "court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply." Thus, if a judge found that conducting a pretrial or settlement conference or issuing a scheduling order would facilitate the resolution of a contested matter in a mega-case, the judge could direct that Rule 7016 be applied.

Transcripts and docketing

Because of the degree of interest in all proceedings in a mega-case, it will frequently be desirable for attorneys to obtain transcripts of proceedings promptly. Some courts have arranged for all hearings, conferences, and adversary proceedings to be transcribed promptly by having the court reporter send the tapes and notes to the transcribing agency by overnight courier. The completed transcript is then returned to the court by the same method within seven days. Lawyers for various parties may have a standing order with the transcribing agency for a transcript of every proceeding in the mega-case.

Prompt docketing of filings in a mega-case is also essential to smooth management. To facilitate the location of documents, the court might use a subfile docketing system. Rather than being filed in chronological order by the date filed, the papers are placed in individual subfiles by subject matter. Thus, all motions to employ professionals are filed under one subfile number, and all motions for relief from the stay under another. Each subfile has its own mini docket sheet. (Exhibit I-14 is a sample subfile listing.) Some courts have found that numerical tabbing of filed documents also facilitates the retrieval of information by court staff.

Relations with the press and public

Because of the interest created by a bankruptcy mega-case, the court may receive many inquiries about the case from the media and the public. Codes of conduct for judges and clerks require abstention from public comment on pending cases. Thus, it will frequently be appropriate to refer questioners to the debtor's attorney or the trustee. The clerk's office can provide information about matters of public record and can invite inspection of the docket and case files. If the demand becomes too great, however, the clerk may need to limit the hours of inspection in the clerk's office and require the third-party custodian of case files to provide public access. The court can also use a telephone hot line with a recorded message to provide information about the status of the case and upcoming hearing dates. (Exhibit I-15 is a sample notice the court can send interested parties regarding how to obtain information about a mega-case.)

The court may also find it desirable to provide the media with general background information about bankruptcy proceedings. For example, the court can distribute fact sheets explaining the general nature of Chapter 11 proceedings and how Chapter 11 differs from the more familiar Chapter 7. Some districts periodically hold a "press day" to educate members of the media about the bankruptcy process, outside the context of a particular case. If a judge wants to make sure that the press understands a particular action taken in a mega-case, an explanation can be given on the record in open court, or a phone recording can be made, explaining the action.

In addition to creating a demand for access to information, a mega-case may give rise to requests by various parties to exclude certain information from public access. Particularly when prominent individuals are involved or trade secrets are at issue, parties may request that records be sealed to protect privacy. Generally, hearings ought to be conducted in open court, and the sealing of case records ought to be rare. Except when the Bankruptcy Code or Rules expressly provide for protection against disclosure of certain information (e.g., 11 U.S.C. § 1113(d)(3)), the bankruptcy judge should be guided by the district court's case law governing the sealing of records. *See, e.g., Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597–99 (1978); *United States v. Hickey*, 767 F.2d 705, 708 (10th Cir. 1985).

II. The Initial Battles

Dealing with Special Interest Groups

The number of players the court must deal with is multiplied in a mega-case, and because the stakes are so high, the vigor with which various groups assert their interests is likely to be intensified. Although the parties in interest vary from case to case, certain categories of parties are typically involved in a mega-case, each raising its own distinctive set of issues.

Regulatory bodies

The filing of a mega-case can give rise to jurisdictional conflicts between the court and regulatory agencies at the local, state, and federal levels. The basic issue the court will have to resolve is whether regulatory actions affecting the debtor should be allowed to continue despite the bankruptcy, or whether these actions would be so detrimental to the reorganization process that they should be enjoined. Because regulators sometimes have little familiarity with the bankruptcy process and tend to view the public interest solely from the perspective of their particular statutory duties, the court may have difficulty in enlisting their cooperation with the reorganization.

An agency that wants to commence or continue a regulatory action against the debtor will rely on the automatic stay's exception for the exercise of a governmental unit's police or regulatory power. The court may therefore be called on to determine whether the Bankruptcy Code's § 362(b)(4) exception applies to the particular proceedings in question. *See Board of Governors of the Federal Reserve System v. MCorp Financial, Inc.*, 112 S. Ct. 459 (1991) (exception applies without bankruptcy court's examination of legitimacy of agency's actions). Even if section 362(b)(4) applies, the analysis is usually not at an end, because the debtor may seek to have the court enjoin the regulatory activity pursuant to section 105. A number of courts have recognized the bankruptcy court's authority to enjoin regulatory activity that interferes with the proper functioning of the provisions of the Bankruptcy Code.

The debtor seeking injunctive relief will have to satisfy the usual injunction standards—likelihood of success on the merits (probably meaning in this context a successful reorganization), irreparable harm without the injunction, balance of harms favoring the moving party, and public interest favoring injunctive relief. In assessing the public interest, the court should consider what must be done to protect the public interest served by the regulatory agency and what must be done to protect the public interest in achieving a successful reorganization. Because of the difficulty of this balancing process, the case law does not lend itself to any clear formula. All that can be said is that injunctive relief against regulatory activity is more likely to be granted when there is a clear reorganization goal that is threatened by the activity.

When the regulatory body acts pursuant to state law, additional statutory authority must be considered: 28 U.S.C. § 959 provides that a trustee appointed by a federal court or a debtor in possession "shall manage and operate the property in his possession . . . according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." Thus, the state or local regulatory agency can argue that the pendency of the bankruptcy proceedings does not exempt the debtor from compliance with state law and that therefore the regulatory actions should be allowed to go forward unimpeded. Bankruptcy courts have not read this provision absolutely, however. In

some circumstances the operation of state regulatory law will be found to be in such conflict with federal bankruptcy law as to be preempted. But when the agency is acting to protect public health or safety, bankruptcy courts have been especially reluctant to interfere with the regulatory activity.

When the regulatory body is a federal one, it will rely on its own statutory authority as being at least coequal to the authority of the bankruptcy court. In some cases the agency may be able to rely on statutory authority giving it exclusive jurisdiction over the administrative matter in question. When such authority exists, the bankruptcy court's concurrent jurisdiction over matters in the bankruptcy case will not override the agency's exclusive authority, and the agency will be able to proceed without interference from the court. *See MCorp,* 112 S. Ct. at 465. Even if the agency's jurisdiction is not exclusive, the court will have to determine whether the provisions of the Bankruptcy Code can be harmonized with the provisions of the federal statute under which the regulator acts. Usually, courts are reluctant to disturb the regulatory proceedings. Several courts, however, have held that the bankruptcy court has authority under section 105 to enjoin federal regulatory action when such action "threatens" the assets of the bankruptcy estate. *See, e.g., NLRB v. Superior Forwarding, Inc.,* 762 F.2d 695 (8th Cir. 1985). Whether the impact on the estate rises to the level of a real threat is a question of fact to be determined by the bankruptcy judge on a case-by-case basis.

In dealing with the regulatory bodies involved in a mega-case, the bankruptcy judge may find it worthwhile to educate the regulators about the bankruptcy process. To prevent the reorganization from being derailed by unnecessary proceedings and appeals, the judge should ensure that the regulatory bodies have a complete understanding of the goals and procedures of the bankruptcy case. The judge, in turn, needs to make sure that he or she has an adequate understanding of the regulatory context in which the debtor operates. Sometimes the regulatory law may be so complex that the judge will want to appoint an examiner or court expert to educate the court about governing state or federal regulatory law.

Unions

The bankruptcy of a major business enterprise is likely to involve the participation of one or more labor unions. Among the issues frequently presented is the appropriate role of the union in the case. For example, the court may be called on to decide whether a union is eligible for membership on a committee of creditors or whether the union may file a class claim on behalf of its members. If the union is permitted to file a class claim, the court may have to decide whether it may file a plan based on the class claim. Courts have reached different conclusions about these issues.

The debtor's dealings with a union may also give rise to substantive issues that will be presented to the court. The debtor may seek to reject the collective bargaining agreement pursuant to section 1113, or it may seek to enjoin employee strikes or National Labor Relations Board proceedings. While issues raised by a union may complicate the bankruptcy case, they will often be important in achieving a successful reorganization. Thus, the court should ensure that the union has a voice in the bankruptcy proceedings.

Pension plans

When a large business is in bankruptcy, the payment of retired employees' pension benefits may become an important issue. Bankruptcy Code § 1114 provides statutory guidance concerning the payment of these benefits while a case is pending. It provides for representation of retirees' interests by the union or a committee of retirees appointed by the court. Under section 1114(e), the debtor in possession is required to pay retiree benefits without modification while the bankruptcy case is pending, unless the court orders modification or

the trustee and the retirees' authorized representative agree to modifications. When the estate's funds are depleted, the federal Pension Benefits Guaranty Corporation steps in. The PBGC can be a major player the court must deal with in a mega-case.

Committees

Under Bankruptcy Code § 1102, the U.S. trustee has the responsibility for appointing creditors' committees and for determining how many committees are needed. Because of the large number of groups that may seek committee status in a mega-case and the resulting administrative costs, the bankruptcy judge probably needs to play a greater role than usual in the committee appointment process. Some courts have found it beneficial to limit the number of committees appointed or to set a deadline for requesting committees in order to prevent disruptive requests on the eve of plan confirmation. The court should also be alert to the possibility of abuse or improper functioning of the committee process. (Exhibit II-1 is a sample order denying a motion to appoint a common stockholders' committee.)

Handling Initial Problems

The substantive issues that arise at the outset of a mega-case are generally the same ones that must be resolved in smaller, routine Chapter 11 cases. However, the size of the case may affect the impact of any court ruling and the urgency with which the court ruling is sought. The debtor may also cite the complexity of the debtor's business as a reason for departing from the Bankruptcy Code's usual requirements.

The following sections discuss some of the issues the court may be asked to rule on during the early days of a mega-case. The court's ruling on any given issue, of course, depends on the facts of the particular case and the interpretation of the governing law in that jurisdiction. Accordingly, no attempt is made here to suggest appropriate outcomes. Instead, the discussion highlights the competing concerns surrounding various issues the court may be required to resolve.

Use of cash collateral

Although in some mega-cases the issue of the debtor's ability to use cash collateral may give rise to a major fight between the real economic interests in the case, it is not unusual for there to be no open dispute over the cash collateral issue. Some major businesses filing for bankruptcy may not have any creditors secured by the debtor's cash, accounts, or proceeds; thus, no issue arises concerning cash collateral. Perhaps more typically, the debtor does have cash collateral, but before filing for bankruptcy the debtor is able to enter into an agreement with the secured creditor concerning use of the collateral. The court may then be presented with an agreed-upon order for its approval in the first week of the mega-case. Despite the apparent harmony surrounding the agreement, the situation has potential pitfalls, and the court should be alert to them.

A number of bankruptcy judges have found that a cash collateral agreement at the outset of a mega-case frequently gives the lawyers an opportunity to evaluate the judge and explore how carefully the court is likely to scrutinize their submissions. It is therefore especially important for the judge to review the proposed order with care, redrafting it if necessary to avoid giving the parties more relief than they are entitled to under the Bankruptcy Code.

The judge can be better assured of the wisdom of the court's ruling if the judge declines to approve the cash collateral order without first providing notice and an opportunity for a hearing on the issue. (Exhibit II-2 is a sample order setting hearings on a cash collateral motion.) Although the debtor may urge the court that an immediate ruling is necessary because of the imminent need to make the payroll or deal with some other emergency situation, some experienced bankruptcy

judges stress the importance of providing notice to at least the twenty largest creditors before ruling. Then the judge will be assisted by the attorneys in the case in discovering the potential problems lurking in the proposed order. While the likely effect of a payroll delay may not be ignored, the judge might also consider whether the bankruptcy filing and submission of the proposed order were timed to maximize pressure on the court to approve the order hastily. Obviously the judge will have to take account of the practical realities facing the debtor, but the judge should use a procedure that will elicit other parties' insights into the situation. Conducting a cash collateral hearing may also give the judge an early opportunity to assess the dynamics of the case.

Payment of employees

Even if there are no cash collateral problems, a mega-case may present the issue of the debtor's authority to pay employees immediately the pre-petition amounts they are owed in order to encourage them to remain with the company. (Exhibit II-3 is a sample order authorizing payment of pre-petition wage claims.) Bankruptcy Code § 507's limited priority for claims for wages and contributions to an employee benefit plan supplies the debtor with a basis for seeking to pay amounts owed employees before paying any other claims. Generally, because administrative-expense claimants and secured creditors realize the importance of employees' continued loyalty to the success of the reorganization, as well as the employees' need to receive their wages, they will not object to the immediate payment of wages up to the priority limit. As noted earlier, however, the bankruptcy judge should be very reluctant to enter any order of this type without first giving notice and an opportunity for a hearing to the relevant parties.

Insurance proceeds

In some mega-cases the status of the debtor's liability insurance coverage or previously posted bonds will raise issues of major significance to the outcome of the case. If the filing of numerous lawsuits or claims against the debtor has precipitated the bankruptcy, the existence of a fund to cover the debtor's liability will give rise to battles over its availability as an asset. The question is ultimately one of control: Will the distribution of the insurance proceeds be controlled by the bankruptcy court as part of the reorganization, or will the matter be resolved apart from the bankruptcy in state or federal district court?

At the outset of the mega-case, the issue may be presented in terms of the extent to which the automatic stay precludes efforts by individual creditors to reach the insurance proceeds. The resolution of this issue in turn depends on whether the insurance policy is viewed as property of the estate under Bankruptcy Code § 541(a)(1). Several appellate decisions view the debtor's interest in a liability insurance policy as constituting property of the estate and thus have upheld the automatic stay's applicability to claimants' attempts to reach the insurance proceeds. *See, e.g., Tringali v. Hathaway Machinery Co.*, 796 F.2d 553, 560–61 (1st Cir. 1986); *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1001–02 (4th Cir. 1986). Courts in other cases, however, have concluded that there is no need for the bankruptcy court to control the distribution of insurance proceeds when there is no indication that the claims will be in excess of the insurance coverage. *See, e.g., In re Titan Energy, Inc.*, 837 F.2d 325, 329 (8th Cir. 1988); *In re White Motor Credit*, 761 F.2d 270, 274 (6th Cir. 1985).

The existence of workers' compensation claims against the debtor may present similar issues of control. One court of appeals has held that the

automatic stay does not apply to workers' compensation proceedings, reasoning that such proceedings come within the Bankruptcy Code's § 362(b)(4) exception for actions by governmental units to enforce their police or regulatory power. *In re Mansfield Tire & Rubber Co.*, 660 F.2d 1108, 1112–14 (6th Cir. 1981). However, that decision may be limited to the situation in which payment of the claims will come from funds that are not property of the debtor's estate. *See, e.g., EEOC v. Rath Packing Co.*, 787 F.2d 318, 324 (8th Cir. 1986).

Seller's right of reclamation

When the debtor has received goods on credit shortly before filing for bankruptcy, the court may be faced with reclamation claims by the sellers, which are seeking to recover the goods based on the debtor's insolvency at the time of receipt. Bankruptcy Code § 546(c) recognizes the state law right of reclamation, with some modifications. One issue courts frequently address involves the rights of a creditor with a floating lien in the goods as opposed to the rights of the reclaiming seller. Although it is generally held that a good-faith lien holder has priority over the seller, there is no consensus as to whether the seller is entitled to any excess proceeds following the lien holder's foreclosure. There is also uncertainty concerning the extent to which the seller has a right to a substitute lien or administrative-expense priority when the seller has not been able to exercise its reclamation rights. If a large number of reclamation claims are made against the debtor in a mega-case, the court may find it advantageous to consolidate them into one proceeding, with lead counsel designated to argue common questions of law.

Post-petition utility services

Because a mega-case debtor's normal expenditures for utilities at its various locations will be considerable, the court may be required to address a number of issues relating to the continuation of utility services during the bankruptcy. Bankruptcy Code § 366(b) provides that a utility may refuse or discontinue service if it does not receive "adequate assurance of payment" within twenty days of the date of the order for relief. Although the statute suggests that this adequate assurance will be "in the form of a deposit or other security," a statement in the legislative history suggests that a deposit will not have to be required if the estate is sufficiently liquid that a guarantee of an administrative-expense priority will suffice. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 350 (1977). Bankruptcy courts are divided over this issue. *Compare In re Penn Jersey Corp.*, 72 B.R. 981 (Bankr. E.D. Pa. 1987), *with In re Smith, Richardson & Conroy, Inc.*, 50 B.R. 5 (Bankr. S.D. Fla. 1985). (Exhibit II-4 is a sample restraining order that enjoins discontinuance of utility services.)

If the court decides that something more than a priority is required to give a utility adequate assurance, it will have to determine what amount of deposit or security is adequate. Generally, this determination depends on the debtor's anticipated utility consumption. Some courts have required a deposit equaling one month's expected consumption. *See, e.g., In re Coastal Dry Dock & Repair Corp.*, 62 B.R. 879 (Bankr. E.D.N.Y. 1986). Other courts have permitted weekly advance payments for service in lieu of a deposit. *See, e.g., In re Monroe Well Service*, 69 B.R. 58 (E.D. Pa. 1986).

Pension plan withdrawal liability

Under the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 29 U.S.C. §§ 1381–1462, participating employers that file for bankruptcy may incur multi-million-dollar liability for withdrawing from the pension plans, even if they do not cease their operations. The statute provides that any disputes concerning determinations under the Act shall be resolved through arbitration. 29 U.S.C. § 1401(a)(1). When a claim of withdrawal liability is asserted in a bankruptcy case, the issue arises whether the claim must be resolved by

arbitration or whether the general rule of bankruptcy court resolution of claims applies.

The cases on this issue are in conflict. Some courts have held that arbitration is required, there being no statutory exception for bankruptcy. *See, e.g., In re Hawley Coal Mining Corp.*, 5 Employee Benefits Cas. (BNA) 2680 (S.D. W. Va. 1984). (Exhibit II-5 is a sample order remanding objections to a withdrawal-liability claim to arbitration.) Other courts have reasoned that because no special expertise is required to determine MPPAA withdrawal liability and there is a strong policy favoring the liquidation of all claims against the debtor in the bankruptcy estate, the bankruptcy court may determine the validity and amount of withdrawal-liability claims. *See, e.g., Cott Corp. v. New England Teamsters & Trucking Indus. Pension Fund (In re Cott Corp.)*, 26 B.R. 332 (Bankr. D. Conn. 1982); *In re Amalgamated Foods, Inc.*, 41 B.R. 616 (Bankr. C.D. Cal. 1984).

Getting Professionals Paid

A mega-case can present difficulties in the appointment of lawyers and other professionals because the opportunities for conflicts of interest are magnified by the large number of parties involved. Moreover, the court's problems are not at an end once the conflicts have been resolved and the professionals appointed, for a manageable procedure for monitoring and allowing their fees and expenses must be devised. The court's goal, as always, should be to preserve the estate's assets to the extent possible, while not unnecessarily penalizing the professionals who have provided valuable services to the estate. A mega-case presents a special challenge to the court in this regard, because so many professionals are involved that fees can quickly skyrocket.

Payment of interim fees

Bankruptcy Code § 331 authorizes the debtor's attorney and other professionals employed in the case to apply to the court for interim compensation "not more than once every 120 days." However, the statute allows the court to permit fee applications on a more frequent basis. In a mega-case, it is likely that the professionals appointed under section 327 are investing huge quantities of time, and therefore receiving payment only once every four months may impose an intolerable burden on them and may place them at a significant economic disadvantage to the professionals retained by the creditors.

The court may therefore decide to authorize more frequent fee applications under section 331. Though this procedure permits payment on a more regular basis, it has the disadvantage of increasing the administrative burdens on the court and the parties. Moreover, because the fee applications may be approved by the court only after "notice and hearing," opposing parties may significantly delay payment to the professionals by objecting to all their applications and requesting hearings.

An alternative approach some courts have taken is to approve the payment of a reduced percentage of the amounts requested in fee applications without conducting a hearing, reserving all objections for a final fee application hearing at the end of the mega-case. This procedure eliminates delay in payment, but it penalizes the professionals employed under section 327 by requiring them to accept only partial payment for the duration of the case. Because the fees in a mega-case are likely to be quite large, deferring payment of 25% or so until the end can create a severe economic disadvantage for the professionals. Moreover, from the court's point of view, this procedure has the disadvantage of requiring an unwieldy final fee decision. Rather than addressing and ruling on fee objections periodically as they come along, the court will have to face a mountain of applications and objections at the end of the case, making accurate evaluation almost impossible.

To avoid that prospect, some courts have devised a different procedure for handling the interim payment of fees in mega-cases. These courts

have entered an order at the outset of the case, authorizing professionals to be paid a specified percentage of their fees and expenses directly by the debtor on a monthly basis when they submit their statements. The court then reviews and approves or modifies these payments after receiving quarterly fee applications. Periodically, such as semiannually, the professionals may apply to the court for allowance of the percentage held back. Although this procedure does not allow payment in full on a monthly basis, it does permit a regular stream of payments to the professionals without creating an unmanageable administrative burden for the parties and the court. (Exhibit II-6 is a sample order establishing an interim fee and expense reimbursement procedure.)

Despite the efficiency of this method of interim fee allowance, some courts have questioned the statutory authority for permitting payment of professionals without prior court approval of the billing statements. The Ninth Circuit Bankruptcy Appellate Panel has held that such authority exists, but only in the "rare case" involving certain special circumstances. *United States Trustee v. Knudsen Corp. (In re Knudsen Corp.)*, 84 B.R. 668 (Bankr. 9th Cir. 1988). That court concluded that section 328(a)'s authorization for the payment of a retainer to a professional employed under the Bankruptcy Code includes the authority to approve the payment of a periodic retainer after the fees are earned. The court held that so long as the fees are not actually allowed, and thus remain subject to repayment, until the court reviews and approves the professional's application, the statutory requirements for fee allowance are satisfied. *Id.* at 671.

The Bankruptcy Appellate Panel stressed the narrowness of the circumstances under which such an interim fee procedure would be appropriate, however. The court stated that professionals would have to file a fee application and have it approved prior to payment of any fees, unless the court could make the following findings:

1. The case is an unusually large one in which an exceptionally large amount of fees accrue each month;
2. The court is convinced that waiting an extended period for payment would place an undue hardship on counsel;
3. The court is satisfied that counsel can respond to any reassessment in one or more of the ways listed above [including payment of only a percentage of the amount billed, posting of a bond, deposit of amounts paid into a trust account until allowance]; and
4. The fee retainer procedure is, itself, the subject of a noticed hearing prior to any payment thereunder.

Id. at 672–73. While finding those circumstances to exist in the case before it, the court further noted, in language that has been read by some courts as narrowing the holding, that this case was a liquidation proceeding primarily for the benefit of a single secured creditor, which had approved the fee procedure and was advancing the fees. *Id.* at 673.

Other courts continue to insist on approval of interim fee applications in all cases before any payments are made. These courts have implemented procedures to make the allowance process as efficient and fair as possible. For example, applications can be permitted as frequently as on a monthly basis, and short, but reasonable, time limits can be imposed for raising any objections. In the absence of objection and request for a hearing, the court may approve the application without conducting a hearing. Any hearings that are held may be set on an expedited basis or may be scheduled in advance to be heard on a designated day each application period. (Exhibit II-7 presents sample orders establishing interim fee and expense reimbursement procedures.)

Regardless of the interim fee payment procedure the court decides on, before payments are made, the bankruptcy judge must consider two factors. First, the judge needs to be sensitive to the debtor's cash position. The percentage of fees that

the court permits to be paid out on an interim basis should be based on an assessment of the likelihood that the estate will be sufficient to pay all administrative expenses in the end. Second, some courts have found that holding back a certain percentage of fees provides them with a useful tool for controlling the pace of the case. Thus, the judge should consider the extent to which he or she wants to use fee allowances as a case management tool. Even if a fee holdback is not used as a management tool, some courts have concluded that it is necessary to pay less than 100% of attorneys' fees requested on an interim basis to allow for adjustments in the final fee award based on the outcome of the case. *See In re Public Service Co.*, 93 B.R. 823 (Bankr. D.N.H. 1988).

Evaluation and allowance of fees

Because ruling on fee applications can be extremely burdensome in a mega-case, the court may want to solicit assistance. The first source of help should be the professionals who are submitting the fee applications. The bankruptcy judge should make clear at the outset of the case the information desired and how it is to be organized. The judge can make the detailed findings that are required much more easily if the lawyers have organized and explained the fee documents. Among other things, the judge may want to enter an order specifying a uniform format for fee applications, including perhaps the requirement of a cover sheet that clearly summarizes the fees requested and the total fees already allowed that professional. (Exhibit II-8 is a sample cover sheet for a fee application.)

Several districts have found it desirable to promulgate fee guidelines applicable to all of their bankruptcy cases. These guidelines can specify the format required for fee applications, the procedure required for gaining approval, and any applicable restrictions on reimbursement of expenses. (Exhibit II-9 is a sample administrative order regarding fees and disbursements for professionals.)

Even if the fee information is clearly set forth, determining in a mega-case what is "reasonable compensation" is not an easy task. The determination may be particularly difficult if the court has handled few mega-cases whose fees can be compared with the fees in the present case. Courts have therefore used a number of methods for obtaining advice on the reasonableness of fee applications in such cases.

Some courts have appointed their own experts or auditors to review fee applications and make recommendations to the court. Others have relied on the U.S. trustee to make evaluations, although the extent of assistance with fee applications this office provides varies greatly from district to district. Other courts have asked the creditors' committee to review all fee applications and submit to the court a written report on them. (Exhibit II-10 presents a sample order requiring creditor committee review of fee applications and sample creditor committee reports.) All of these methods have the benefit of ensuring that, even if there are no objections to an application, the court will have some assistance in determining to what extent the hours billed and the rates charged were necessary and reasonable.

When ruling on the final fee applications in a case, the court may be asked to reduce or enhance the award that would otherwise be made based on the hours worked and the usual rates billed. Generally, the argument for such an adjustment is that the ultimate results of the reorganization were either especially disappointing or unusually successful, thus justifying a deviation from the normal fee award. With respect to the award of a bonus, courts have indicated that, although it is not prohibited under Bankruptcy Code § 330, such an award should be reserved for the rare case in which the usual lodestar method will not provide the professional with compensation commensurate with that paid for comparable non-bankruptcy

work. *See, e.g., Burgess v. Klenske (In re Manoa Finance Co.)*, 853 F.2d 687 (9th Cir. 1988). In the event of an unsuccessful reorganization, some courts routinely cut the fees requested. In making such a reduction, however, the court should consider whether an adjustment of the hours billed or the rates charged, rather than an across-the-board cut, would better respond to the plan's failure and better promote Congress's goal of keeping bankruptcy compensation comparable to that outside bankruptcy.

Special problems

In some mega-cases the debtor's attorneys will have received a substantial retainer prior to filing the petition. How this retainer should be dealt with in the bankruptcy depends on what purpose it is intended to serve. In most Chapter 11 cases the retainer is intended as an advance against future fees. In this sense it is similar to a possessory security interest; the attorneys are given the retainer to assure them that they will be able to receive payment during the case at least up to that amount. Courts have found that the retainer serves this security purpose, even when the debtor and attorneys have executed an agreement indicating that the retainer is "earned on receipt" and thus is purportedly an absolute transfer to the attorneys.

If the retainer is in the nature of a security interest, then the debtor retains an interest in it, and it becomes property of the estate. Some courts have required the attorneys to deposit the retainer in a special account and to draw on it only as the court approves the attorneys' fee applications. Even if the retainer is not required to be segregated, the attorneys must ultimately show that the amount does not exceed the reasonable value of the services rendered. In a mega-case this is not likely to be a problem, because the debtor's attorneys' fees will probably exceed the amount of any retainer.

An issue related to the compensation of professionals is creditors' committee members' entitlement to be reimbursed for their expenses. In a mega-case with national participation, the travel and other expenses of individual creditors' committee members can be substantial. Bankruptcy Code §§ 330 and 331 authorize reimbursement of expenses only for the trustee, examiner, and professionals, including the debtor's attorney; they do not authorize reimbursement of committee members. Allowance of such reimbursement is left to section 503's provisions for administrative expenses. Unfortunately, the wording of the section has caused some confusion on this issue.

Bankruptcy Code § 503(b)(3)(D) refers specifically to the reimbursement of the actual, necessary expenses incurred by creditors and committees in making a substantial contribution to a Chapter 11 case. However, it excludes from its coverage "committee[s] appointed under section 1102." That language has led some courts to conclude they are not authorized to reimburse official creditors' committees (*see, e.g., In re Interstate Restaurant Systems, Inc.*, 30 B.R. 32 (Bankr. S.D. Fla. 1983)), a result seemingly at odds with Chapter 11's policy of encouraging active involvement of creditors' committees. Other courts have concluded that reimbursement of official creditors' committees and their members is authorized under section 503(b)(1)(A) as an actual, necessary cost of preserving the estate so long as the committee is fulfilling its intended role. *See, e.g., In re Kaiser Steel Corp.*, 74 B.R. 885 (Bankr. D. Colo. 1987). Moreover, it has been held that the reimbursement may be awarded on an interim basis and need not await completion of the case. *Id.*

A number of courts have also encountered difficulties with respect to the compensation of investment bankers retained in mega-cases. Often these financial advisors have sought to be compensated with less court scrutiny of the reasonableness of their fees than is applied to the applications of other professionals. Faced with such expectations, courts have made clear in orders retaining investment bankers that the bankers will

have to comply with the same fee approval procedures that are used for attorneys and other professionals in the case. (Exhibit II-11 is a sample order authorizing retention of financial advisors.)

III. Handling Litigation

Maintaining Control

Even in a routine bankruptcy case, seemingly straightforward adversary proceedings can sometimes turn into major battles, with the parties and their attorneys spinning completely out of control. In a mega-case the chances of this happening are greatly magnified, because the stakes are much higher and the number of adversary proceedings filed and lawyers involved is greatly multiplied. It is therefore essential for the judge to maintain firm control over the scope, pace, and conduct of all litigation.

In the early stages of an adversary proceeding, the court should conduct a pretrial conference or establish some other method for setting firm deadlines for the conduct of the litigation. (Exhibit III-1 is a sample scheduling order.) The court should consider limiting the number of interrogatories and depositions; setting page limits for briefs; and scheduling discovery to be conducted in waves, with subsequent stages dependent on some showing of need. (Exhibit III-2 is a sample discovery order.) The court should also consider methods of streamlining any trials that take place.

To prevent the debtor's assets from being consumed in the litigation process, it is especially important in a mega-case to achieve as many settlements of disputes as possible. Although the extent to which the bankruptcy judge will get personally involved in settlement negotiations varies from court to court, there is a consensus that the court must adopt means to facilitate and encourage settlements of litigated matters. At the initial pretrial conference, for example, the court can explore settlement possibilities and encourage such efforts in hopes of avoiding discovery and trial costs. Courts have found that the prospect of court estimation of claims can contribute to a willingness to settle disputes, apparently because of attorneys' greater comfort with their own ability to evaluate a case than with the court's.

Streamlining Trials

Because of the many parties and lawyers frequently involved in a mega-case, the court must consider ways to structure hearings and trials so as to achieve an efficient yet fair presentation of the issues and evidence. Direct and cross-examination by each of numerous parties, for example, may be extremely time-consuming and repetitive. Accordingly, some courts have required that lead counsel be designated to conduct the examination for various groups of parties. Others have placed strict limits on the length of trials and carefully excluded cumulative evidence.

In some districts trials have been further streamlined by the use of declarations in place of live direct testimony. The parties are required to submit their direct testimony before trial by declarations of their witnesses under penalty of perjury. The other side is permitted to raise any evidentiary objections to the testimony prior to trial and to cross-examine the witness at trial. Thus, for the direct testimony in the declaration to be admissible, the witness must be present at trial and available for cross-examination. The party presenting the declaration may question the witness following the other side's cross-examination, but only to elicit true rebuttal testimony. (Exhibit III-3 is a sample order requiring presentation of evidence by declarations.)

Trial by declaration is similar to what other courts refer to as an offer of proof with opportunity for cross-examination. It differs from a resolution by summary judgment because it is available when factual issues are in dispute and it provides the opposing party the opportunity to cross-examine. Courts have used this method of trial in

a variety of litigation contexts, including adversary proceedings, claims litigation, plan confirmation, claims estimation, valuation determinations, and involuntary petition disputes.

The main advantage of trial by declaration is that trial time can be greatly reduced. Not only is time for presenting direct testimony eliminated, but cross-examination of witnesses tends to be more focused and less time-consuming. In addition, the required advance preparation forces parties to confront the reality of their case sooner, making pretrial settlement more likely. This method also enables the court to be better prepared for trial, since it permits the judge to read the direct testimony and consider the evidentiary objections raised ahead of time.

Despite these advantages, questions can be raised about how this procedure for streamlining adversary proceeding trials can be reconciled with the current versions of Fed. R. Civ. P. 43(a) and Fed. R. Evid. 801 and 802, which are made applicable in bankruptcy by Bankruptcy Rule 9017. Rule 43(a) requires the testimony of witnesses "[i]n all trials" to be "taken orally in open court, unless otherwise provided by an Act of Congress or by [the Federal Rules of Civil Procedure], the Federal Rules of Evidence, or other rules adopted by the Supreme Court." Similarly, under Fed. R. Evid. 801, a witness's out-of-court declaration constitutes hearsay, since it is not made "while testifying at the trial or hearing," and under Rule 802, it is inadmissible unless it falls within a hearsay exception or is authorized by federal statute or a rule promulgated by the Supreme Court. Because no hearsay exception covers a declaration prepared for trial by an available witness, the current authority for the court to mandate such a procedure over the parties' objections in an adversary proceeding is uncertain. *See Adair v. Sunwest Bank (In re Adair)*, 965 F.2d 777, 780 (9th Cir. 1992) (holding that while declarations fell literally within hearsay definition, appellants failed to demonstrate any prejudice from admission).

Resolution of a contested matter by this procedure is consistent with Fed. R. Civ. P. 43(e), however, and thus permissible under Fed. R. Evid. 802. Rule 43(e) provides that the court may hear "a motion . . . based on facts not appearing of record . . . on affidavits presented by the respective parties." Since Bankruptcy Rule 9014 states that in a contested matter "relief shall be requested by motion," the hearing of such a matter would not have to be limited to live testimony.

Even in adversary proceedings, however, the presentation of direct testimony by declaration would clearly be permissible in non-jury trials if a proposed amendment to Fed. R. Civ. P. 43(a) were adopted. In August 1991 the Advisory Committee on Civil Rules proposed an amendment to Rule 43 that would delete the requirement of "oral" testimony in open court and would expressly authorize the presentation of a witness's direct testimony by means of affidavit, written statement or report, or deposition, subject to the right of cross-examination of the witness. The Committee Notes point out, however, that this procedure would be available only in non-jury cases and would be appropriate primarily for expert testimony or background testimony from lay witnesses concerning matters not in substantial dispute. Even without this amendment to Rule 43(a), the Ninth Circuit has upheld a bankruptcy court's practice of requiring that direct testimony be presented by written declaration, at least where no hearsay objection is raised. *Adair v. Sunwest Bank (In re Adair)*, 965 F.2d 777 (9th Cir. 1992). The court reasoned that this procedure constitutes "a permissible 'mode' of presenting direct testimony under [Federal] Rule [of Evidence] 611(a)" and that it does not raise significant due process concerns. *Id.* at 779–80.

Resolving Claims

Because of the large number of claims that may be filed in a mega-case, the court will want to devise efficient ways of resolving them that will reduce the necessity for court involvement as much as possible. For example, the court may require the parties to negotiate disputed claims before they are permitted to seek a judicial resolution.

One court that handled a mega-case involving many employee claims approved a procedure that facilitated the non-judicial resolution of "hard claims," that is, those types of employee claims that the debtor acknowledged it had an obligation to pay. Under this procedure, the debtor sent each holder of a hard claim a statement indicating the amount the debtor believed it owed on such a claim based on its records. The creditor receiving the notice then had forty days to respond in order to dispute the debtor's stated amount. If the creditor did not respond, the claim was allowed in the amount set by the debtor. A creditor that did dispute the amount was required to explain the basis for the disagreement with the debtor's records and to include copies of any documents supporting the claim. Representatives of the debtor then had to contact each responding creditor (by telephone or in writing) and seek to resolve the differences. Only if the differences could not be resolved by negotiation would hearings be conducted on the disputed hard claims. (Exhibit III-4 is a sample order approving a hard claims resolution program.)

A procedure requiring negotiation of disputed claims need not be limited to hard claims, although it might be fruitless to require negotiation with respect to some types of claims for which the debtor disclaims all responsibility. In some cases all disputed claims have been subject to procedures designed to encourage the parties' resolution of differences. Rather than requiring the debtor to start the process, some courts have required creditors whose claims have been contested and who have requested a hearing to submit to the debtor a written explanation of the basis for their claims, including any available documentation. The parties are then required to make at least one attempt to resolve their differences before a hearing on the disputed claim can be set. (Exhibit III-5 is a sample order establishing a procedure for resolution of contested claims.)

Even with such negotiation procedures, the number or complexity of the remaining disputed claims may make individual resolution infeasible. Bankruptcy Code § 502(c)(1) requires the court to estimate for purposes of allowance any contingent or unliquidated claim if its fixing or liquidation "would unduly delay the administration of the case." While 28 U.S.C. § 157(b)(2)(B) eliminates from the category of core proceedings the estimation of personal injury or wrongful death tort claims against the estate "for purposes of distribution" in a Chapter 11 case, it makes clear that the estimation of all claims (including personal injury and wrongful death) for the purposes of confirming a plan falls within the bankruptcy court's core jurisdiction.

Having authority to estimate claims is just the first step for the bankruptcy court, however. The real question is how it should assign an estimated value to hundreds or thousands of claims in a fair and efficient manner. Courts have used a number of methods to deal with this problem, and appellate courts have held that the method of estimation chosen will be upheld unless it constitutes an abuse of the bankruptcy court's discretion. *See, e.g., Bittner v. Borne Chemical Co.*, 691 F.2d 134 (3d Cir. 1982). Two methods have been used primarily, however: reliance on experts and use of summary trials.

The first method, use of experts, was the basis for the estimation in the Dalkon Shield case. As the court of appeals decision explains, the district court (which presided over the bankruptcy case) appointed an expert to develop a database consisting of information about the claims. In addition, the debtor, its insurer, various committees, and the future claimants' representative each hired its own

experts to assist the court expert. After a year and a half of data collection, each of the parties' experts arrived at an estimation of the total amount of the claims. The court then conducted a hearing, which lasted more than six days, and at which the experts testified concerning their estimates and the basis for them. The court made its finding as to the estimated total value of the claims on the basis of this evidence. *See Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 694, 698–700 (4th Cir. 1989).

In other cases courts have used procedures similar to a summary jury trial but without the jury. In the Baldwin-United bankruptcy, for example, the court was dealing with a relatively small number of claims, the liquidation of which would delay the reorganization. It therefore estimated them on the basis of a consolidated summary trial. Each claimant was allowed two hours to present its case to the court, and the debtor was given five hours. Each party's case could consist of the following: an opening statement of limited duration, statements by counsel concerning what their witnesses would testify to and what documentary evidence supported their position, the live testimony of one witness (subject to cross-examination of no more than thirty minutes per opposing party), and a closing argument. *See In re Baldwin-United Corp.*, 55 B.R. 885, 911–12 (Bankr. S.D. Ohio 1985) (order setting forth summary trial procedure).

IV. The Reorganization Plan Process

Developing the Reorganization Plan

Although development of the reorganization plan in a mega-case is primarily the task of the parties and outside the supervision of the court, good case management requires that the court play a continuing role in ensuring that the case keeps moving toward completion. The active involvement of the various parties in a mega-case makes it unlikely that the case will languish; however, the court's efforts may be needed to coordinate the parties' competing efforts and to break any impasse that arises. The court should be especially vigilant to ensure that the estate's assets are not being consumed in unproductive wheel-spinning, since the fees of the large number of professionals involved can quickly mount.

The court's goal in facilitating plan development is to encourage the parties to arrive at a consensual plan while avoiding overstepping the bounds that separate desirable case management from inappropriate interference. Courts that have successfully managed mega-cases have used a number of methods for achieving this goal.

Extension of exclusivity period

The court's decision whether to allow the debtor repeated extensions of the period during which it alone may file a reorganization plan may have a significant impact on the pace of the case. Most courts believe that the sheer size of a mega-case justifies one or more extensions of the exclusivity period. However, after that initial phase the court might well consider whether consistently granting the debtor's motions to extend will remove some of the pressure on the debtor to engage in serious negotiations. Courts have frequently conditioned the extension decision on a showing by the debtor that progress is being made in the negotiations. Although this showing may involve a discussion of the substance of the negotiations, the court should receive the information only to assess the progress being made and not to dictate the outcome of the negotiations.

By repeatedly requiring the debtor to justify the need for extensions, the bankruptcy judge may be able to assure himself or herself that the case is progressing satisfactorily. At some point in a mega-case, however, the judge may come to the conclusion that termination of the exclusivity period is needed to move the negotiations. Such a decision opens up the possibility of competing plans, a development with uncertain impact on the progress of the case. On the one hand, removal of the debtor's exclusive control over the negotiation process may undermine efforts to achieve a consensus, since individual parties will now champion their own plans. On the other hand, introducing more than one plan for consideration can lead to serious bargaining over the differences between the plans, with the parties ultimately being able to reach an accord.

Imposition of bar date for plan filing

Setting a deadline for the filing of any reorganization plan, upon request of a party in interest, is another method for moving the case along. The court can put teeth in the bar date order by providing that the case will be converted if no plan is filed by the bar date, unless cause is established for extension of the deadline. As is true for extension of the exclusivity period, the cause determination can take into account the progress being made in the formulation of a plan.

Most courts have rejected use of a bar date to prod plan formulation in mega-cases, however. Recognition of the complexities of a mega-case and the myriad issues facing the debtor makes a bankruptcy judge reluctant to force the debtor's

hand prematurely. Nevertheless, the debtor can be required as debtor in possession to file a report indicating why no plan has been filed. *See* Bankruptcy Code § 1106(a)(5).

Control of fees

A rather clumsy, but sometimes effective, tool for encouraging progress in a case is the court's control over the timing and amount of fee allowances. The judge can cut fees or postpone their payment if he or she believes that the parties are not making satisfactory progress toward development of a plan. Some courts are reluctant to use such a blunt instrument to encourage earnest negotiation; others have successfully used their control over fees to get the parties' attention and to send a message that better efforts are required. Certainly in some cases the court could find the fees professionals request to be excessive in light of the results achieved through the professionals' efforts to date.

Use of examiners

Despite the earnestness of the parties' efforts, their negotiations may reach an impasse. When this situation becomes apparent, the court must determine how directly it should get involved in attempting to break the stalemate. The judge's response undoubtedly will depend on his or her perception of the situation, including the cause of the impasse and the court's proper role. For example, if the parties are divided over a question of law, the court's resolution of the issue may allow the negotiations to move forward. If the parties are divided over the treatment to be accorded the various claims, however, the judge should be reluctant to become involved in the process at this point.

Several courts have found it useful to use third parties to get the negotiations back on track. In some cases the court has turned to the district's mediation system with the parties' consent. In other cases, another judge has been brought in to facilitate settlement or encourage renewed efforts at negotiation. The U.S. trustee might also have a role to play, although in most mega-cases this official plays no part in the plan formulation process.

A common source of assistance to the court in a stalled mega-case is an examiner, appointed pursuant to Bankruptcy Code § 1104(b). (Exhibit IV-1 is a sample order appointing an examiner.) Courts have used these officials for a variety of purposes, with some success. Traditionally, examiners have been appointed to investigate the debtor's financial affairs or to determine whether a basis exists for pursuing a particular cause of action. In mega-cases courts have used examiners for a wider array of functions. Examiners have been appointed to determine if an impasse in the negotiations exists and, if so, to act as a mediator to assist the parties in breaking the deadlock. Examiners have also been appointed to educate the judge about the complex field in which the debtor does business or to deal with the large number of laypersons involved in a particular reorganization.

Courts that have used examiners stress that it is important to keep their duties carefully confined; otherwise, the parties may fear that the court is attempting to take over the negotiation process. For example, examiners should not attempt to force a particular plan on the parties; they should assist the parties in arriving at a plan of their own. Furthermore, examiners should deal with the bankruptcy judge as any other party does; they should not be perceived as having the judge's special ear. The court should not appoint an examiner to function as a trustee. The examiner's duties should not be so broad as to approximate those of a trustee, particularly in light of the Bankruptcy Code's § 321(b) prohibition against someone serving as a trustee who has previously served as an examiner. *See In re International Distribution Centers, Inc.*, 74 B.R. 221 (S.D.N.Y. 1987).

The court's authority to appoint an examiner to serve in a mediation role is not clearly spelled out in the Bankruptcy Code; nevertheless, courts have

found such authority to exist, even in the absence of a motion by a party. The argument in support of this authority rests on sections 1104 and 1106. Under section 1104(b) an examiner shall be appointed on the request of a party if such appointment is in the interests of creditors or other interests of the estate. Section 1104 refers to appointing an examiner in order to investigate the debtor; section 1106(b) provides that the examiner may perform the trustee duties that the court has ordered the debtor in possession not to perform. Service as a mediator is not among the statutorily prescribed duties of a trustee, but a trustee (and thus an examiner) may perform "any other matter relevant to the case or to the formulation of a plan." § 1106(a)(3). Furthermore, some courts have relied on legislative history indicating that Congress intended examiners to be able to perform "additional duties as the circumstances warrant." *See In re UNR Industries, Inc.*, 72 B.R. 789 (Bankr. N.D. Ill. 1987). Others, however, have suggested that the court's authority to appoint a mediator better rests on Bankruptcy Code § 327's authorization for the appointment of a "professional person" or with Fed. R. Evid. 706's authorization for the appointment of experts.

If the court decides that an examiner would be useful in the plan formulation process, the U.S. trustee makes the appointment, subject to the court's approval, under Bankruptcy Code § 1104(c). In ordering the appointment, the court may want to specify the qualifications that the examiner should possess in order to be able to carry out the intended duties. Although section 1104 provides for appointment of an examiner only on the motion of a party in interest, some courts have found inherent authority in the court or authority under section 105 for the court to order the appointment on its own motion. *See, e.g., In re Public Service Co.*, 99 B.R. 177 (Bankr. D.N.H. 1989); *In re UNR Industries, Inc.*, 72 B.R. 789 (Bankr. N.D. Ill. 1987).

Managing the Disclosure and Confirmation Process

Disclosure statement

In a mega-case, as in other Chapter 11 cases, the court's hearing on the disclosure statement is an important stage of the reorganization process. The hearing may provide the court with the opportunity to discover defects in the plan, which can be addressed and resolved at that point before the plan is sent out for a vote. For that reason some courts refuse to approve a disclosure statement if the plan contains an obvious violation of the Bankruptcy Code. Other courts are reluctant to get too deeply involved in the details of the plan at this stage, on the assumption that the aggrieved class or party may vote in favor of the plan, notwithstanding its defect. Recognizing the validity of both approaches, the court might allow the plan to be sent out if the defect will be mooted by an affirmative vote, but deny approval of the disclosure statement if the defect will preclude confirmation regardless of the vote.

If competing plans have been proposed and the court is considering more than one disclosure statement, it is possible that the statements will contain conflicting information, such as inconsistent liquidation analyses. In such a situation the court need not take testimony at the disclosure hearing to determine which is the correct analysis, because that issue is not yet before the court. The issue at this point is the adequacy of disclosure, and the court may simply require the disclosure statements to reveal that a dispute exists over the liquidation analysis. Furthermore, because of the limited scope of the court's approval, the court should make sure that the plan proponents do not represent approval of the disclosure statement for more than it is. If a disclosure statement has been approved, the court has merely determined that it contains adequate information, not that all its information is necessarily correct.

Because of the complex scope of most mega-cases and the diversity of creditors frequently involved, there may be a question as to how much information should be contained in a disclosure statement in such a case. The answer is no different in this context than in others: the statement should include enough information in an understandable form that the recipients will be able to comprehend what the plan provides. The disclosure statement should not make a sales pitch for the plan; it should be a neutral document that provides meaningful information, financial and otherwise, about the plan's provisions and their effects. If the court has not already done so, it might find it useful to develop a checklist of information that would normally be in the disclosure statement. *See, e.g., In re Metrocraft Publishing Services, Inc.,* 39 B.R. 567 (Bankr. N.D. Ga. 1984).

The court should ensure that the disclosure statement will be comprehensible to all its recipients, which in a mega-case may include a large number of employees, tort victims, small shareholders, or others with little knowledge of legal and financial terms. The disclosure statement should be written in plain English, perhaps with a cover letter explaining what it is. Some courts have found it useful to have a layperson, such as an employee of the clerk's office, read the disclosure statement and point out any parts that are difficult to understand.

In cases in which there is opposition to a proposed plan, some parties may want to send out information on their own that disputes or contradicts a previously approved disclosure statement. Nothing in the Bankruptcy Code prohibits separate statements that have not been approved by the court, as long as they are not sent to solicit acceptance of a competing plan. *See Century Glove, Inc. v. First American Bank,* 860 F.2d 94 (3d Cir. 1988). Parties are permitted to mount an opposition to the plan, and recipients of the opposing information will have the disclosure statement, which they can compare with the new information before they vote on the plan.

Confirmation

Not all mega-cases end in consensual plans. If the confirmation is contested, the court should make clear to the parties in advance what types of evidence will be permitted at the confirmation hearing and in what form. This could be done with a pretrial order. Some courts set a date for the confirmation hearing, at which time the plan will be confirmed if it is consensual. If the plan is contested, however, this hearing is used as a pretrial conference, during which issues are narrowed and trial procedures are established. The confirmation hearing is then set for a later date. Some courts prefer to focus on one confirmation issue at a time in the submission of briefs and the presentation of evidence; others believe that it is important to dispose of all the contested issues in a single confirmation order, to prevent piecemeal appeals.

When the parties arrive at a consensual plan, some courts have taken the position that the court is not required to conduct a confirmation hearing unless a party in interest requests one. It is not clear, however, that this is a permissible reading of Bankruptcy Code § 1128. According to that provision, "[a]fter notice, the court shall hold a hearing on confirmation of a plan." Although section 102 defines "after notice and a hearing" or similar phrases to permit dispensing with the hearing if none is requested, the different wording of section 1128 arguably requires the court to conduct a hearing even without request. In any event, a number of courts always require a showing of feasibility to be made for the record, even if confirmation is not contested. However, Bankruptcy Rule 3020 provides that if no objection to confirmation is filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law, without receiving any evidence on those issues.

An issue that may affect confirmation in mega-cases is the permissibility of class proofs of claim. Courts are divided over whether proofs of claim may be filed in a bankruptcy by a class representative. The majority view at the court of appeals level apparently is that class proofs of claim are permitted. *Compare, e.g., In re Standard Metals Corp.*, 817 F.2d 625, *modified*, 839 F.2d 1383 (10th Cir. 1987), *with In re American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988). If class proofs of claim are permitted, issues may arise concerning the class representatives' authority to vote on behalf of the class. *See, e.g., In re Mortgage & Realty Trust*, 125 B.R. 575 (Bankr. C.D. Cal. 1991). The court may have to decide whether the class representatives may vote at all and, if so, whether they may vote for the entire class or only for those who do not vote individually. Because of the impact of these issues on the plan negotiation process, the court should generally attempt to resolve them well in advance of the confirmation stage.

Handling Post-confirmation Problems

The court's post-confirmation jurisdiction

In a mega-case, the court's role does not end with the confirmation of a reorganization plan. Because the Bankruptcy Code places some responsibilities on the court that last beyond the confirmation period and because problems may arise while the plan is being executed, parties in a mega-case, just like those in any confirmed Chapter 11 case, may continue to look to the bankruptcy court for relief. (Exhibits IV-2 and IV-3 are sample orders establishing post-confirmation motion and notice procedures.) Whether the court can and should grant that relief is not always clear, however; there is not always a discernible point at which the bankruptcy court's responsibility for the case ceases. Moreover, as the Second Circuit noted, the court must keep in mind that "the purpose of reorganization clearly is to rehabilitate the business and start it off on a new and to-be-hoped-for more successful career." *North American Car Corp. v. Peerless Weighing & Vending Machine Corp.*, 143 F.2d 938, 940 (2d Cir. 1944). Thus, "it should be the objective of courts to cast off as quickly as possible all leading strings which may limit and hamper its activities and throw doubt upon its responsibility." *Id.*

The Bankruptcy Code contains some provisions that give the court continuing authority after confirmation. Section 1129(a)(4), in prescribing the requirements for confirmation, clearly contemplates that the court will rule after confirmation on requests for payment for services and expenses, as it speaks of "payment . . . to be made" that is "subject to the approval of the court . . . as reasonable." Section 1129(a)(11)'s requirement of feasibility may provide another basis for some retention of jurisdiction by the court, for the court may find that to ensure the plan's feasibility, it must retain jurisdiction over certain matters. Confirmation of the plan would be conditioned on this continuing court oversight. *See Official Dalkon-Shield Claimants' Committee v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 769 (4th Cir. 1989). Finally, a number of Bankruptcy Code provisions have been recognized as providing the court with continuing jurisdiction to oversee consummation of the plan. *See, e.g.*, §§ 1112(b)(6), (7), (8), (9) (authority to convert or dismiss a case based on a number of post-confirmation occurrences); 1127(b) (court's confirmation of a modified plan following initial confirmation); 1141(d)(2), (3) (determination of debts excepted from discharge); 1142(b) (authority for court to issue order necessary for consummation of a plan); 1144 (revocation of an order of confirmation).

Frequently the proposed plan in a mega-case will purport to confer continuing jurisdiction on the bankruptcy court over a broad range of matters that might arise post-confirmation. To the extent that the plan merely restates the authority already

provided by statute, there probably can be no objection. Indeed, such a provision might serve to eliminate ambiguities and to clarify the court's continuing authority. To the extent that the plan seeks to confer additional post-confirmation authority on the court, however, this provision of the plan must be carefully considered and questioned. As one bankruptcy court noted,

> There is no doubt that the bankruptcy court's jurisdiction continues postconfirmation to "protect its confirmation decree, to prevent interference with the execution of the plan and to aid otherwise in its operation." However, courts have attempted to balance the need to retain jurisdiction post-confirmation with the need to end the reorganization process at some point.

In re Greenley Energy Holdings of Pennsylvania, Inc., 110 B.R. 173 (Bankr. E.D. Pa. 1990). *See also In re Bankeast Corp.*, 132 B.R. 665 (Bankr. D.N.H. 1991) (court confirms plan only with narrowed post-confirmation jurisdictional provision).

Problems that might arise after confirmation

Fee allowances. As noted earlier, the court has continuing jurisdiction to rule on fee applications after confirmation of the plan. *See* Bankruptcy Code § 1129(a)(4). This authority permits the court's determination of motions for allowance of final compensation in the case, including amounts previously held back from interim payments. (Exhibit IV-4 is a sample order setting final fee procedures; Exhibit IV-5 is a sample order authorizing a technical advisor to assist the court in making final fee awards). Section 1129(a)(4) also may include authority for the court to rule on requests for adjustments in the levels of compensation awarded pursuant to plan provisions, as in payments of trust funds to claimants' attorneys.

Revocation of confirmation. The court has limited authority to revoke an order of confirmation and thereby revoke the debtor's discharge. Under Bankruptcy Code § 1144, the court, after notice and hearing, may revoke such an order if it was procured by fraud. However, the court may do so only if it is requested by a party in interest within 180 days of the entry of the order of confirmation. Under Bankruptcy Rules 9006(b) and 9024, this time limit may not be extended.

Enforcement of post-confirmation injunctions. Because confirmation of the plan revests the property of the estate in the debtor and grants a discharge, it serves to terminate the automatic stay. *See* Bankruptcy Code § 362(c). The granting of the discharge, however, also triggers the commencement of an injunction under section 524. The court has continuing jurisdiction to enforce that injunction as well as others issued pursuant to section 105 or the terms of the plan. *See Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 694 (4th Cir. 1989).

Plan modification. Under Bankruptcy Code § 1127(b), either the plan proponent or the reorganized debtor may modify the plan at any time after confirmation and before "substantial consummation" of the plan. The plan must still meet the requirements of sections 1122 and 1123, and the court, after notice and hearing, must confirm the plan under section 1129. Whether substantial consummation has occurred is not always easy to determine. Section 1101(2) provides a definition of the term, but it is an issue courts have had to struggle with. *See, e.g., United States v. Novak*, 86 B.R. 625 (D.S.D. 1988); *In re Hayball Trucking, Inc.*, 67 B.R. 681 (Bankr. E.D. Mich. 1986); *In re Heatron, Inc.*, 34 B.R. 526 (Bankr. W.D. Mo. 1983).

Section 1127(c) requires the proponent of a plan modification to comply with section 1125's disclosure requirements. A new disclosure statement may not be required for every modification, however. *See In re American Solar King Corp.*, 90 B.R. 808 (Bankr. W.D. Tex. 1988) (new disclosure statement required only when "debtor intends to solicit votes from previously dissenting creditors or when the modification materially and adversely impacts parties who previously voted for

the plan"). Section 1127(d) places the burden on the holders of claims or interests to take action to change their previous vote. It provides that their original acceptance or rejection is deemed to apply to the modified plan, unless the holder changes the acceptance or rejection within the time set by the court.

Conversion or dismissal of the case. The court has authority under Bankruptcy Code § 1112 to convert the case to Chapter 7 or dismiss for cause, which may be established by a number of post-confirmation occurrences. Specifically, revocation of confirmation, the inability to effectuate substantial consummation of the plan, a material default by the debtor under the plan, and termination of the plan by reason of an occurrence or condition specified in the plan would all provide a basis for a party in interest or the U.S. trustee to move for conversion or dismissal. When considering such a motion, the court should take into account the competing interests of the creditors and the debtor and should permit liquidation only if no other viable option exists.

If the case is converted, issues may arise concerning the treatment of the Chapter 11 creditors in the Chapter 7 proceedings. For example, the court may have to determine if the original amount of an unsecured creditor's claim is restored or if in the Chapter 7 proceeding the creditor may claim only the reduced amount to which it was entitled under the plan. Unless the discharge is revoked under the narrow circumstances set forth in Bankruptcy Code § 1144, it would appear that the creditor's claim has been reduced to the amount specified in the plan, and that would be the basis for dealing with it in the Chapter 7 proceedings.

Successive filings. A court might be faced with a debtor seeking to escape its duties under a confirmed plan by refiling under Chapter 7 or 11. Generally, courts have not been sympathetic to such attempts to modify the plan without complying with the requirements of Bankruptcy Code § 1127. *See, e.g., In re AT of Maine, Inc.,* 56 B.R. 55 (Bankr. D. Me. 1985); *In re Northampton Corp.,* 37 B.R. 110 (Bankr. E.D. Pa. 1984). *But see In re Jartran, Inc.,* 886 F.2d 859 (7th Cir. 1989) (subsequent Chapter 11 filing resulted from recognition of inability to continue operating, not from attempt to modify terms of the original plan).

Exhibits

Exhibit I-1. Judicial Conference's Guidelines for Implementing 28 U.S.C. § 156(c)

Guidelines on Use of Outside Facilities and Services

Generally

1. **Authority.** Section 156(c) of Title 28 authorizes bankruptcy courts to use outside facilities or services to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The statute provides that the use of such facilities and services is subject to any conditions and limitations imposed by the pertinent circuit council.

Comments: Section 156(c) was enacted in recognition that the day-to-day activities and administrative requirements in some large bankruptcy cases are too onerous to be performed efficiently by the bankruptcy clerk's office. Services such as noticing, providing copies of case papers, and processing proofs of claims and interest can sometimes be performed more efficiently outside the bankruptcy clerk's office. The statute authorizes the bankruptcy court to permit third parties to perform these services at the estate's expense.

The need for such outside services is most prevalent in so-called "mega-cases," which are extremely large bankruptcy cases with hundreds or thousands of creditors. The staffing levels of bankruptcy clerks' offices sometimes cannot absorb such dramatic increases in workloads.

Records

2. **Custodian.** Pursuant to 28 U.S.C. § 156(e), the bankruptcy clerk of court is the official custodian of the records and dockets of the bankruptcy court. As custodian of the records and dockets of the bankruptcy court, the bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including those maintained by the debtor or a third party.

Comments: The bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including dockets, claims registers, mailing matrices, and other case papers maintained by the debtor or a third party.

How the bankruptcy clerk assures the security and integrity of the records and dockets depends on the procedures utilized in a particular case.

If the estate has hired personnel to work in the bankruptcy clerk's office, the bankruptcy clerk should supervise their work. If the debtor or a third party maintains claims registers, mailing matrices, or other case papers outside the bankruptcy clerk's office, the bankruptcy clerk should institute a system to monitor and check its work.

The bankruptcy clerk should institute safeguards to be included in the procedures used by others.

For example, if the debtor or a third party is to process proofs of claims and produce the claims register, it may be required to issue an acknowledgment when a proof of claim is filed. The notice of the meeting of creditors could state that acknowledgments are to be issued for proofs of claims and that if a creditor does not receive one within a week after filing a proof of claim, the creditor should contact the bankruptcy clerk.

Another example of a safeguard would be to require that the third party submit updated copies of the claims register or mailing matrix to the bankruptcy court on a weekly basis.

3. **Filing.** Proofs of claim or interest, complaints, motions, applications, objections, and other case papers shall be filed with the bankruptcy clerk's office which, after noting receipt, upon order of the court, may transmit case papers to an outside entity for maintenance.

Comments: Bankruptcy Rules 3002(b) and 5005(a) require that proofs of claim or interest, complaints, motions, applications, objections, and other case papers be filed with the bankruptcy clerk of court in the district where the case is pending, except as specified by section 1409 of Title 28 and except as a judge permits papers to be filed with the judge.

The bankruptcy court should assure itself of the integrity of the procedures before directing that proofs of claim or interest, or other case papers be transmitted to a third party.

If all case papers are filed in the bankruptcy clerk's office and stamped with the date received, the papers can be picked up by the debtor or a third party for processing at another location. The bankruptcy clerk can copy some papers to make spot checks of their processing by the debtor or a third party.

The bankruptcy clerk can obtain a special post office box for the receipt of proofs of claim in mega-cases. This separates the proofs of claim from other mail and speeds processing.

4. **Disposition.** The bankruptcy clerk remains responsible for the disposition of case papers after the conclusion of a case in which the bankruptcy court has directed the debtor or a third party to maintain the records.

Comments: Although the order which directs the debtor or a third party to maintain records does not necessarily have to provide for their disposition, the bankruptcy clerk should begin planning for records disposition early in the case.

5. **Claims.** If debtors or third parties are directed to process proofs of claim and maintain the claims register, they should be directed to perform related functions, such as recording transfers of claims and giving notices of transfer.

Comments: Bankruptcy Rule 3001(e)(2),(3),(4) requires notices of certain transfers of claims. The party which processes proofs of claim and maintains the claims register is best able to give the notices. Bankruptcy Rule 3001 requires that the court enter an order on many transfers. The original notices and orders should be placed in the case files.

Bankruptcy Rule 3004 requires notice to the creditor when the debtor or trustee files a claim in the name of the creditor. The party that processes proofs of claim and maintains the claims register is best able to provide the notice.

6. **Public records.** Section 107 of the Bankruptcy Code provides that the papers filed in bankruptcy cases and the bankruptcy court's dockets are public records unless the bankruptcy court orders otherwise. Case papers such as proofs of claim remain public records even if the debtor or a third party is directed to process and maintain those records. The bankruptcy clerk should ensure that those records are open to examination at reasonable times without charge.

Comments: Case papers processed and maintained by the debtor or a third party at a location outside the bankruptcy clerk's office should be available for review at that location during normal business hours.

Because it may often be impractical for parties to review case papers where the papers are processed and maintained, the bankruptcy clerk should attempt to make as much information available as is possible.

As an example, if a third party or the debtor processes proofs of claim and interest and generates the claims register, the third party or the debtor should furnish copies of the updated claims register to the bankruptcy court at least weekly.

Personnel

7. **Waivers.** Personnel employed by the estate to assist the bankruptcy clerk's office are not government employees. They should not be administered oaths of office, although they may be asked to sign a waiver of any right to compensation by the government. Because such personnel are not government employees, the bankruptcy clerk may not fire them.

Comments: There is no need to administer an oath of office to personnel paid by the estate to assist the bankruptcy clerk's office in processing a case. Administering an oath to such personnel fosters the false impression that they are government employees.

Administering an oath to a new government employee impresses the employee with the obligations of office and triggers certain restrictions on the employee's activities. A written waiver including a statement of the obligations of personnel employed by the estate to assist the bankruptcy clerk's office is less suggestive of government employment.

The bankruptcy clerk should request that special employees sign a written waiver of any right to receive compensation from the government, civil service retirement credit, or other benefits of government employment. The waiver should also include an acknowledgment that the special employee is to be paid by the estate, is directly accountable to the bankruptcy clerk, and will not receive instructions, directions, or orders from the debtor or the trustee.

The waiver should also specify that the special employees will refrain from discussing pending or impending cases, will not disclose confidential information received during the course of their employment, and will not profit from such confidential

information. These obligations are included in the code of conduct for clerks, which requires that the clerks impose these specific obligations on their staffs.

8. **Supervision.** The bankruptcy clerk is responsible for supervising the work of personnel employed by the estate to assist the bankruptcy clerk's office.

Comments: The bankruptcy clerk of court may select personnel to be employed by the estate to work in the bankruptcy clerk's office pursuant to section 156(c). If authorized by the order directing the estate to employ the personnel, the bankruptcy clerk may specify the terms of their employment. Due to the nature of such special employees' work, the bankruptcy clerk or a designated deputy clerk should supervise their work.

For the ease of supervision, it is desirable that the special employees work in the bankruptcy clerk's office if sufficient space is available. This also makes it easier to maintain security for the case papers processed by the special employees.

9. **Favoritism.** Personnel employed by the estate to assist the bankruptcy clerk's office may not provide special services for the debtor or the trustee. The bankruptcy clerk should strive to avoid any appearance that these personnel favor the debtor or any other party while performing official duties.

Comments: While they are assisting the bankruptcy clerk's office, special employees should not be in contact with the debtor, except on official business or to receive their paychecks. They should not receive instructions, directions, or orders from the debtor or the trustee.

The bankruptcy clerk should strive to avoid any impression that the special employees favor the debtor or any other party in their work for the bankruptcy clerk's office. For this reason, the special employees should not work in the debtor's business and assist the bankruptcy clerk's office at the same time. It is desirable that the special employees not be former employees of the debtor.

Facilities

10. **Equipment.** Any equipment, furniture, or other facilities leased or purchased at the estate's expense for the court's use in a bankruptcy case is property of the estate and will be returned to the estate after its use by the bankruptcy court.

Comments: Because section 156(c) prohibits charging the cost of such equipment, furniture, or other facilities to the United States, the bankruptcy clerk should explain to the seller or lessor that the estate—not the bankruptcy court—is responsible for payment.

Services

11. **Copies.** If the bankruptcy clerk selects a commercial copy service to provide copies of papers in one or more cases, the bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection. The bankruptcy clerk should request written proposals for the work as part of the clerk's determination of which commercial copy service is best qualified to provide such a service. If the cost of the copies is expected to

total more than $25,000, the bankruptcy clerk should make a formal solicitation of written proposals for the work. If a very large case is filed without advance notice, the bankruptcy clerk may not have time to solicit formal written proposals for the copy services. In such an instance, the clerk may solicit proposals orally and document the solicitation and responses.

Comments: The bankruptcy clerk's office may not be able to efficiently handle the volume of copy requests in a mega-case. With planning and the bankruptcy clerk's assistance, a private copy service may be able to provide copies of case papers at a lower price than the bankruptcy clerk's office. This saves time for the bankruptcy clerk's office and saves money for the parties. The time savings is particularly important in mega-cases, in which copy requests could otherwise require much of the bankruptcy clerk's office's time.

The bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection of a copy service to provide copies in a mega-case. The bankruptcy clerk should make at least an informal survey to determine which copy service is best qualified to provide copies on the basis of reliability, price per copy, and additional services to be provided, such as maintaining a duplicate file for review by the public.

Advertising is required for most government purchases of more than $25,000 by 41 U.S.C. § 5. Although the bankruptcy court's designation of a copy service is not a government purchase of services, it does convey a valuable business opportunity.

Basic fairness requires that all qualified copy centers be allowed to submit proposals if the bankruptcy clerk anticipates that more than $25,000 worth of copies will be requested in a year. If time permits, the bankruptcy clerk should send written requests for proposals to each of the local copy services which are capable of performing the work in a timely manner. If time permits and the bankruptcy clerk anticipates that more than $25,000 worth of copies will be requested in a year, copies of all of the written proposals should be sent for review to the Contracts Branch of the Contracts and Services Division of the Administrative Office before a particular proposal is selected.

Proposals for making copies should be solicited on a contingent basis before a mega-case is filed. If it has not been done, the request for proposals can be conveyed orally or hand-delivered with instructions that they be returned within 48 hours.

The order designating the copy service can also require that the parties file an extra copy of all case papers except proofs of claim. The intake and docket clerks can process the copies along with the originals, and the copy service can pick up the copies and an updated docket sheet once a day. The parties can then order copies by docket numbers or can place standing orders for copies.

The request for proposals should require the copy center to maintain a duplicate case file from which copies will be made. The request may also require that the copy center make the duplicate file available for review without charge during normal business hours.

Notices

12. **Mailing lists.** A debtor in a voluntary case must file a list containing the names and addresses of its creditors, even if the debtor or a third party is ordered to mail all notices in the case. If the debtor or a third party is directed to maintain the mailing matrix in a case, it shall make copies of the matrix available as requested by other parties or the bankruptcy court.

Comments: Bankruptcy Rule 1007(a) requires that debtors in voluntary cases file mailing lists with their petitions unless the petitions are accompanied by schedules of liabilities or Chapter 13 statements. Other parties may need to review the list. Another party or the bankruptcy clerk's office may need the list in order to provide a notice.

In certain circumstances the bankruptcy court may permit the debtor to file the mailing list in the form of a computer tape. The bankruptcy clerk shall take steps to insure that the mailing list is maintained properly and that it is protected against loss or damage.

13. **Certificates of service.** The bankruptcy court or the bankruptcy clerk should approve the form and content of any notice not provided by the bankruptcy clerk's office and should receive from the person providing notice a certificate of service which includes a copy of the notice and a list of persons to whom it was mailed.

Comments: Pursuant to the Bankruptcy Noticing Guidelines adopted by the Judicial Conference in March 1986, the parties shall file certificates of service for the notices which they provide. If counsel for the party signs a certificate of service, the certificate may generally state that notice was given to certain parties (such as the parties on the mailing matrix as of a certain date). If someone else signs the certificate, the certificate shall be accompanied by a list of the names and addresses of the parties served.

To ease the burden of reviewing the form and content of notices not prepared by the bankruptcy clerk's office, the bankruptcy clerk and the bankruptcy court can develop form notices for various circumstances. The bankruptcy court can specify the required contents for certain notices in its local rules.

Miscellaneous

14. **Assistance.** The Bankruptcy Division of the Administrative Office should be consulted when unusual questions or problems arise concerning outside facilities or services.

Comments: Mega-cases often present unusual questions or problems, such as the need to hire additional personnel on an expedited basis or to address unique circumstances in the meeting of creditors notice. The Bankruptcy Division can either answer the questions or refer them to the appropriate office.

Exhibit I-2. Sample Packet of Materials Sent to Debtors Whose Cases Potentially Necessitate Use of 28 U.S.C. § 156(c) Procedures

MEMORANDUM

United States Bankruptcy Court
Southern District of New York
Office of the Clerk

Date: November 21, 1991
To: Debtors in Potential Large Asset-Multiple Creditor Cases Under 28 U.S.C. § 156(c)
From: Cecelia M. Lewis
Clerk of Court
Re: 28 U.S.C. § 156(c) Procedures

Attached are exhibits which should help you help us in determining the number of creditors in your case and assist in its administration.

I. Worksheet developed by an outside agent to help define if case meets large asset-multiple creditor status, thus the need to invoke 28 U.S.C. § 156(c). This is an excellent tool for the clerk's office, as well as attorneys. Often, debtors do not understand the scope of the notices needed to administer a bankruptcy case.
II. Clerk's letter to debtor setting the procedures after determination that a case is a large asset-multiple creditor case.
III. Copy of the Judicial Conference Guidelines, as adopted March 1989, and approved by the Second Circuit.
IV. Form of order appointing an outside agent for claims processing.
V. Memorandum to outside agent, once the agent has been approved by the clerk for appointment. This is the clerk's detailed explanation to the claims processing agents of their duties and responsibilities to the court.
VI. Transfer of claims under Fed. R. Bankr. P. § 3001(e)(2) (3) & (4)
Under Fed. R. Bankr. P. § 3001(e)(2) & (4), the clerk's office must give 20 days' notice of the transfer of claim after a proof of claim has been filed.
VII. Southern District of New York fee guidelines.

The purpose of using the outside agent in the large asset-multiple creditor cases is to ensure that notices are properly sent, claims and notices returned to the court are lessened, and the amount of judicial time involved is minimized.

In this light, the debtor will provide the claims agent with a copy of the schedules and all amendments thereto by electronic media.

The outside agent is an arm of the court, even though paid by the debtor. An outside agent is not to be confused with a reconciliation agent. The reconciliation agent and the

claims agent are two separate entities, and they must remain so throughout the case. The outside agent, with the knowledge and consent of the clerk, has the ability to help tailor notices for a particular case. It is hoped that notices written in easily understood language will help the claims processing.

Before you attempt to set dates for a section 341(a) meeting and bar dates, it is recommended that you confer with your outside agent to ensure that the information provided by the debtor is sufficient to meet those deadlines.

Part I. Worksheet for Creditors to Receive Notices or File Claims (1 of 7)

_____ _____

Debtor **Case**

_____ **Payables**

_____ Trade Vendors
_____ Merchandise Payables
_____ Freight Claims
_____ Reclamation Notices
_____ Expense Payables
_____ _____
_____ _____
_____ _____

_____ **Financial**

_____ Commercial Deposits
_____ Prepayments
_____ Credit Balances
_____ Uncleared Checks
_____ Customer Deposit
_____ Notes Payable
_____ Dishonored Checks
_____ Loan Notes
_____ Secured Notes
_____ Loan Guarantees
_____ Promissory Notes
_____ Capital Leases
_____ Warranties
_____ Bank Accounts with Negative Amounts
_____ _____
_____ _____
_____ _____

Worksheet for Creditors to Receive Notices or File Claims (2 of 7)

_____ _____

Debtor **Case**

_____ **Institutions**

_____ Banks
_____ Title Companies
_____ Regulatory Agencies
_____ Underwriters
_____ Trustee
_____ Government Agencies
_____ Counsel of Record/Bankruptcy
_____ Credit & Financial Institutions
_____ Insurance Companies
_____ Broker Dealers
_____ _____
_____ _____
_____ _____

_____ **Litigation/Insurance Claims: General**

_____ Litigation
_____ Insurance Claims: Public Liability
_____ Insurance Claims: Other
_____ Personal Injury
_____ Pending Lawsuits
_____ _____
_____ _____
_____ _____

_____ **Unclaimed**

_____ Unclaimed Dividends
_____ Unclaimed Wages
_____ Unclaimed Checks
_____ _____
_____ _____
_____ _____

Worksheet for Creditors to Receive Notices or File Claims (3 of 7)

Debtor	Case

_____ **Taxing Agents**

_____ Federal Taxes
_____ State Taxes
_____ Local Taxes
_____ Other Taxes
_____ Property Taxes
_____ Sales Taxes
_____ _____
_____ _____
_____ Fiduciary Federal Taxes
_____ Fiduciary State Taxes
_____ Fiduciary Local Taxes
_____ Fiduciary Other Taxes
_____ _____
_____ _____

_____ **Operating Expenses**

_____ Leases
_____ Other Rentals
_____ Utilities
_____ _____
_____ _____

Worksheet for Creditors to Receive Notices or File Claims (4 of 7)

_____ _____

Debtor **Case**

_____ **Employee Compensation & Benefits**

_____ Current Employee Compensation & Benefit Contracts
_____ Former Employee Compensation & Benefit Contracts
_____ Unclaimed Wages: Former Employees
_____ Employee Wages
_____ Employee Wages: Commission
_____ Employee Severance
_____ Employee Vacation
_____ Employee 401K
_____ Employee Stock Ownership Trust/Plan (ESOT or ESOP)
_____ Employee Contracts
_____ Striking Employees
_____ Union Reps
_____ Employee Grievance
_____ Profit Sharing
_____ _____
_____ _____

_____ Officers & Directors
_____ _____
_____ _____

_____ Pension/Retirees
_____ Long Term Employee Disability
_____ Retirees—Medical
_____ _____
_____ _____

Worksheet for Creditors to Receive Notices or File Claims (5 of 7)

Debtor	Case

_____ **Stockholders**

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

_____ **Bondholders**

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

Worksheet for Creditors to Receive Notices or File Claims (6 of 7)

Debtor	Case

_____ **Miscellaneous**

_____ Intercompany Debt (internal)
_____ Letters of Credit
_____ Creditors Holding Security
_____ Other Debt
_____ Undesignated Claim
_____ Consulting Agreement
_____ Letter of Intent
_____ Settlement Agreement
_____ Executory Contracts
_____ _____
_____ _____

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

_____ _____
_____ _____
_____ _____
_____ _____
_____ _____

Worksheet for Creditors to Receive Notices or File Claims (7 of 7)

_____ _____

Debtor **Case**

Industry-Specific

_____ **Air/Bus/Etc. Transportation**

_____ Transportation Creditor Order
_____ Flight Coupon
_____ Refund Request
_____ Refund: Ticket Copy
_____ Refund: Original Ticket
_____ Refund: Lost Ticket
_____ Refund: Frequent Flyer
_____ Refund: Denied Boarding
_____ Refund: Lost Baggage
_____ Refund: Hotel Claim
_____ Refund: Prepaid Ticket
_____ Charter Deposits
_____ Interline Carriers
_____ _____
_____ _____
_____ _____
_____ _____

_____ **Real Estate**

_____ Commercial Property Deposit
_____ Property Owners Association
_____ Deposits on Homesite Sales
_____ Houses Under Contract
_____ Purchase Money: Mortgages
_____ Housing Contracts: Canceled
_____ Commercial Property Acquisition & Sales
_____ _____
_____ _____
_____ _____

Part II. Letter to Debtor from Clerk of Court Regarding Implementation of 28 U.S.C. § 156(c)

[This exhibit is reproduced in this guide as Exhibit I-6.]

Part III. Judicial Conference's Guidelines for Implementing 28 U.S.C. § 156(c)

[This exhibit is reproduced in this guide as Exhibit I-1.]

Part IV. Sample Order and Motion for Order Appointing an Outside Firm As Claims Agent for Clerk of Court

[The sample order is reproduced in this guide as Exhibit I-4.]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
	)	
	)	Case No.
	)	(Jointly Administered)
Debtors	)	

**Motion for Order Appointing [Firm's Name]
As Agent for the Clerk of the Bankruptcy Court
and Approving Related Agreement**

TO THE HONORABLE BURTON R. LIFLAND,
CHIEF UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), by their attorneys, [debtors' attorneys' name], respectfully represent:

Introduction

1. On December 11, 1991 (the "Filing Date"), each of the Debtors filed with this Court a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the "Bankruptcy Code"). The Debtors have continued in possession of their respective properties and to manage and operate their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These Chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of this Court.

2. No trustee or examiner has been appointed herein. On December 20, 1991, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee").

3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges," dated July 10, 1984, of District Court Judge Robert T. Ward. Venue of this case and the within motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is 28 U.S.C. § 156(c).

4. The Debtors primarily are engaged in the financing, production and distribution of motion pictures for the worldwide theatrical film market, including distribution of motion pictures financed and produced by others. In addition, the Debtors distribute motion pictures to the worldwide free television, cable and pay television markets and to the videocassette and video disc markets. Until May 31, 1991, the Debtors also created,

developed and produced programming, including series programming, motion pictures and "mini-series" intended for licensing to the major television networks in the United States and to the basic cable, pay television and first-run syndication markets. The Debtors' expansive film library includes in excess of 750 previously released theatrical and television motion pictures, television series and other television programs.

Request for Relief

5. This Motion is made pursuant to 28 U.S.C. § 156(c) and seeks: (a) the Court's approval of the agreement dated as of January 6, 1992 and entered as of February 24, 1992 (the "[firm's name] Agreement"), a copy of which is annexed hereto as Exhibit A, between "[firm's name]" and the Debtors; and (b) the appointment of [firm's name] as the official claims agent of the Clerk of this Court (the "Clerk's Office") in the Debtors' Chapter 11 cases. As more fully discussed below, in its capacity as the official claims agent, [firm's name] will assume responsibility, among other things, for providing form proofs of claim and notices related thereto to creditors, and for docketing and maintaining of proofs of claim filed in the Debtors' cases.

6. Pursuant to 28 U.S.C. § 156(c), the Clerk's Office is empowered to utilize outside agents and facilities for noticing creditors and docketing and maintaining claims, provided that the costs of such services are paid by the Debtors' estates. The Clerk's Office has established procedures for using outside claims agents, based upon guidelines promulgated under 28 U.S.C. § 156(c) by the Administrative Office of the U.S. Courts (the "Guidelines").

7. It is estimated that there are more than 56,000 creditors holding claims against the Debtors' estates. Upon information and belief, the Clerk's Office is not adequately equipped or staffed to efficiently docket and maintain the large number of proofs of claim that may be filed in these Chapter 11 cases. Accordingly, the Debtors seek to retain [firm's name] as a claims agent to assist the Clerk's Office in this process.

8. The salient terms of the [firm's name] Agreement are as follows:

a. **Compensation.** [Firm's name] shall be paid a one-time "set-up" fee of $1,500.00. [Firm's name] shall be compensated for services, expenses and supplies at the rates and prices listed in the schedule attached to the [firm's name] Agreement.

[Firm's name] shall be paid at the end of each calendar month upon the submission of invoices to the Debtors, counsel to the Creditors' Committee and the U.S. Trustee.

b. **Term.** The Agreement shall remain in effect until terminated by the Debtors, or [firm's name]. The Debtors may terminate the Agreement, without cause, upon one month's prior written notice received by [firm's name]. [Firm's name] may suspend performance under the [firm's name] Agreement upon three months' prior written notice received by the Debtors.

c. **Additional Terms.** The Agreement contains additional terms governing: (i) the protection of [firm's name]'s interest in the computer software developed or to be developed and utilized by [firm's name] on behalf of the Debtors; (ii) the

confidentiality of all information that may be provided by the Debtors to [firm's name]; and (iii) limitations on warranties of and liabilities to be incurred by [firm's name] in the event of defects or errors.

d. **Approval.** The [firm's name] Agreement is subject to the approval of this Court.

9. The Debtors have interviewed and considered a number of companies that provide claims processing services. The Debtors have selected [firm's name] as their claims agent based upon [firm's name]'s competitive rates and because the Debtors believe [firm's name] is well qualified to perform the services required by the Debtors and the Clerk's Office.

10. Consistent with the Guidelines, [firm's name] shall perform the following tasks in the Debtors' cases:

a. furnish all potential claimants with a form proof of claim and notice of the deadline for filing claims in the Debtors' cases and the amounts of their potential claims, as established by the Debtors' records;

b. provide mylar labels to the Clerk's Office in the form required by the Clerk's Office for docketing proofs of claim filed in the Debtors' cases;

c. docket all proofs of claim filed in the Debtors' cases and transmitted by the Clerk's Office and maintain the official claims register (the "Claims Register") on behalf of the Clerk's Office and provide a certified copy thereof to the Clerk's Office on a weekly basis;

d. maintain and store all original proofs of claim filed in the Debtors' cases;

e. specify on the Claims Register for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if an agent filed the proof of claim, (iv) the Debtor against whom the claim is asserted, and (v) the amount and classification asserted by such claimant;

f. record all transfers of claims pursuant to Fed. R. Bankr. P. 3001(e) and provide notice of the transfer as required by Fed. R. Bankr. P. 3001(e) and file a certificate of mailing thereof with the Clerk's Office; and

g. such other services as may be requested by the Debtors in connection with the processing of claims and providing of notice to creditors, shareholders and other parties in interest.

11. [Firm's name] also may provide the Debtors with a diskette or diskettes containing claims information, to assist the Debtors in reconciling and processing claims. The Debtors will not have access to [firm's name]'s database, however, and [firm's name] will not participate in the claims reconciliation process or advise the Debtors with respect thereto.

12. [Firm's name], in cooperation with the Clerk's Office, intends to provide the Debtors with an imaging system (the "Imaging System") for storage and retrieval of proofs of claim filed in these cases. [Firm's name] will make copies of a computer disk containing the documents in the Imaging System available for purchase. Thus, the Imaging System provides computer access to all the documents filed in these cases. If a party wishes to obtain a document contained in the Imaging System but does not wish to

purchase the Imaging System disk, the party will pay no more than the usual cost of copying to obtain such document.

13. The Claims Register maintained by [firm's name] shall be open to the public for examination without charge during regular business hours at the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York. All original documents maintained by [firm's name] shall be available to the Clerk's Office upon request.

14. The Debtors submit that the retention and appointment of [firm's name] as agent and custodian for the Clerk's Office is warranted under the facts of these cases. Further, the Debtors submit that [firm's name] is well qualified for this engagement inasmuch as [firm's name] has performed claims processing functions in numerous other reorganization cases, including those of [case names]. Upon information and belief, [firm's name] is not related to or connected with any of the Debtors or their advisors, nor is [firm's name] a creditor herein. [firm's name] shall not employ any past or present employees of the Debtors to perform services in connection with these cases.

15. The relief requested in this motion has been reviewed by the Clerk of the Bankruptcy Court, and notice of this motion has been given to counsel for the Creditors' Committee, the U.S. Trustee, and all parties in interest that have filed notices of appearance or requests to receive notices and pleadings filed herein. The Debtors submit that no further notice is necessary under the circumstances.

16. The Debtors request that the Court find the requirement pursuant to Local Bankruptcy Rule 13(b) that a memorandum of law be submitted in conjunction with this Motion is satisfied by the motion.

17. No previous motion for the relief requested herein has been made to this or any other court.

WHEREFORE the Debtors request that this Court enter the prefixed order and grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 24, 1992

[DEBTORS' ATTORNEYS' NAME]
Attorneys for Debtors and
Debtors In Possession

By: _____
[Attorney name]
(A Member of the Firm)

[Attorney address]

Part V. Memo from Clerk of Court to Outside Claims Agent Regarding Guidelines for Implementation of 28 U.S.C. § 156(c)

[This exhibit is reproduced in this guide as Exhibit I-5.]

Part VI. Notices from Clerk of Court Regarding Transfer of Claim and Filing of Proof of Claim by Transferor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under Chapter 11
	)	Case Nos.
	)	Claim No.
Debtors	)	

Notice of Transfer of Claim Pursuant to Fed. R. Bankr. P. 3001(e)(2) or (4)

To: (Transferor) _____
_____
_____

The transfer of your claim as shown above, in the amount of $_____ has been transferred to:

_____
_____
_____

No action is required if you do not object to the transfer of your claim. However, **if you object to the transfer of your claim, within 20 days of the date of this notice, you must:**

—File a Written Objection to the Transfer with:
Pierre D. Carlos, Special Deputy Clerk
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, New York 10004-1408

—Send a Copy of the Objection to the Transferee

Refer to **Internal Control No.** _____ in your objection.
If you file an objection, a hearing will be scheduled. **If Your Objection Is Not Timely Filed, the Transferee Will Be Substituted on Our Records As the Claimant.**

Cecelia M. Lewis, Clerk

FOR CLERK'S OFFICE USE ONLY:
This notice was mailed to the first named party, by first class mail, postage prepaid on _____, 199_.
INTERNAL CONTROL NO. _____
Copy: Claims Agent _____
Transferee _____
Debtor's Attorney _____

_____
Deputy Clerk

(rev. 10/29/91)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under Chapter 11
	)	Case Nos.
Debtors	)	

Notice: Filing of a Proof of Claim Pursuant to Fed. R. Bankr. P. 3001(e)(1) by Transferor

To: _____
_____
_____

We have received a Proof of Claim in the amount of $ _____. Our records reflect a transfer of claim to:

_____
_____
_____

Fed. R. Bankr. P. 3001(e) (1) allows only the transferee of a transferred claim to file a Proof of Claim. The transferee has been provided with a copy of this notice.

Cecelia M. Lewis, Clerk

CLERK'S OFFICE USE ONLY:
This notice was mailed to the first named party, by first class mail, postage prepaid on _____, 199_.

INTERNAL CONTROL NO. _____
Copy: Claims Agent _____
Transferee _____
Debtor's Attorney _____

_____
Deputy Clerk

(rev. 10/29/91)

Part VII. Administrative Order Regarding Fees and Disbursements for Professionals in Bankruptcy Cases

[This exhibit is reproduced in this guide as Exhibit II-9.]

Exhibit I-3. Sample Waiver Form for Special Employees of the Estate

Waiver Agreement for Special Employees of the Estate

I, _____, hereby declare that in performing services for the court my status will be that of a "special employee of the estate" of _____, debtor in case no. ___ in the United States Bankruptcy Court for the _____. A "special employee of the estate" for the purposes of this agreement is defined as a person who is employed by the debtor's estate pursuant to 28 U.S.C. § 156(c) to perform services for the court under the direction of the clerk of court in connection with the bankruptcy case filed by the debtor under Title 11 of the United States Code.

I understand that as a "special employee of the estate," I am not an employee of the Federal Government and that the debtor's estate is responsible for the payment of all wages and benefits to which my services may entitle me. I understand that as a "special employee of the estate," I am not entitled to the protections provided to Federal Government employees by the Federal Tort Claims Act from liability for negligence in the performance of duties or by the federal worker's compensation program for on-the-job injuries. I further understand that I will be directly answerable to the clerk of the court, and that I will not take instructions, directions, or orders from the debtor or any trustee who may be appointed in the bankruptcy case, nor will I provide any services to these entities without the approval of the clerk.

I hereby waive any claim or right to receive salary or other compensation, including fringe benefits, from the Federal Government as a result of my services. Further, I hereby agree to: (1) abstain from public comment about a pending or impending proceeding in the court; and (2) refrain from disclosing to any person outside of the clerk's office, including the debtor or the trustee or representatives of the debtor or the trustee, any confidential information received in the performance of my duties and from employing such information for personal gain.

_____	_____
Name	Witness
_____	_____
Date	Date

Acceptance by Clerk of Court

Pursuant to 28 U.S.C. § 156(c), I hereby accept the services of the above named "special employee of the estate" on behalf of the court subject to the understandings and waivers set forth above.

_____

Clerk of Court

Exhibit I-4. Sample Order Appointing an Outside Claims Agent

PRESENTMENT DATE: February 28, 1992
TIME: 12:00 noon

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
	)	
	)	Case No.
	)	(Jointly Administered)
Debtors	)	

**Order Appointing [Firm's Name]
As Agent for the Clerk of the Bankruptcy Court
and Approving Related Agreement**

Upon the motion (the "Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to 28 U.S.C. § 156(c) authorizing the Debtors to retain [firm's name], and appointing [firm's name] as the agent for the Clerk of this Court (the "Clerk's Office") pursuant to the terms and provisions of that certain agreement between the Debtors and [firm's name] dated as of January 6, 1992 and entered as of February 24, 1992 (the "[firm's name] Agreement"), a copy of which is annexed to the Motion as Exhibit "A," all as more fully set forth and described in the Motion; and it appearing that there are in excess of 56,000 creditors in the Debtors' Chapter 11 cases, many of whom are expected to file proofs of claim; and it further appearing that the noticing of creditors and docketing and maintaining of proofs of claim would be unduly time-consuming and burdensome for the Clerk's Office; and it appearing that pursuant to 28 U.S.C. § 156(c) the Court may utilize outside agents and facilities for the purpose of mailing notices and docketing and maintaining proofs of claim; and upon the consent of the Clerk's Office; and notice having been given to the United States Trustee for the Southern District of New York (the "U.S. Trustee"), counsel to the Official Committee of Unsecured Creditors (the "Creditors' Committee") and all other parties in interest that have filed notices of appearance or requests to receive notices and pleadings filed in the Debtors' cases; and no other or further notice being necessary; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED, that the Motion is granted in all respects; and it is further

ORDERED, that the [firm's name] Agreement hereby is approved; and it is further

ORDERED, that the Debtors are authorized to retain [firm's name] as their claims agent to perform the services described in the [firm's name] Agreement and the Motion, including to maintain, docket and otherwise administer and catalog any and all proofs of

claim filed in the Debtors' cases and to pay [firm's name] for such services in accordance with the terms set forth in the [firm's name] Agreement; and it is further

ORDERED, that the Clerk's Office is authorized and directed to transmit to [firm's name] all proofs of claim heretofore filed herein and to transmit to [firm's name], not less often than weekly, all proofs of claim hereafter received by the Clerk's Office; and it is further

ORDERED, that [firm's name] is authorized and directed to maintain as agent for the Clerk's Office an official claims register (the "Claims Register") and to provide the Clerk's Office with a certified copy thereof on a weekly basis, unless requested otherwise in writing by the Clerk's Office; and it is further

ORDERED, that the Claims Register shall reflect in sequential order the claims filed in the Debtors' Chapter 11 cases, specifying: (1) the claim number, (2) the date such claim was received by the Clerk's Office (if such claim was not date-stamped by the Clerk, then the date on which [firm's name] receives such claim shall be indicated), (3) the name and address of the claimant and the agent, if any, that filed such proof of claim, (4) the amount of said claim, (5) the Debtor against whom the claim is filed, (6) the classification(s) of such claim (e.g., secured, unsecured, priority, etc.), and (7) such other information as the Debtors or [firm's name] consider appropriate; and it is further

ORDERED, that [firm's name] is authorized and directed to perform all tasks related to maintaining the Claims Register, including, without limitation, recording transfers of claims and providing required notice thereof; and it is further

ORDERED, that upon the close of the Debtors' Chapter 11 cases, [firm's name] shall return all proofs of claim received by it to the Clerk's Office or the Clerk's Office's designee; and it is further

ORDERED, that [firm's name], in cooperation with the Clerk's Office, will provide an imaging system for storage and retrieval of proofs of claim, pleadings and all other documents filed in the Debtors' Chapter 11 cases and will make copies of the imaged disk available for purchase; *provided, however*, that the cost to the Debtors, their estates and their creditors of obtaining documents other than from such imaging system shall be no more than the ordinary and usual costs of copying and mailing such documents.

ORDERED, that the Debtors are authorized to execute such documents, take such action, make such payment and do such other things as may be necessary to implement and effectuate the terms of this order.

Consented to:

_____

Clerk of the Court

SO ORDERED THIS ____ DAY
OF FEBRUARY, 1992

_____

UNITED STATES BANKRUPTCY JUDGE

Exhibit I-5. Sample Memo from Clerk of Court to Outside Claims Agent Regarding Guidelines for Implementation of 28 U.S.C. § 156(c)

Date: September 19, 1991
From: THE OFFICE OF THE CLERK OF THE BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
To: Outside Claims Agent
Re: Guidelines for Implementation of 28 U.S.C. § 156(c)

In March 1989 the Judicial Conference of the United States authorized bankruptcy courts to use other than court facilities to provide notices, dockets and other administrative information to parties in bankruptcy cases. The Judicial Council of the Second Circuit concurred in April of 1990.

The authorization was given through guidelines established under 28 U.S.C. § 156(c). Section 156(c) was enacted in recognition that the day-to-day activities in large bankruptcy cases are too onerous to be performed efficiently by the bankruptcy clerk's office and can be performed more practically by third parties, referred to as "outside claims agents."

The outside claims agent shall be responsible for providing noticing and claims docketing assistance for debtors in bankruptcy cases with multiple creditors in those bankruptcy cases determined by the clerk to be beyond the administrative capacity of the clerk's office. All proofs of claim will be received at the court, a mylar label affixed to the claim, and each claim will be microfilmed, either by the clerk or by an outside reproduction service.

No entity may act as an outside claims agent until it has met with the clerk to insure that all guidelines set forth in the memo will be implemented and will continue for the life of the case. No entity will be approved by the court until such time as the applicant has demonstrated to the clerk's satisfaction its ability to comply with these guidelines.

The outside claims agent acts for the court in the process of docketing the claims to ensure that all claims received are recorded and available for public reference. The second phase of claims processing is reconciliation of the claims to debtor-provided creditor information. To ensure that the creditors are treated fairly, the claims agent handling the docket will be an independent party not providing legal or financial advice on the interpretation or settlement of the claim.

Since the bankruptcy clerk is responsible for the security and integrity of all of the bankruptcy court's records and dockets, including claims registers, mailing matrices, and other case papers maintained by the outside claims agent, the following guidelines are set forth to help assure the security of official information.

The outside claims agent *shall:*

1. relieve the clerk's office of all noticing under any applicable bankruptcy rule and processing of claims;

2. at any time, upon request, satisfy the court that the outside claims agent has the capability to efficiently and effectively notice, docket and maintain the proofs of claims;
3. notify all creditors of the filing of the bankruptcy petition and of the setting of the first meeting of creditors, pursuant to 11 U.S.C. § 341(a), under the proper provision of the Bankruptcy Code;
4. furnish a last date for the filing of a proof of claim and a form for filing a proof of claim to each creditor notified of the filing;
5. maintain an up-to-date copy of debtor's schedule listing of creditors and amounts owed;
6. provide the creditor with the scheduled amount and classification—in administratively consolidated cases the entity in which the creditor is scheduled should also be provided;
7. file with the clerk a certificate of service, within 10 days, which includes a copy of the notice, a list of persons to whom it was mailed (in alphabetical order), and the date mailed;
8. provide mylar labels to the clerk's office with the following information: (a) FILED S.D.N.Y.B.C., (b) case name and number, and (c) claim number beginning with 00001 and continuing;
9. after reproducing, cause to be removed all proofs of claim from the office of the clerk to the outside claims agent;
10. maintain all proofs of claim filed;
11. maintain an official claims register by docketing all proofs of claim on a claims register including but not limited to the following information:
    a. the name and address of claimant and agent, if agent filed proof of claim,
    b. the date received,
    c. the claim number assigned, and
    d. the amount and classification asserted by such claimant;
12. have the option to send at the discretion of the debtor or clerk an acknowledgment letter to the creditor when its claim is processed;
13. maintain the original proofs of claim in correct claim number order, in an environmentally secure area and protect the integrity of these original documents from theft and/or alteration;
14. transmit to the clerk an official copy of the claims register on a weekly basis, unless authorized by the clerk on a more/less regular basis;
15. maintain an up-to-date copy of the official mailing list for all entities, which shall be available upon request of a party in interest or the clerk;
16. be open to the public for examination of the original proofs of claim without charge during regular business hours;
17. maintain a telephone staff to handle inquiries as related to procedures in filing proofs of claim;

18. record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of the transfer as required by Bankruptcy Rule 3001(e) (copy of rules attached);
19. make changes in claims register pursuant to court order;
20. make all original documents available to the clerk on an expedited, immediate basis;
21. not employ any past or present employees of the debtor for work on the particular case involving that debtor;
22. provide notices to any entities, not limited to creditors, that the debtor or the court deems necessary for an orderly administration of the bankruptcy case;
23. at the close of the case, box and ship all original documents in proper format, as provided by the clerk's office, to the Federal Archives located at Military Ocean Terminal, Building 22, Bayonne, NJ 07002;
24. insure that no notices or forms are sent on behalf of the debtor without prior approval of the clerk; and
25. be responsible for regular contact with the debtor's attorney to insure that any changes in the claims that appear on the docket, i.e., withdrawals, transfers, etc., be transmitted to the claims agent for docketing on the claims docket.

In the exercise of any privilege granted by these guidelines, the outside claims agent shall comply with all applicable state, municipal and local laws, and the rules, orders, regulations and requirements of federal governmental departments and bureaus.

The outside claims agent shall promptly comply with such further conditions and requirements as the clerk may hereafter prescribe.

The outside claims agent is not employed by the government and shall not seek any compensation from the government. By accepting appointment to the case, the outside claims agent shall waive any right to receive compensation from the government.

The outside claims agent, appointed on a case-by-case basis, is not an official representative of the United States and is not acting on behalf of the United States. The outside claims agent shall not misrepresent this fact to the public.

Please sign the enclosed copy and return it to the clerk as acceptance of appointment to this case and of these guidelines.

_____ _____

Signature Date

Exhibit I-6. Sample Letter to Debtor's Attorney from Clerk of Court Regarding Debtor's Responsibilities Under 28 U.S.C. § 156(c)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
ONE BOWLING GREEN, ROOM 615-A
NEW YORK, NY 10004-1408

CECELIA M. LEWIS
CLERK OF COURT
TELEPHONE: (212) 791-2292

June 12, 1991

In re

Case No.

Subj: Implementation of 28 U.S.C. § 156(c)

Dear Attorney/Debtor:

In March 1989, the Judicial Conference of the United States effected guidelines to implement the above code section. This section authorizes the courts to utilize other than court facilities to administratively process information to the parties in bankruptcy cases. The costs of such facilities and information are to be paid from the assets of the estate.

The above case falls under these guidelines, since it is too burdensome for the clerk's office to administer. Please contact the clerk or the chief deputy within ten (10) days at (212) 791-2632 for further information regarding what must be done in the administration of this case. In implementing these procedures it is understood that you will speak directly with the clerk and that certain documents *will not* be processed unless the attached guidelines are followed specifically and completely.

The guidelines allow for the appointment of an outside noticing claims agent. Please keep in mind that while you are culpable to the outside claims agent, the clerk's office is responsible for the security and integrity of all the court's records, including noticing and claims registers. The outside claims agent is acting in place of the clerk's office and in such capacity is accountable to the clerk. Therefore all outside claims agent retention orders should be reviewed by me. Also, it is essential for you to cooperate fully with the outside claims agent, just as you would the clerk's office, in promptly providing it with information to send the notice to creditors of the filing, including scheduled information and amendments effecting same.

Be sure that all information concerning the filing of the case does not promote the filing of claims until these procedures are in place. Unless these procedures are in place, no claims will be processed by this office until such time as they are implemented. There is no wish on the part of this office to mandate a proof of claim form other than those set out in the official forms. It is clear that forms devised by parties, without clerk input, may cause delays and result in increased cost. Therefore, all "unapproved" proofs of claim forms are not allowed for distribution to creditors.

It is imperative that no notices be sent until such time as you have checked with me. This is to insure proper content and flow of documents to the court.

You shall also maintain a post office box for the purpose of receiving claims. A messenger service provided by you will deliver said claims to the office of the clerk. The post office box will be maintained by the debtor until 6 months past the bar date. You will further provide employees to process and microfilm said claims as necessary. Once processed, the claims will be forwarded to an outside claims agent as outlined in the guidelines. Prior to an order being submitted to the judge for signing and retaining an outside service, it is essential that the clerk review the agent's capability to handle this case.

It is the responsibility of the debtor's attorney to monitor the legal docket for changes regarding claims. The court has attempted to make that procedure less onerous by insisting that the claim number affected in an order appear in the caption of the document. The clerk's office has taken the responsibility to make sure that the numbers of those claims appear on the docket. It will be your obligation as the debtor's attorney to provide the outside claims agent with a conformed copy of any orders affecting claims.

If you have any questions concerning this, please contact me as soon as possible.

Thank you.

Sincerely,

Cecelia M. Lewis

enclosure

cc: Honorable [Bankruptcy Judge's name]
Chief Deputy Clerk
Claims Supervisor
Systems Manager

Exhibit I-7. Sample Order Designating an Outside Copy Service

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re	)	
	)	Case No. through
	)	inclusive
	)	
	)	Chapter 11
	)	
	)	Cons. for Administration at
	)	
Debtors	)	

Order of Court

AND NOW, this 23rd day of February, 1988, IT IS HEREBY ORDERED that an original and three (3) copies of all papers be filed in the above-captioned cases.

IT IS FURTHER ORDERED that [copy service's name], [address], is authorized to process all copy requests in the above cases, and that the Clerk shall assure that [copy service's name] has a complete copy of the files and docket sheets at all times.

At Pittsburgh, Pennsylvania.

Joseph L. Cosetti
Bankruptcy Judge

Exhibit I-8. Sample Order Directing Debtor to Give Notices Pursuant to Bankruptcy Rule 2002

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ------

In re	)	
	)	Chapter 11
	)	
Debtors	)	Case No.

Order Directing Debtor to Give Notices Pursuant to Bankruptcy Rule 2002

Upon the request of the clerk of this court for an order directing the above-named debtor (the "Debtor") to give certain notices required by Bankruptcy Rule 2002; and it appearing that the relief requested by the clerk is in the best interests of the Debtor's estate and creditors and will assist the smooth and efficient administration of this Chapter 11 case; and sufficient cause appearing therefor, it is hereby

ORDERED that the Debtor shall give all notices required in this Chapter 11 case by Bankruptcy Rule 2002(a), 2002(b), 2002(d), 2002(f), 2002(i) and 2002(j); and it is further

ORDERED that the Debtor may give all notices that are required by Bankruptcy Rule 2002 to be given to creditors and indenture trustees by arranging for such notices to be given by [name of outside noticing agency] or a corporation that provides similar services, with such notices to be given by said corporation to those creditors and indenture trustees whose names appear on the list of creditors and indenture trustees filed by the Debtor with the court; and it is further

ORDERED that the Debtor may give all notices that are required by Bankruptcy Rule 2002 to be given to holders of publicly held debt and equity securities, including all notices required by Bankruptcy Rule 2002(d), by arranging for such notices to be given by the indenture trustee or transfer agent, as the case may be, for the securities, with such notices to be given by the trustee or transfer agent to those holders of securities whose names appear on a reasonably current list of such holders maintained by the trustee or transfer agent whose names appear on such a list as of a record date established by further order of this court; and it is further

ORDERED that the Debtor shall file with the court a Certificate of Service after the Debtor has given notice pursuant to Bankruptcy Rule 2002, and that in the case of notices which are given to creditors and indenture trustees by [name of outside noticing agency] or a corporation which provides similar services, or which are given to holders of publicly held debt and equity securities by the indenture trustee or transfer agent, the Debtor shall file with the court as promptly as possible under the circumstances a

Certificate of Service which shall set forth to whom notice has been given; and it is further

ORDERED that all costs of giving notice as directed herein may be paid by the Debtor as administrative expenses out of its available funds without further order of this court; and it is further

ORDERED that the foregoing directions to the Debtor to give notice shall be without prejudice to the Debtor or any other person seeking an order of this court shortening the time to give notice or limiting the persons to whom notice is to be given as may be permitted by the Bankruptcy Code, Bankruptcy Rules or otherwise by this court.

_____

United States Bankruptcy Judge

Exhibit I-9. Sample Order Establishing Notice Procedure

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF -------

In re	)	
	)	Chapter 11
	)	
Debtors	)	Case No.

Order Establishing Notice Procedure

To promote better understanding by the staff of this court and all parties involved as to the current notice procedures being employed in this case, to eliminate unnecessary expense, and to eliminate certain ambiguities, the court hereby sets out the procedures to be followed:

1. The clerk shall maintain, in separate folders, master current service lists, as further specified respectively in paragraphs 5 and 6 below, to be known *and to be referred to in all pleadings* as the "Full List" and the "Short List" in this case with specific reference to this Order and any subsequent amendments thereto. These lists will be used generally for notice purposes where the court has discretion to limit notice (under the Bankruptcy Code and Rules at less than all scheduled creditors and shareholders) unless the court specifically orders otherwise as to a particular matter.

2. Whenever service of process is required to be made pursuant to this or any other order, a certificate of service shall be filed with the clerk and appended to the original filing copy of the document served, along with a copy of the appropriate service list appertaining, whether the Full List or the Short List. The service list may be copied on microfiche and filed with the court in that form. The *copy* of the certificate of service mailed to other parties, with the copy of the moving or responding pleading, need not include a copy of the service list employed but may simply refer to service upon the current Full List or current Short List as appropriate. Whenever it is, for good cause, not possible to furnish a certificate of service with the original filing copy of the document, said certificate and the copy of the appropriate service list shall be submitted without unreasonable delay. In such cases the transmittal letter covering the pleadings must indicate the mode and date of service (or date to be served) and whether the Full List or Short List is being (or will be) used.

3. The service lists appended as provided in the preceding paragraph *shall be in the form and format* of the master current service lists maintained by the clerk, as obtained from the clerk upon request, at least to the extent that the parties listed shall appear in the same order as they appear on the lists maintained by the clerk. Counsel shall have the

duty, from time to time, of assuring the currency of the lists used. The clerk is not required to furnish automatic updates.

4. Failure to certify timely service, or to furnish the requisite certificate of service and list as required by paragraph 2 above, will result in the non-scheduling of the matter or will delay setting a hearing on any matters not covered by prior order.

5. The Full List shall include the debtor in possession; the United States Trustee; any and all indenture trustees and their counsel; counsel for and members of any committee appointed pursuant to 11 U.S.C. § 1102, including separate non-appointed attorneys for individual committee members; and any creditor, equity security holder or other party in interest who serves upon the debtor in possession and files with the clerk a request that all notices be mailed to it pursuant to Bankruptcy Rule 2002(i). The Full List shall also include all entities listed in paragraph 6 below if not otherwise covered by the foregoing enumeration. Furthermore, inasmuch as the debtor has been providing mailings to other entities on full mailings since the commencement of the case, not covered by the foregoing enumeration, the Full List shall continue to include such entities until and if they are removed in accordance with paragraph 13 below.

6. The Short List shall include and be limited to the following entities:

a. Counsel for and members of any committee appointed under § 1102 of the Bankruptcy Code, including separate non-appointed attorneys for individual committee members;

b. the District Director of the Internal Revenue Service;

c. the Securities and Exchange Commission at its Washington and New York regional offices;

d. all indenture trustees and their attorneys;

e. the United States Trustee; and

f. the debtor.

7. All notices required by Bankruptcy Rule 2002(a)(2), (3), or (7) may be served on the Full List under this Order, and not on all scheduled creditors and shareholders, unless the court specifically orders otherwise as to a particular matter.

8. All requests for an order or other relief, including any motion or application under Bankruptcy Rule 9013, 9014, or otherwise (other than in an adversary proceeding), or a complaint, counterclaim, or third party claim within an adversary proceeding, shall be served on the Full List.

9. Any opposition, reply, statement, request for a hearing, or other response to any document served under paragraph 7 or 8 of this Order need be served only on the entity filing and serving the document to which response is being made, and upon the Short List.

10. Service of any document on the debtor and its counsel, on counsel for and members of any committee appointed pursuant to 11 U.S.C. § 1102, and on the United States Trustee shall be by overnight delivery service, by hand delivery, or by telecopy. However, the United States Trustee need serve only general counsel to the debtor and counsel (not members) of committees with the special service under this paragraph.

11. This Order is without prejudice to any request by a party in interest, or an order by the court on its own motion, that for good cause in a particular circumstance, this court order a different notice procedure with respect to any particular entity or matter.

12. With the aid of the clerk of the court the debtor shall prepare forthwith the initial listings of a Full List and a Short List in compliance with this Order. Thereafter such lists shall be maintained by the clerk and no additions or deletions thereto shall be made, except by the clerk in accordance with this Order, or upon an appropriate motion and amending order entered by this court.

13. Nothing in this Order shall preclude the United States Trustee, the debtor, or any other party in interest from seeking amendment of this Order to add or delete entities for good cause shown. It is the intent of the court, however, that this Order be strictly complied with and serve as a bench mark with serially-numbered amendments hereafter. Any requests for change shall be made with specific reference to the current list in question and shall name the specific entities to be added or deleted as well as the category involved. Periodically, to eliminate unnecessary administrative expense, the debtor is directed to canvass all entities on the Full List to determine the continuing justification for their inclusion on the Full List (and/or justification of duplicative listings) and to move for deletion of such entities as may be appropriate after such canvass.

14. The debtor shall serve a copy of this Order upon the Full List and shall certify service in accordance with the provisions hereof.

DONE and ORDERED this ___ day of _____, 19__.

_____

United States Bankruptcy Judge

Exhibit I-10. Sample First-Day Orders

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case No.
Debtor	)	
	)	

In re	)	
	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case No.
Debtor	)	
	)	

In re	)	
	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case No.
Debtor	)	
	)	

In re	)	
	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case No.
Debtor	)	
	)	

Order Directing Joint Administration of Cases Pursuant to Bankruptcy Rule 1015(b)

Upon the annexed motion ("Motion") of [debtor's name] and the other above-captioned debtors in possession (collectively, the "Debtors") for an order pursuant to Bankruptcy Rule 1015(b) administratively consolidating their respective Chapter 11 cases for procedural purposes only; and it appearing that joint administration of the cases is in the best interests of the Debtors, their respective estates and creditors; and notice having been given to the United States Trustee; and it appearing that no other notice need be given; and sufficient cause appearing therefor, it is

ORDERED that the above-captioned Chapter 11 cases be, and they hereby are, consolidated for procedural purposes only and shall be jointly administered by the court; and it is further

ORDERED that the caption of the jointly administered cases is to read as follows:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
	)	Through
Debtors	)	Inclusive

and it is further

ORDERED that a docket entry shall be made in each of the above-captioned cases substantially as follows:

> "An order has been entered in this case directing the procedural consolidation and joint administration of the [debtors' names] Chapter 11 cases, and the docket in Case No. _____ ( ) should be consulted for all matters affecting this case."

Dated: New York, New York
September 21, 1989

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By: _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
Debtors	)	Through
	)	Inclusive

**Order for Retention of [Attorneys' Name]
As Attorneys for the Debtors and
Debtors in Possession**

Upon the annexed application of [debtor's name], debtor and debtor in possession, on behalf of itself and the other debtors and debtors in possession herein (collectively, the "Debtors"), for authority to employ [attorneys' name] to represent them under a general retainer as their attorneys (the "Application"); and upon the affidavit of [firm member's name], a member of [attorneys' name], annexed to the Application; and it appearing that [attorneys' name] is a firm of attorneys duly admitted to practice in this Court; and the Court being satisfied that (1) [attorneys' name] represents no interest adverse to the Debtors or to their estates, (2) [attorneys' name] is a "disinterested person" as that term is defined in section 101(13) of the Bankruptcy Code, and (3) the employment of [attorneys' name] is necessary and would be in the best interests of these estates; and after due deliberation and sufficient cause appearing therefor; it is

ORDERED, that in accordance with section 327(a) of the Bankruptcy Code, the Debtors be and they hereby are authorized and empowered to retain [attorneys' name] as their attorneys under a general retainer to represent them in these cases under Chapter 11 of the Bankruptcy Code, and for the other purposes set forth in the Application, and it is further

ORDERED, that [attorneys' name] shall be compensated in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code.

Dated: New York, New York
September 24, 1989

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By: _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
Debtors	)	Through
	)	Inclusive

Order Waiving or Modifying the Requirements of Bankruptcy Rule 1007 and Local Bankruptcy Rules 50 and 52 with Respect to the Filing of Information, Lists, Statements, and Schedules

Upon the annexed application of [debtor's name], debtor and debtor in possession, on behalf of itself and the other above-captioned debtors and debtors in possession (collectively, the "Debtors") for an order waiving or modifying the requirements of Bankruptcy Rule 1007 and Local Bankruptcy Rules 50 and 52 with respect to the filing of information, lists, statements and schedules, and there being no need for notice in the circumstances, and the United States Trustee having no objection to the relief requested, and no adverse interest being represented; and after due deliberation and sufficient cause appearing therefor, it is

NOW, on motion of [debtors' attorneys' name], counsel for the Debtors,

ORDERED, that for cause shown the requirements of Rule 1007 of the Bankruptcy Rules be, and hereby are, modified to the following extent:

1. The Debtors be, and hereby are, authorized and directed to file their lists of creditors and equity security holders, as required by Rule 1007(a)(1) and (a)(3), within forty-five (45) days of the date hereof.
2. The Debtors be, and hereby are, authorized and directed to file their schedules of assets and liabilities, statements of financial affairs and statements of executory contracts and unexpired leases, as required by Rule 1007(b), within ninety (90) days of the date hereof;

and it is further

ORDERED, that for cause shown the requirements of Rule 50(b) of the Local Bankruptcy Rules be, and hereby are, modified to the following extent:

The Debtors be, and hereby are, authorized and directed to file a list of creditors compatible with the Bankruptcy Automatic Noticing System utilized by the Court within thirty (30) days of the date hereof;

and it is further

ORDERED, that for cause shown the requirements of Rule 52 of the Local Bankruptcy Rules be, and hereby are, waived or modified to the following extent:

1. The Debtors be, and hereby are, authorized and directed to file the information and lists required by subsections (a)(7) and (a)(9) of Rule 52 of the Local Bankruptcy Rules within twenty (20) days of the date hereof.
2. The requirements of subsection (b)(2) and (b)(3) of Rule 52 of the Local Bankruptcy Rules be, and hereby are, waived for ten (10) days and the Debtors be, and hereby are, relieved for such period of the obligation to provide any of the projected information required therein, provided, however, that nothing provided herein shall relieve the Debtors from the obligation of disclosing the salaries, compensation and benefits of its officers, and directors and consultants.

and it is further

ORDERED, that the relief granted herein be, and hereby is, without prejudice to the Debtors to seek further extensions of the time limits imposed herein upon proper application to the Court.

Dated: New York, New York
September 24, 1989

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By:_____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
	)	Through
	)	Inclusive
Debtors	)	

Order Authorizing Debtors to Continue Consolidated Cash Management System

Upon the annexed application of [debtor's name], debtor and debtor in possession, on behalf of itself and the other above-captioned debtors and debtors in possession (the "Debtors"), and the United States Trustee having no objection, and no adverse interest being represented; and after due deliberation and sufficient cause appearing therefor, it is

NOW, on motion of [debtors' attorneys' name], counsel for the Debtors,

ORDERED, that the Debtors be, and they hereby are, authorized for 60 days to continue to consolidate the management of their cash and the cash of their affiliates as has been usual and customary in the past, and to transfer monies in the ordinary course of business from entity to entity, including transfers of cash to affiliated entities that are not debtors herein, as, when and in the amounts necessary to maintain the business operations and assets of the Debtors and their affiliates; *provided however*, that the Debtors shall maintain strict and complete records of all such transfers of cash so that all transfers can be readily ascertained, and it is further

ORDERED, that the authority granted by this order may be revoked or modified by further order of this court after notice and a hearing and is without prejudice to any application for an extension.

Dated: New York, New York
September 24, 1989

_____
UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By: _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
	)	Through
	)	Inclusive
Debtors	)	

Order Approving Investment Guidelines

Upon the annexed application (the "Application") of [debtor's name], debtor and debtor in possession, on behalf of itself and the other debtors and debtors in possession herein (collectively, the "Debtors"), for an order approving the Investment Guidelines as meeting the requirement of section 345 of the Bankruptcy Code; and notice having been given to the United States Trustee; and it appearing that no other notice need be given; and sufficient cause appearing therefor, it is

ORDERED, that the Investment Guidelines for short-term investment of cash (as defined in the Application), as set forth in Exhibit "A" to the Application, are approved for investment of cash by the Debtors; and it is further

ORDERED, that the relief requested herein being deemed necessary and proper, compliance with such Investment Guidelines by the Debtors be and hereby is deemed adequate and sufficient compliance with the requirements of section 345 of the Bankruptcy Code, and the Debtors be and hereby are relieved from the obligation under section 345(b) of the Bankruptcy Code of obtaining a bond from an entity with which money is deposited or invested; and it is further

ORDERED, that the Debtors shall, not later than Wednesday of each week commencing September 27, 1989, supply to (1) any Official Committee appointed in these proceedings, (2) the attorneys for the various lending institutions, and (3) the United States Trustee, a summary of each Debtor's cash investment position as of the last business day of the preceding week, including the aggregate amount of cash invested as of such date and an itemized list of all investments exceeding $100,000; and it is further

ORDERED, that nothing contained herein shall prejudice the right of the Debtors or any other party in interest to seek at any time a modification of this order or the Investment Guidelines hereby approved.

Dated: New York, New York
September 24, 1989

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By: _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
	)	Through
	)	Inclusive
Debtors	)	

Order Authorizing Debtors in Possession to Pay Wages and Salaries, Reimburse Pre-petition Employee Business Expenses and Pay Other Pre-petition Employee Benefits

Upon the annexed motion of [debtor's name], debtor and debtor in possession, on behalf of itself and the other above-captioned debtors and debtors in possession (collectively, the "Debtors"), and the United States Trustee having no objection to the relief requested and no adverse interest being represented; and after due deliberation and sufficient cause appearing therefor, it is

NOW, on motion of [debtors' attorneys' name], counsel for the Debtors,

ORDERED, that the Debtors be, and they hereby are, authorized and empowered to pay on September 29, 1989, to their employees all wages, salaries and commissions (including holiday pay, contributions to thrift or other savings plans, and all federal, state and local payroll-related taxes, deductions and withholdings pertaining to payments made pursuant to this order) which have accrued by virtue of the services rendered by the employees to the Debtors within the forty-five (45) days immediately prior to the filing of the Chapter 11 petitions (the "filing date"), provided that such accrued wage, salary and commission payments shall not exceed, in the aggregate, the sum of $200,000; and it is further

ORDERED, that the Debtors be, and they hereby are, authorized and empowered to pay, in the ordinary course of business and in accordance with existing policies and practices, vacation pay which has accrued and becomes payable subsequent to the filing date on account of services rendered by employees to the Debtors, whether before or after the filing date; and it is further

ORDERED, that the Debtors be, and they hereby are, authorized and empowered to pay all out-of-pocket business and business-related expenses incurred by employees prior to the filing date in accordance with existing company policies and practices, provided that such payments shall not exceed, in the aggregate, the sum of $125,000; and it is further

ORDERED, that the Debtors be, and they hereby are, authorized and empowered to pay to or for the benefit of employees all (a) health, medical, dental, disability and death

claims, (b) all premiums on policies of insurance pertaining thereto and (c) all costs and expenses incurred in connection with the servicing and processing of such claims, for and on account of claims which arose or accrued prior to the filing date, provided that such payments shall not exceed, in the aggregate, the sum of $125,000; and it is further

ORDERED, that the Debtors be, and they hereby are, authorized and empowered to continue to service and make all payments on or in connection with credit, savings, benefits and thrift plans, union dues and other wage or salary check-offs and deductions in accordance with the prior requests and instructions of their employees and past practices; and it is further

ORDERED, that the Debtors be, and they hereby are, authorized and empowered to pay all employees' workers' compensation, and related benefits and claims which arose or accrued prior to the filing date, on or after September 29, 1989; and it is further

ORDERED, that the Debtors shall, by overnight mail or courier service, give notice of the entry of this Order on any Indenture Trustee and the 20 largest creditors of [debtor's name] stating that if objection is filed by 4:00 p.m. on September 28, 1989, a hearing will be held at 9:30 a.m. before the judge to whom this case is assigned.

Dated: New York, New York
September 24, 1989

_____
UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By: _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
	)	Through
	)	Inclusive
Debtors	)	

Order Authorizing Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Directing Payment of Payroll Checks

Upon the annexed application of [debtor's name], debtor and debtor in possession, on behalf of itself and the other above-captioned debtors and debtors in possession (collectively, the "Debtors"), and there being no objection hereto by the United States Trustee; and no adverse interest being represented and sufficient cause appearing therefor, it is

NOW, on motion of [debtors' attorneys' name], counsel for Debtors,

ORDERED, that the Debtors be, and each of them hereby is, authorized to (1) designate, maintain and continue to use all of their respective bank accounts in existence as at the date these Chapter 11 cases were commenced (the "accounts") including, without limitation, those accounts set forth on Exhibit "A" (with accompanying account numbers) annexed to the Application, (2) treat the accounts for all purposes as accounts of the debtors in possession and (3) use, in their present form, existing checks and other documents related to the accounts; and all banks at which accounts are maintained, including without limitation those set forth on Exhibit "A," be, and they hereby are, authorized and directed to continue to service and administer the accounts as accounts of the debtors in possession; and it is further

ORDERED, that notwithstanding the foregoing decretal paragraph, no checks or drafts issued on the accounts prior to the commencement of these Chapter 11 cases shall be honored or paid by said banks; provided, however, that checks drawn on payroll or other employee-related accounts respecting compensation and benefits (including, without limitation, those accounts designated as "payroll accounts" in Schedule "A" hereto, herein called the "payroll accounts") shall be honored by such banks provided sufficient funds are in said accounts to cover them, all as more fully authorized and provided for in the fourth and fifth decretal paragraphs hereof and in an order of this Court of even date herewith entitled "Order Authorizing Debtors in Possession to Pay Wages and Salaries, Reimburse Pre-petition Employee Business Expenses and Pay Other Pre-Petition Employee Benefits"; and it is further

ORDERED, that the Debtors be, and they hereby are, authorized to continue to use their existing business forms without alteration or change; and it is further

ORDERED, that all banks at which payroll accounts are maintained, including, but not limited to, those identified as payroll accounts on Schedule "A," be, and they hereby are, authorized and directed to continue to service and administer the payroll accounts without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks and drafts drawn on the payroll accounts, whether presented, drawn or issued before or after the commencement of these Chapter 11 cases by the holders or makers thereof, as the case may be, provided sufficient funds are in the payroll accounts to cover them; and it is further

ORDERED, that pursuant to 11 U.S.C. §§ 352 and 552 all banks at which payroll accounts are maintained be, and they hereby are, enjoined from offsetting, freezing, affecting or otherwise impeding any funds of the Debtors deposited post-petition by the Debtors in the payroll accounts by wire or other means subsequent to the commencement of these Chapter 11 cases (the "filing date") on account or by reason of any claim (as defined in the Bankruptcy Code) of any such bank against any of the Debtors that arose before the filing date, and any and all checks drawn or issued by the Debtors on the payroll accounts which contain post-filing date deposits as aforesaid shall be timely honored by such banks notwithstanding any claim they may hold against any of the Debtors.

Dated: New York, New York
September 24, 1989

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By:_____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case Nos.
	)	Through
	)	Inclusive
Debtors	)	

Order for Retention of [Accounting Firm's Name] As Certified Public Accountants for the Debtors and Debtors in Possession

Upon the annexed application of [debtor's name], debtor and debtor in possession, on behalf of itself and the other debtors and debtors in possession herein (collectively, the "Debtors") for authority to employ [accounting firm's name] as their certified public accountants (the "Application"); and it appearing that (1) [accounting firm's name] represents no interest adverse to the Debtors or to their estates; (2) [accounting firm's name] is a "disinterested person" as that term is defined in section 101(13) of the Bankruptcy Code; and (3) the employment of [accounting firm's name] is necessary and would be in the best interests of these estates; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED, that in accordance with section 327(a) of the Bankruptcy Code, the Debtors be, and they hereby are, authorized and empowered to retain [accounting firm's name] as their certified public accountants in these cases under Chapter 11 of the Bankruptcy Code; and it is further

ORDERED, that [accounting firm's name] may file for allowances under sections 330 and 331 of the Bankruptcy Code and such Bankruptcy Rules, which applications shall be filed in accordance with the further orders of this Court; and it is further

ORDERED, that absent an allocation by [accounting firm's name] of the time and other charges for which it seeks compensation among the various Debtors in any bill or application for allowance of compensation [accounting firm's name] may file, based upon the time spent and benefits received by the various Debtors, any payment made by the Debtors to [accounting firm's name] shall be without prejudice to the right of any party in interest, at any time before or after such payment is made, to make an application to this Court for an appropriate allocation of such payment among the estates of the various Debtors.

Dated: New York, New York
September 24, 1989

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By: _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	In Proceedings for a
	)	Reorganization Under
	)	Chapter 11
	)	Case No.
Debtor	)	

Restraining Order

The above-captioned debtors (collectively, the "Debtors") having filed petitions for reorganization under Chapter 11, § 301 of the Bankruptcy Code and having been continued in the management and possession of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code; and

IT APPEARING that this Court, pursuant to 28 U.S.C. §§ 1334 and 157, as supplemented by the "Standing Order of Referral of Cases to Bankruptcy Judges" dated July 10, 1984 (Ward, Acting C.J.), has exclusive jurisdiction of all of the property of the Debtors, wherever located, and that this Court pursuant to sections 105, 362 and 366 of the Bankruptcy Code may issue any order, process or judgment including, without limitation, this restraining order, as may be necessary or appropriate to carry out the provisions of Chapter 11, and after due deliberation, no adverse interest being represented, and sufficient cause appearing therefor, it is

NOW, on motion of [debtors' attorneys' name], counsel for the Debtors,

ORDERED, that section 362 of the Bankruptcy Code provides that all persons (including individuals, partnerships and corporations, and all those acting for or on their behalf), and all governmental units (including the United States of America and any State, Commonwealth, District, Territory, municipality, department, agency or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, a foreign state, or other foreign or domestic governments, and all those acting for or on their behalf) are, *inter alia* stayed, restrained and enjoined from:

1. Commencing or continuing, including the issuance or employment of process, any judicial, administrative or other proceeding against any of the Debtors, that was or could have been commenced before the commencement of the instant Chapter 11 cases, or recovering a claim against any of the Debtors that arose before the commencement of the Chapter 11 cases;
2. Enforcing, against any of the Debtors or against property of any of the Debtors, a judgment obtained before the commencement of the Chapter 11 cases;
3. Taking any act to obtain possession of property of any of the Debtors or of property from any of the Debtors;
4. Taking any act to create, perfect or enforce any lien against property of any of the Debtors;

5. Taking any act to create, perfect or enforce against property of any of the Debtors, any lien to the extent that such lien secures a claim that arose before the commencement of the Chapter 11 cases;
6. Taking any act to collect, assess or recover a claim against any of the Debtors that arose before the commencement of the Chapter 11 cases; and
7. Offsetting any debt owing to any of the Debtors which arose before the commencement of the Chapter 11 cases against any claim against any of the Debtors;

and it is further

ORDERED, that section 362 further provides that all persons and all governmental units, and all those acting for or on their behalf, including sheriffs, marshals, constables and other or similar law enforcement officers and officials, are stayed, restrained and enjoined from in any way seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all of the property of any of the Debtors, wherever located; and it is further

ORDERED, that section 366 of the Bankruptcy Code provides that all entities furnishing any of the Debtors as of the date of the commencement of the within Chapter 11 cases with gas, fuel, steam, telephone services, heat, electrical services, water supply, or any other utility of like kind (collectively, the "Utility Companies") be and each of them hereby is stayed, restrained and enjoined from altering, refusing or discontinuing service to, or from discriminating against, the Debtors on the basis that a debt owed by the Debtors to any of such Utility Companies for services rendered prior to the commencement of these Chapter 11 cases was not paid when due or on the basis that the Debtors failed to furnish adequate assurance of future payment in the form of a deposit within twenty (20) days subsequent to the commencement of these Chapter 11 cases; and it is further

ORDERED, that this Order shall not affect the exceptions to the automatic stay contained in section 362 of the Bankruptcy Code; and it is further

ORDERED, that on request of a party in interest, and after not less than ten (10) days' written notice to [debtors' attorneys' name], counsel for the Debtors, or such other notice as this Court may order, and after a hearing, this Court may consider granting relief from the restraints imposed herein; and it is further

ORDERED, that the Debtors be and they hereby are directed to serve a copy of this order upon all known Utility Companies within twenty (20) days of the date hereof.

Dated: New York, New York
September 24, 1989

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

UNITED STATES TRUSTEE

By: _____

Exhibit I-11. Sample Initial Administrative Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re	)	
	)	
	)	Jointly Administered at
	)	Case No.
Debtor	)	

Administrative Order No. 1

AND NOW, this 29th day of March, 1988, upon consideration of the record in the above cases, it appearing that:

1. The schedules required by Rule 1007 have not yet been filed;
2. The assets and liabilities in the above-captioned cases exceed one billion dollars;
3. Among the interested parties are creditors with huge financial interests, and thousands of parties with interests which are substantial and vital to such parties, but at this juncture, it is not feasible to provide to all such parties copies of litigation documents, other matters of an emergency nature, nor any other documents;
4. The principal parties to the above proceeding at the present time are the Debtors, the Pittsburgh Office of the United States Trustee for the Western District of Pennsylvania, the bank creditors, the insurance company creditors and the unsecured creditors committees;
5. The above cases are being jointly administered; it is

ORDERED as follows:

1. Service List No. 1 shall consist of the persons listed on the list attached hereto and marked "Service List No. 1." This Service List shall be dated to reflect the last additions from all five cases being jointly administered at _____. As the Service List is amended, the list shall be renumbered and dated and this order and all orders of this court in these cases referring to the Service List shall mean the current Service List.
2. Every complaint, petition, motion, application, brief, memorandum, affidavit, letter or other writing filed in the within proceeding, and in which relief is requested, or related to a matter in which relief is requested, shall be filed in an original and three copies and shall be immediately served on each attorney listed in Service List No. 1, and on any party against whom relief is sought who is not named in Service List No. 1, in the manner prescribed by Bankruptcy Rule 7004, or Fed. R. Civ. P. Rule 5(b), as applicable.
3. All orders of this Court and notices by this Court (except notices subject to Bankruptcy Rule 2002(a)(1), (2), (4), (5), (6), and (8)) shall be mailed by the Clerk of the Bankruptcy Court to the persons shown on Service List No. 1, and to the attorney for the

principal party or parties in the particular matter to which such order or notice pertains. The Clerk of the Bankruptcy Court shall provide three copies of such orders and notices, which shall be distributed as set forth in Paragraph 4 below.

4. Each paper filed in the within matter (including Notices by the Court and Court Orders) shall be filed in quadruplicate. Only the original need be signed, but the copies must show at least a facsimile, conformed, or photostatic copy of signature. The distribution of the quadruplicate copies shall be as follows:

a. Original to the Clerk of the Bankruptcy Court, Pittsburgh, for Court use and permanent retention;

b. One copy to the Clerk of the Bankruptcy Court, Pittsburgh, for the use of attorneys and the public;

c. One copy to the assigned judge; and

d. One copy to [copy service's name and address].

5. Requests by any party for automatic receipt of copies of all papers is hereby denied except as set forth herein.

[Copy service's name and address], pursuant to contract with Debtors, will maintain a complete copy of all documents filed in the above case, and upon request of any person, will supply copies of any designated documents at a cost to be paid by such person at the prevailing fee being charged by [copy service's name] as its published rates from time to time. Any party in interest who desires a copy of each and every paper filed and docketed in the within proceeding may obtain same by contracting for such copies (at such party's expense) with [copy service's name and address], in accordance with the contract for copy services between Debtors and [copy service's name].

6. a. The Clerk, upon receipt of each document, shall assign it a number which number shall be placed conspicuously on the face of the document and noted clearly on the docket sheet with each entry.

b. The documents in the main case shall be numbered sequentially. In an adversary proceeding bearing a separate adversary number, the document numbering shall commence at number one and be sequential.

7. For cause, notices and service of documents are limited as herein prescribed, pursuant to Bankruptcy Rule 2002(i).

8. This Order shall be served by the Debtors promptly upon all persons:

a. whose names appear on Service List No. 1;

b. who have filed in this Court appearances or a request for notices in the above cases;

c. designated in Bankruptcy Rule 2002(i) and (j).

Proof of such service shall be filed promptly.

9. Any party may at any time apply for reconsideration or modification of this Order.
10. This Order shall continue in effect until modified by further order of Court.

Joseph L. Cosetti
U.S. Bankruptcy Judge

Service List No. 1

[List of names and addresses of persons to be served]

Exhibit I-12. Sample Initial Case Management Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re	)	Consolidated Case No.
	)	
	)	Chapter 11 - Judge Aug
	)	
	)	
Debtors	)	

Case Management Order

This case finds that because of the great number of creditors and other parties in interest in these cases, burdensome expense and unnecessary delay will result unless a modified procedure for copying, noticing and motion practice is implemented.

The caption of this order is the official caption to be used in this case and shall hereafter be used on all pleadings.

Pursuant to Sections 102(1) and 105(a) of the Bankruptcy Code (11 U.S.C. §§ 101-1330) and Bankruptcy Rules 2002, 7016, 9007 and 9014, it is hereby ORDERED as follows:

A. Service of Filings

1. All filings in these cases, unless otherwise ordered by the Court, shall be served upon the following entities:

a. The above captioned debtors and debtors-in-possession, debtors' case attorney and debtors' co-counsel; and

b. The Cincinnati and Columbus office of the United States Trustee for Region IX; and

c. The Chairperson of any Official Committees established pursuant to section 1102 of the Bankruptcy Code; and

d. Counsel retained by any Official Committees established pursuant to section 1102 of the Bankruptcy Code.

e. Attached hereto as Exhibit A is a copy of the Master Service List ("MSL") containing the names and addresses of the entities set forth above, creditors and other parties in interest. Parties may be added or deleted from the MSL upon written request to the Court. The Court may require the debtors to survey the MSL periodically to determine whether or not it may be reduced. The debtors will maintain

and update the MSL on a weekly basis. It should be numbered, dated and filed with the Court. With the establishment of the Official Committees and counsel, the twenty (20) largest creditors of each debtor have been deleted from the MSL effective February 15, 1990.

f. All service shall be made by regular mail except in emergency situations when overnight mail may be necessary. The certificate of service which must accompany each pleading shall state that service has been made on all parties listed on the MSL and the date and number of such list shall be provided. The MSL itself need not be attached to the pleadings.

2. All filings in adversary proceedings and any motions directed at specific parties (contested matters) shall be served, pursuant to Bankruptcy Rule 7004, upon all parties having a particularized interest in the subject of the filings or motions and the parties listed on the MSL.

3. All notices required by subdivisions (a)(2), (3) and (7) of Bankruptcy Rule 2002, by Bankruptcy Rule 4001 and by Local Bankruptcy Rule ("LBR") 6.0 shall be mailed to:

a. each entity designated on the MSL; and

b. when the notice is of a proposed use, sale, lease or abandonment of property or of a hearing thereon, each entity having an interest in the property; and

c. when the notice relates to relief from the stay, each entity having a lien or encumbrance in accordance with LBR 6.0(a)(4); and

d. when the notice relates to use of cash collateral or obtaining credit, each entity who has an interest in the cash collateral or each entity who has a lien or other interest in property on which a lien is proposed to be granted; and

e. when the notice is of a proposed compromise or settlement or of a hearing thereon, each entity who is a party to the compromise or settlement; and

f. when the notice is of an application for compensation or reimbursement of expenses or of a hearing thereon, each professional person who is seeking compensation or reimbursement whose retention in these cases is authorized by this Court.

4. Notices required by subdivision (a)(1), (5), (6) and (8), subdivision (b), and subdivision (f) of Bankruptcy Rule 2002 shall be mailed to each entity on the MSL, to all creditors, indenture trustees, and equity security holders.

5. All other notices shall be mailed to each entity on the MSL and to any entity who has a particularized interest in the subject of the notice.

6. Notice in accordance with the provisions of this Order shall be adequate pursuant to Bankruptcy Rule 2002 and the Local Bankruptcy Rules.

B. Motions, Objections, and Hearing Dates

1. The procedures for motions and objections thereto, except for motions and objections filed by parties seeking relief pursuant to section 362 of the Bankruptcy Code, shall be as follows:

a. It is anticipated that during the routine administration of this case, hearings shall normally be held on the fourth Thursday of each month commencing at 10:00 a.m. *All matters, unless otherwise ordered by the Court, shall be heard at these regular hearings.* An agenda for each hearing date will be issued by the Court.

Initially, more frequent hearing dates are required and they are hereby scheduled for February 22, 1990, March 15, 1990, April 12, 1990 and April 26, 1990. The date of the next regularly scheduled hearing date will be announced at the conclusion of each hearing date and included in a post-hearing order.

b. Absent exigent circumstances, any motion, application, objection or other request shall be filed and served at least twenty-five (25) days prior to the anticipated hearing date on the motion.

c. The scheduling of motions to be heard at a particular hearing date shall be subject to the Court's discretion. However, if a motion is filed and served more than 25 days prior to a regularly scheduled hearing date, the movant shall notice the hearing for that date. If a party wishes a hearing date other than the regularly scheduled hearing date, he or she must obtain the approval of the Court and get the date from the courtroom deputy. The Court may dispense with oral argument on motions and decide them on the briefs.

d. An objection or memorandum contra to a motion made by parties in interest shall be filed and served within fifteen (15) days after service. Movant may have three (3) days to reply to the memorandum contra. Stipulated orders should be presented to objecting parties and then may be presented to the Court at any time.

e. If an emergency hearing is *unavoidable* and *essential,* the Court in its discretion may hear the matter at the regularly scheduled hearing date or any other date scheduled by the Court, but only if it is demonstrated that *best efforts* were made to notify all essential parties before that time. Any orders entered on such basis will be subject to future modification upon objection to such orders after notice to all parties as required by this Order.

2. The procedures for motions filed by parties seeking relief pursuant to section 362 of the Bankruptcy Code and any objections thereto shall be handled pursuant to LBR 6.0 and the standard order currently in use in the Bankruptcy Court in Cincinnati, Ohio. (See sample attached hereto and marked Exhibit B.)

3. Counsel for debtors shall be responsible for communicating with the Judge's law clerk by 10:00 a.m. of the day preceding each scheduled hearing date to indicate whether, as of that time, any pending matter shown on the Agenda is settled.

C. Procedures for Copying and Service of Orders

1. The Clerk of the Bankruptcy Court, upon receipt of each filed document, shall stamp it filed and assign it a number, which shall be placed in the lower right-hand corner of the first page of the document and entered clearly on the docket sheet. The documents shall be numbered sequentially beginning at number one (1).

2. The documents in any adversary proceeding shall be numbered sequentially beginning at number one (1) for each proceeding.

3. Each original paper filed in these cases (including pleadings, exhibits, memoranda, notices and orders of the Court) shall be filed with six (6) copies. Only the original need be signed, but the copies must show a facsimile, conformed or photostatic copy of the signature. The distribution of papers by the Clerk of the Bankruptcy Court shall include the following:

a. Original to the Clerk of the Bankruptcy Court;
b. One copy for the Honorable J. Vincent Aug, Jr.;
c. One copy for the law clerk;
d. One copy for the reproduction facility;
e. One copy for over-the-counter viewing;
f. One copy for Lexis;
g. One copy for Westlaw.

Lexis and Westlaw have created separate "Federated-Allied" libraries. Lexis can be accessed by "BKRTCY-FDS". Westlaw can be accessed by "FBKR-FDS".

D. Proofs of Claim and Proofs of Interest

1. The Court hereby waives the provisions of Bankruptcy Rule 5005(a) and designates [claims agent's name], [address and phone number] as the authorized repository for all proofs of claim and proofs of interest in lieu of the Clerk of this Court.

2. [Claims agent's name] shall receive, maintain, record and otherwise administer and catalog any and all proofs of claim and proofs of interest that may be filed in these cases. Claims will be deemed filed when received by [claims agent's name].

3. [Claims agent's name] is hereby authorized and directed to maintain, on behalf of the Clerk, an official claims register and to provide debtors, debtors' case attorney, debtors' co-counsel, the Clerk and the reproduction facility with a true and correct copy thereof on a weekly basis..

4. Debtors are authorized to execute such documents and take such actions as are reasonable and necessary to implement and effectuate the procedures set forth in this section, including compensating [claims agent's name] for all reasonable fees and costs incurred, subject to the approval of the Court.

E. Bar Date

The provision of LBR 3.14(a) that requires the filing of proofs of claim within ninety (90) days after the first date set for the meeting of creditors to be held pursuant to section 341 of the Bankruptcy Code will not be applicable, and the bar dates for proofs of claim and proofs of interest shall be set by a subsequent order of the Court.

F. Court Hotline

Attached hereto and marked as Exhibit C is a Memorandum which provides the phone number for contacting the docket personnel in the Federated Annex of the Office of the Clerk of the Bankruptcy Court and other pertinent information.

G. Non-resident Attorneys

Motions by non-resident attorneys for permission to practice before the Court in these cases, *pro hac vice*, shall not be set for hearing. These motions are hereby GRANTED by the Court unless objections are promptly filed thereto. The Court will require parties to obtain local counsel in contested matters and adversary proceedings that are likely to involve extensive discovery, multiple hearings and status conferences, or protracted evidentiary proceedings.

H. Briefs and Memoranda

Briefing will be subject to a 20-page limit pursuant to LBR 5.8.

I. Term of This Order

Any party may at any time apply for reconsideration or modification of this Order. Service of such motion shall be to persons on the MSL and shall be made upon at least 25 days notice. The Court may amend this order at any time.

This order shall continue in effect until modified by further order of the Court and shall apply to any subsequently filed cases jointly administered with these cases.

IT IS SO ORDERED.

J. Vincent Aug, Jr.
U.S. Bankruptcy Judge

Dated and mailed: February 15, 1990
Copies to: Master Service List (Dated February 14, 1990)

Exhibit I-13. Sample Administrative Order for the Scheduling of Motions

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re	)	
	)	
	)	Jointly Administered at
	)	Bankruptcy No.
	)	
	)	Chapter 11
	)	
Debtor	)	

Administrative Order No. 3
Scheduling of Motions

For the convenience of the court and the parties, the court has created a special calendar for motions and pretrials of matters related to [debtor's name]. The court has reserved Thursday as the calendar day to hear motions and pretrials, commencing at 10:00 A.M.

The problems related to the commencement of large Chapter 11 cases require prompt scheduling by the court and creditors. At this time, the necessity for these prompt hearings has subsided. The court wishes to continue to proceed in an expeditious manner, but desires to impose a formal structure upon contested motions in [debtor's name].

The local rules are amended for this case only.

The Movant shall provide the Respondent with at least a minimum of seven calendar days for response. The Movant shall provide for a hearing date, as a minimum, no sooner than the first Thursday following the tenth calendar day following the day the motion was filed with the Clerk. Service of said motion shall occur on the appropriate service list in effect. When the interest of good administration or justice indicates, the court reserves the privilege of proceeding as on a pretrial at such a hearing date.

The following hearing dates may be utilized by the Movant in preparing its order noticing a hearing:

June 9	August 18
June 30	August 25
July 14	September 1
July 21	September 8
July 28	September 15
August 4	September 22
August 11	September 29

The attached format is to be used to notice the Respondent of the answer and hearing date. The Order Setting Date Certain for Response and Hearing on Motion and the Certification of Service shall be filed with the motion.

Dated this 11th day of May, 1988
at Pittsburgh, Pennsylvania

Joseph L. Cosetti
U.S. Bankruptcy Judge

Exhibit I-14. Sample Subfile Listing

[Debtor's Name]
8-1-90

Subfiles:

AI-01 Professionals Employed by Order of Court:

88-1096-M Motion to Retain and Employ [Law Firm's Name]

88-1097-M Motion to Retain and Employ Special Financial Advisors for Debtors

88-1100-M Motion to Retain and Employ Accountants for Debtors

Dkt. #113 Application for Authority to Employ and Retain [Law Firm's Name] as Attys. for Creditors' Committee

Dkt. #114 Application for Authority to Employ and Retain [Accounting Firm's Name] as Accountants & Consultants for Creditors' Committee

88-1668-M Application to Engage Accountants for Creditors' Committee

88-2083-M Application for Approval of Retention and Compensation of Ordinary Course Law Firms and Payment of De Minimis Legal Fees

88-2092-M Motion for Authority to Employ Financial Advisors and Investment Banker for Debtors
Emer. mtn.

88-2164-M Motion for Employment of [Name] as a Consultant for Debtors

88-2213-M Motion for Retention of [Law Firm's Name] as Counsel to the Equity Committee

88-3283-M Application for Approval of Retention and Compensation of [Law Firm's Name] and Payment of De Minimis Legal Fees
4th Supplement

88-3383-M Application of Creditors' Committee to Retain and Employ Financial Advisor

88-3455-M Application of Off. Comm. of Unsec. Cred. to Retain and Employ [Law Firm's Name] as Special Litigation Counsel

88-4023-M Application for Approval of Employment of [Firm's Name] as Financial Advisor with any Sale Transaction with [Name]
(Appeal filed)

	88-4149-M	Application of Eq. Com. for Order Authorizing [Firm's Name] as financial advisor
	Docket #378	Motion to amend service list by Securities & Exchange Commission
P	88-2062-M	Motion to amend service list to include [name]
A		
R	88-2589-M	Motion to amend service list to include [name]
T		and [Name] as indenture trustee
5	88-2636-M	Motion to amend service list to include counsel for [name]
Admin.	88-2639-M	Motion to amend service list to include [name]
Orders		
& motions	88-4915-M	Motion to amend service list to include [name]
to amend		
service list	88-6120-M	Motion to amend Service List #3B
	88-6209-M	Motion to delete counsel for [name] from service list
	88-7379-M	Debtors' motion to promptly reinstate payment of professional fees under Administrative Order No. 2
	89-0395-M	Motion to amend service list substituting [name] for [name]
	89-4483-M	Motion of [name] to amend Service List #3D
AI-7(b)	Administrative Orders; Matters or Motions Scheduled for Hearing:	
	90-0116-M	Mtn. of [name] for leave to file claim *(Continued)*
	90-1907-M	Mtn. to file claim of [name] *(Briefs to be filed w/i 30 days) Briefs filed*
	90-2100-M	Mtn. to file claim of [name] *(Brief by D to be filed w/i 30 days) Brief filed*
	90-2261-M	Motion for authorization to file claim of [name] *(J to review deb. brief when filed) FILED*
	90-3054-M	Motion to allow omitted claim of [name] *(Phone conf. to be set)*
	90-4478-M	Mtn. to estim. & allow. of claim #6082 *(7-26/10:00)*
	90-5115-M	Mtn. for order liquidating claims *(9-6/10:00)*
AI-81	88-4647-M	R/S [Movant's Name]
(R)		*(CLOSED)*

AI-82 (R)	88-4710-M	S-F&C of 96,000 B Nonvoting Ordinary Shares of [Company's Name] for $400,000 & Motion of [Name] for Authority to Release its rights of first refusal w/ respect to 487,046 shares of [Company's Name] *(CLOSED)*
AI-83	88-4730-M	Creditors' Committee for Authority to Institute and prosecute actions on behalf of the Debtors pertaining to non-performing officer loans and related matters *(CLOSED)*
AI-84 (R)	88-4743-M	R/S [Movant's Name] *(CLOSED)*
AI-85 (R)	87-4777-M	R/S [Movant's Name] *(CLOSED)*
AI-86		Fee Application of [Firm's Name] (Accountants and Consultants for Creditors' Committee)
AI-87		Fee Applications of [Firm's Name] (Accountants for Creditors' Committee)
AI-88	88-4872-M	Expunge late claims, duplicate claims filed against the wrong Debtor and to reduce certain claim
	88-7541-M	Motion to extend time to file claim of [name] *(MOOT-Order signed 1/3/89)*
AI-89	88-4873-M	Expunge claims or interest filed by certain Holders of Equity *(CLOSED)*
AI-90	88-4874-M	Expunge claims filed by certain Holders of Public Debt Securities *(CLOSED)*

AI-91	Objections to Claims Related Subfiles: 88, 89, 90, 106, 114, 116, 122, 123, 139, 141, 155, 156, 158, 170, 175, 176, 178, 207, 222, 226, 235, 248, 255, 276, 307		
	OBJ. 88-0001	[Name]	(CLOSED)
Trans. to J. Fitzgerald			
	OBJ. 88-0002	[Name] Mtn. for summary judgment Trial is *CONT. GEN.*	(CONT. GEN.) (GRANTED)
	OBJ. 89-0001	[Name] Originally filed at #7 Related to AI-175 Consolidated at ADV. 89-0173	
	OBJ. 89-0002	[Name] Originally at omnibus #7	(CLOSED)
	OBJ. 89-0003	[Name] Originally at omnibus #7	(CLOSED)
	OBJ. 89-0004	[Name] Originally at omnibus #7B	(CLOSED)
	OBJ. 89-0005	[Name]	(CLOSED)
	OBJ. 89-0006	[Name]	(CLOSED)
	OBJ. 89-0007	[Name]	(CLOSED)
	OBJ. 89-0008	[Name]	(CLOSED)
	OBJ. 89-0009	[Name] Originally at omnibus #7b Appeal filed	(CLOSED)
*	OBJ. 89-0010	[Name]	(CLOSED)
*	OBJ. 89-0011	[Name]	(CLOSED)
*	OBJ. 89-0012	[Name]	(CLOSED)
*	OBJ. 89-0013	[Name]	(CLOSED)
	OBJ. 89-0014	[Name]	CONS. AT ADV. 89-0181
*	OBJ. 89-0016	[Name]	(CLOSED)
*	OBJ. 89-0017	[Name]	(CLOSED)
*	OBJ. 89-0018	[Name]	(CLOSED)
*July	OBJ. 89-0019	[Name]	(CLOSED)
*July	OBJ. 89-0020	[Name] Appealed to the 3rd Circuit	(CLOSED)
AI-291	90-2035-M	Motion to approve exclusive agency agmt. w/ [firm's name] w/respect to [property location] (*CLOSED*)	
AI-292	90-2181-M	Mtn. of [name] for leave to sell real estate in Altoona, PA for $39,000 (*CLOSED*)	

AI-293	90-2195-M	R/S [Name] (*CLOSED*)
AI-294	90-2236M	R/S [Name] (*CLOSED*)
AI-295	90-2266M	Mtn. of [debtor's name] for leave to quitclaim 3 small parcels of land in Lincolnton, S.C. to [Name] (*CLOSED*) Related to AI-24
AI-296	90-2286M	Mtn. to sell property at [property location] for $88,000 (*CLOSED*)
	90-2285M	Mtn. to approve standard listing contract (*CLOSED*)
AI-297	90-2271M	R/S ([Movant's Name] vs.) (*5-10/10:00*)
AI-298	90-2376M	R/S ([Movant's Name] vs.) (*CLOSED*)
AI-299	90-2396M	R/S ([Movant's Name] vs.) (*DISMISSED*)
AI-300	90-2707M	R/S ([Movant's Name] vs.) (*WITHDRAWN*)
AI-301	90-2441M	R/S ([Movant's Name] vs.) (*CLOSED*)
AI-302	90-2750M	R/S ([Movant's Name] vs.) (*CLOSED*)
AI-303	90-2787M	R/S ([Movant's Name] vs.) (*CLOSED*)
AI-304	90-2910M	R/S ([Movant's Name] vs.) (*DISMISSED*)

Exhibit I-15. Sample Notice to Interested Parties Regarding How to Obtain Information About a Mega-Case

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Memorandum

TO: All Creditors and Parties in Interest
FROM: United States Bankruptcy Court, Cincinnati, Ohio
SUBJECT: In re [Case Name]

With respect to the subject bankruptcy proceedings, we thought it might be helpful to provide you with the telephone numbers of the Court and [debtor's name] in the event you need information or assistance. Please note the following:

For daily information on documents filed with the Court, orders entered and upcoming hearing dates:

Call: 1-800-548-1155

For copies of documents filed in the Court

[Copy service's name,
address, phone number,
FAX number, and contact's
name]

[Copy service's name] is providing copying services in these cases under contract with the Administrative Office of the United States Courts.

For administrative inquiries regarding documents, mailing list procedures, etc.

At the Court:

[Debtor's Name] Annex
U.S. Bankruptcy Court
710 U.S. Post Office Building
Fifth and Walnut Streets
Cincinnati, Ohio 45202
(513) 684-6924

At [Debtor's Name]: [Debtor's Attorney's Name
Firm Name
Address
Telephone No.]

Proofs of claim do not need to be filed at this time. All creditors will be notified at a later date as to when and where to file proofs of claim.

Dated & Mailed: February 14, 1990

Exhibit II-1. Sample Order Denying a Motion to Appoint a Common Stockholders Committee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re	)	
	)	
	)	
	)	
Debtor	)	BK No.

Order Re Motion for Common Stockholders Committee

This matter came on for hearing on February 2, 1990, upon the Motion of [movants' names] for Order Appointing an Official Committee of Common Stockholders. The Motion in question was filed on January 12, 1990. The Court has reflected on those arguments, as well as the written pleadings on this matter and the record in this case, and hereby denies said Motion on the following grounds:

1. This Chapter 11 case was commenced by a voluntary petition filed on January 28, 1988. The unique nature and complexity of this case of a debtor that is a regulated monopoly electric utility company has been set forth in prior opinions of this court. *See, e.g.*, [prior decisions in this bankruptcy case].

2. Following a long and tortuous process this case in September 1989 had plans of reorganization filed by multiple, competing plan proponents and, under a series of procedural orders entered by the Court, there commenced a grueling sequence of hearings in November and December of 1989, consuming more than ten trial days and resulting in an order entered December 8, 1989 approving a disclosure statement on a joint plan of reorganization. A further procedural order then was entered on January 3, 1990 setting forth requirements for mailing the disclosure materials to creditors and stockholders, for voting on the plan, and for a confirmation hearing to commence on April 4, 1990.

3. No case cited to this court or independently found by this court has authorized the appointment of an additional committee after the disclosure statement hearing has been closed and the disclosure statement approved and before a scheduled confirmation hearing.

4. Courts generally do not look with favor on authorizing committees late in the reorganization process due to delay and disruption. *See, e.g.*, [prior decisions in this bankruptcy case] (and cases cited therein). The decision cited above was rendered in August of 1988 and denied a request to appoint a separate committee of individual debenture holders. It was noted that the Court at the outset of these proceedings encouraged quick formation of committees in this case at conference hearings held in

February and March of 1988 and that the individual debenture holder committee requested by a motion filed in June of 1988 would "belatedly interject" an additional committee that would cause unjustified delay and disruption in the proceeding.

5. Some conflicts between members of committees or their interests are expectable and do not per se warrant authorizing an extra committee, especially considering the added cost and complexity that appointing a committee would bring to the proceedings. *See* [prior decisions in this bankruptcy case].

6. It is conceded in the present case that granting the Motion for the Appointment of a Common Stockholder Committee will necessarily result in subsequent motions and appointment of attorneys and financial advisors to the new committee. In my judgment such appointments will necessarily delay and disrupt the scheduled confirmation hearings in order for such new professionals to be made knowledgeable about the history of this Chapter 11 proceeding and all factors bearing upon confirmation of the pending plan of reorganization.

7. There has been no showing that the existing equity committee does not adequately represent the interests of common as well as preferred stockholders in the circumstances of this case. The makeup of the committee has been known to all parties since originally appointed by the U.S. Trustee at the outset of the case and, until the present Motion was filed, no common stockholders aside from [movant's names] have challenged the makeup of the committee as not being representative or involving an impermissible conflict.

8. The movants believe the underlying compromise with the State of New Hampshire on rate increases for the reorganized company does not give sufficient weight to the possible rate increases that the company might achieve if the pending plan is not confirmed and the debtor proceeds with a litigated rate case once the Seabrook nuclear power plant comes on line. The movants believe that the present plan proponents, including the equity committee, will not make an appropriate showing before the Court as to the possibilities of rate litigation as part of a showing that the compromise included within the plan of reorganization is fair and equitable. However, the plan proponents will have the burden at the confirmation hearing of establishing on the record that the compromise is fair and equitable—including a showing as to the range of possible results that might come out of a litigated rate case—as a factor in determining whether the plan is in the best interest of creditors and stockholders under Bankruptcy Code § 1129 (a)(7). The Court will have to make an affirmative finding in that regard to support confirmation of the pending plan.

9. The Court also notes in this regard that by Order entered April 3, 1989 the Court appointed [examiner's name], a former Chairman of the New York Public Service Commission, as Examiner in these proceedings under Bankruptcy Code § 1104, and has appointed [examiner's attorney's name] of New York City, as his attorney in these proceedings. The Court expects to receive knowledgeable analysis and information from the Examiner and his attorney at the confirmation hearing with regard to the range of possible results in a litigated rate case with the State of New Hampshire should the pending plan of reorganization not be confirmed. To the extent that the existing orders appointing the Examiner and his attorney may be restrictive in that regard they are hereby

amended and expanded *pro tanto* to assure this Court will have the requisite information to make the best interest finding under Bankruptcy Code § 1129 (a)(7) at the confirmation hearing.

10. Nothing in this Order denying appointment of a committee will prevent [movants' names] from opposing in their individual capacities as common stockholders the confirmation of the plan of reorganization under the scheduling order. Moreover, under Bankruptcy Code § 503 (b)(3) and (b)(4) should their activity in this case result in the making of a substantial contribution to the case as therein provided, they have the possibility of recovering their fees and expenses in that regard as an administrative expense of this estate.

11. Finally, it should be noted that the reluctance of this and other courts to appoint additional committees late in the reorganization process—and particularly after the disclosure statement hearings have been closed—is a function of the importance to the Chapter 11 reorganization process of meaningful and effective deadlines for plan formulation. This is especially true with regard to the approval of the requisite disclosure statement permitting a plan to go forward for vote on confirmation. Much that makes Chapter 11 work is the result of the pressure put on the parties and interests to "put their best foot forward" in the plan formulation process before the disclosure statement hearings are closed and the plan confirmation procedures commence. The present case, in its history during the August through December 1989 period, amply illustrates the constant improving of contending plans under this competitive time pressure, leading to the closing of the disclosure statement hearings.

12. The question as to the makeup of the equity committee in this case could have been raised at any time prior to the closing of the disclosure statement hearings, but was not. To order an additional committee now on that ground, even if it arguably might have been ordered earlier in the case, would be a precedent that would inevitably weaken the force of the procedures and deadlines necessary to effective plan formulation in Chapter 11 cases.

DONE and ORDERED this 9th day of February, 1990 at Manchester, New Hampshire.

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to serve Full List

Exhibit II-2. Sample Order Setting Hearings on a Cash Collateral Motion

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re	)	
	)	Case No. through
	)	inclusive
	)	
	)	Chapter 11
	)	
	)	Consolidated for Administration
	)	at
Debtors	)	

Order Setting Preliminary and Final Hearings on Request for Interim Financing Order, Motion for Authorization to Use Cash Collateral-Documents of Title and Providing for Notice Thereof

At Pittsburgh in the said District, on this 20th day of February, 1988, it is hereby ORDERED as follows:

1. The following hearings shall be held on February 23, 1988, commencing at 9:30 a.m. at Courtroom 1603, Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania, 15222:

a. A preliminary hearing pursuant to Bankruptcy Code § 364(c) and Bankruptcy Rule 4001(c) on the Debtors' request for the entry of an Interim Financing Order pursuant to its Verified Emergency Motion to Obtain Secured Credit, etc.;

b. A preliminary hearing pursuant to Bankruptcy Rule 4001(b) on the Debtors' Emergency Motion for Authority to Use Cash Collateral-Documents of Title.

2. The Debtors or their counsel shall endeavor to give telephonic or mailgram notice of the above hearings and the relief sought thereat prior to February ___, 1988 at ____ o'clock __.m. to each of the creditors listed on the lists filed pursuant to Rule 1007(d) by [debtors' names], to counsel for [lender's name] and to the United States Trustee.

3. Debtors' best efforts to give such notices shall be deemed adequate notice of the above hearings.

4. The Final Hearing on Debtor's Verified Emergency Motion to Obtain Secured Credit, etc., and Debtors' Emergency Motion for Authority to Use Cash Collateral-Documents of Title shall commence on _____, 1988 at _____ o'clock ___.m., before Chief Judge Joseph L. Cosetti (without regard to the Judge assigned to this case) (the "Final Hearing Date"), at Room 1603, 1000 Liberty Avenue, Pittsburgh,

Pennsylvania 15222. Any objections to the granting of the Motions shall be made in writing, filed with the Clerk of the Court not less than two (2) business days before the Final Hearing and served on the parties listed below not less than three (3) business days before the Final Hearing Date. Objections shall be served, by hand delivery or guaranteed overnight delivery, upon:

a. [Debtors' Attorneys' Name and Address]
   Attention:
b. [Debtor's Name and Address]
   Attention:
c. [Lender's Attorneys' Name and Address]
   Attention:
d. [Lender's Attorneys' Name and Address]
   Attention:
e. [Lender's Attorneys' Name and Address]
   Attention:

Date: February 20, 1988

UNITED STATES BANKRUPTCY JUDGE

Exhibit II-3. Sample Order Authorizing Payment of Pre-petition Wage Claims

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re	)	
	)	Case No.
	)	through
	)	inclusive
	)	Consolidated for
	)	Administration at
Debtors	)	

Order Authorizing Payment of Pre-petition Wages, Salaries, and Commissions, Reimbursement of Pre-petition Employee Business Expenses and Payment of Other Pre-petition Employee Benefits

Upon the foregoing application (the "Application") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and no adverse interest being represented; and sufficient cause appearing therefor, it is

NOW, on motion of [debtors' attorneys' name], counsel for Debtors,

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to pay to their employees all wages, salaries and commissions (including holiday pay, contributions to thrift or other savings plans and all federal, state and local payroll-related taxes, deductions and withholdings pertaining to payments made pursuant to this order) which have accrued by virtue of the services rendered by the employees to the Debtors within the forty-five (45) days immediately prior to the filing of the Chapter 11 petitions (the "Filing Date"); and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to pay, in the ordinary course of business and in accordance with existing policies and practices, vacation pay and sick pay on account of services rendered by employees to the Debtors, whether before or after the Filing Date; and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to reimburse employees for all out-of-pocket business and business-related expenses whether incurred by them before or after the Filing Date in accordance with existing company policies and practices; and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to pay to or for the benefit of active and laid-off employees the following claims and expenses whether incurred before or after the Filing Date:

1. all health, medical, dental, disability and death claims;

2. all premiums on policies of insurance pertaining thereto;
3. premiums on policies of travel and accident insurance; and
4. all costs and expenses incurred in connection with the servicing and processing of such claims whether the claims arose or accrued before or after the Filing Date;

and it is further

ORDERED, that the Debtors be, and each of them hereby is, authorized and empowered to continue to service and make all payments on or in connection with credit, savings, benefits and thrift plans, union dues and other wage or salary check-offs and deductions in accordance with the prior requests and instructions of their employees and past practices; and it is further

ORDERED, that [debtor's name] be, and each of them hereby is, authorized and empowered to pay severance pay (excluding severance pay under executive employment contracts or at the executive level but including severance pay as to non-executive employees who become entitled before the Filing Date), on account of services rendered by their employees, whether before or after the Filing Date, in the ordinary course of business and in accordance with existing policies and practices; and it is further

ORDERED, that [debtor's name] be and hereby is permitted to pay severance pay (excluding severance pay under executive employment contracts or at the executive level but including severance pay as to non-executive employees who become entitled before the Filing Date), on account of services rendered by their employees, whether before or after the Filing Date, in the ordinary course of business and in accordance with existing policies and practices, with respect to any present employee who may be laid off post-petition, except that no severance pay for a period longer than three (3) months may be paid to any one employee without further Order of Court.

Dated: Pittsburgh, PA
February 20, 1988

UNITED STATES BANKRUPTCY JUDGE

Exhibit II-4. Sample Restraining Order That Enjoins Discontinuance of Utility Services

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re	)	
	)	Case No. through
	)	inclusive
	)	
	)	Chapter 11
	)	
	)	Consolidated for Administration
	)	at
Debtors	)	

Restraining Order Entered Under and Pursuant to Sections 105, 362 and 366 of Title 11, United States Code, Setting Forth Provisions Necessary or Appropriate Under Title 11

The above-captioned debtors (collectively, the "Debtors"), having filed petitions for reorganization under Chapter 11, § 301 of the Bankruptcy Code on February 19, 1988, and having been continued in the management and possession of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code; and

IT APPEARING that this Court, pursuant to 28 U.S.C. §§ 1334 and 157, as supplemented by the "Standing Order of Referral of Cases to Bankruptcy Judges" entered by the United States District Court for the Western District of Pennsylvania, has exclusive jurisdiction of all of the property of the Debtors, wherever located, and that this Court pursuant to §§ 105, 362 and 366 of the Bankruptcy Code may issue any order, process or judgment including, without limitation, this restraining order, as may be necessary or appropriate to carry out the provisions of Title 11, and after due deliberation, no adverse interest being represented, and sufficient cause appearing therefor, it is

NOW, on Motion of [debtors' attorneys' name], counsel for the Debtors,

ORDERED that all persons (including individuals, partnerships and corporations, and all those acting for or on their behalf), and all governmental units (including the United States of America and any State, Commonwealth, District, Territory, municipality, department, agency or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, a foreign state, or other foreign or domestic governments, and all those acting for or on their behalf) be and each of them hereby is stayed, restrained and enjoined from:

1. Commencing or continuing, including the issuance or employment of process, any judicial, administrative or other proceeding against any of the Debtors, that was or could have been commenced before the commencement of the instant Chapter 11 cases, or recovering a claim against any of the Debtors that arose before the commencement of the Chapter 11 cases;
2. Enforcing, against any of the Debtors or against property of any of the Debtors, a judgment obtained before the commencement of the Chapter 11 cases;
3. Taking any act to obtain possession of property of any of the Debtors or of property from any of the Debtors or to exercise control over property of any of the Debtors;
4. Taking any act to create, perfect or enforce any lien against property of any of the Debtors;
5. Taking any act to create, perfect or enforce against property of any of the Debtors, any lien to the extent that such lien secures a claim that arose before the commencement of the Chapter 11 cases; and
6. Taking any act to collect, assess or recover a claim against any of the Debtors that arose before the commencement of the Chapter 11 cases; and
7. Offsetting any debt owing to any of the Debtors which arose before the commencement of the Chapter 11 cases against any claim of the Debtors;

and it is further

ORDERED that all persons and all governmental units, and all those acting for or on their behalf, including sheriffs, marshals, constables and other or similar law enforcement officers and officials, be and each of them hereby is stayed, restrained and enjoined from in any way seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all of the property of any of the Debtors, wherever located; and it is further

ORDERED that notwithstanding the provisions of § 366 of the Bankruptcy Code, all entities furnishing any of the Debtors as of the date of the commencement of the within Chapter 11 cases with gas, fuel, steam, telephone services, heat, electrical services, water supply, or any other utility of like kind (collectively, the "Utility Companies"), be and each of them hereby is stayed, restrained and enjoined from altering, refusing or discontinuing service to, or from discriminating against, the Debtors on the basis that a debt owed by the Debtors to any of such Utility Companies for services rendered prior to the commencement of these Chapter 11 cases was not paid when due or on the basis that the Debtors failed to furnish adequate assurance of future payment in the form of a deposit within twenty (20) days subsequent to the commencement of these Chapter 11 cases; and it is further

ORDERED that this order shall not affect the exceptions to the automatic stay contained in section 362(b) of the Bankruptcy Code; and it is further

ORDERED that in accordance with section 362 of the Bankruptcy Code on request of a party in interest, and after not less than ten (10) business days' written notice to [debtors' attorneys' name], counsel for the Debtors, or such other notice as this Court

may order, and after a hearing, this Court may consider granting relief from the restraints imposed herein; and it is further

ORDERED that the Debtors be and they hereby are directed to serve a copy of this order upon all known Utility Companies within twenty (20) days of the date hereof.

Dated: Pittsburgh, PA
February 20, 1988

UNITED STATES BANKRUPTCY JUDGE

Exhibit II-5. Sample Order Remanding to Arbitration Objections to a Withdrawal-Liability Claim

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In re	)	
	)	Chapter 11 Reorganization
	)	Case No.
	)	Honorable Rufus W. Reynolds
Reorganized Debtor	)	

Order Remanding Objections to Withdrawal Liability Claim to Arbitration

THESE CAUSES, coming on to be heard before the undersigned Bankruptcy Judge upon: (1) the objections filed by [objecting parties' names] to the withdrawal liability claim of the [pension fund's name] ("Pension Fund"); (2) the Pension Fund's Motion to Consolidate Objections to Withdrawal Liability Claim and to Remand to Arbitration; (3) the Pension Fund's Motion to Quash Discovery Requests and for Sanctions; and (4) the Pension Fund's Motion to Dismiss Joint Objections of [objecting parties' names] to [pension fund's name]'s Withdrawal Liability Claim;

And the Court having taken judicial notice of the Court files and carefully considered the pleadings and the responses to the Motions and having held a hearing on these matters on March 30, 1987 at which counsel for [objecting parties' names], the Reorganized Debtor, and the Pension Fund appeared; and the Court having considered the arguments of counsel makes the following:

Findings of Fact

1. The Debtor, [debtor's name] filed a petition for relief under Chapter 11 of the Bankruptcy Code on March 29, 1984. On April 25, 1984, the Pension Fund filed a contingent proof of claim for withdrawal liability in the amount of $26,357,365.86, which represented the total amount due for a complete withdrawal from the Pension Fund. On July 17, 1984, an objection to the filed proof of claim and a motion to estimate the claim were filed by the Debtor. A bar date of August 14, 1984 was set by order of this Bankruptcy Court.

2. On March 18, 1985, the Pension Fund filed an amended proof of claim for a partial withdrawal in the fixed amount of $19,909,771.72 and a contingent claim for the remainder of the withdrawal liability claim in the amount of $7,311,109.83. A subsequent amendment to the fixed and contingent proofs of claim referenced above, which is not at

issue in these causes, increased the amount of the calculation to include the contribution history of the purchaser of [debtor's name], [objecting party's name] and its affiliates.

3. On October 31, 1985, [objecting parties' names] and other [objecting party's name] affiliates and [debtor's subsidiary's name], the Debtor's wholly-owned subsidiary, simultaneously filed actions for declaratory judgment and injunctive relief in the United States District Court for the Eastern District of Tennessee contesting the withdrawal liability assessment made by the Pension Fund against those entities. [case citations] On February 28, 1986, [objecting parties' names] filed objections in this Chapter 11 case to the withdrawal liability proofs of claim of the Pension Fund in these bankruptcy proceedings.

4. On March 5, 1986, the United States District Court for the Eastern District of Tennessee in the *[objecting party's name]* case rendered summary judgment in favor of [objecting party's name]. The decision is on appeal to the United States Court of Appeals for the Sixth Circuit. As a result of that judgment, the contribution histories of the [objecting party's name] affiliates were eliminated from the withdrawal liability calculation and the amount reduced. The fixed claim for a partial withdrawal asserted against the Debtor is in the amount of $17,120,963.12. This claim supersedes any and all previously filed proofs of claim for withdrawal liability contingent or otherwise.

5. The Restated Joint Plan of Reorganization proposed by [objecting party's name] and the Trustee was confirmed by this Bankruptcy Court on March 29, 1986.

6. On October 29, 1986, the Honorable Thomas G. Bull rendered his decision in the *[debtor's subsidiary's name]* case, cited above, finding, *inter alia* that (a) a pension fund can charge withdrawal liability against two corporations as a single employer if neither alone would have been liable; (b) under 29 U.S.C. § 1301(b) a pension fund can calculate a withdrawal liability assessment based on the contribution histories of all members of a control group; (c) withdrawal liability can be calculated based on a "triggering event" at one of the members of the control group; (d) withdrawal liability for a "triggering event" occurring at a subsidiary in 1983 can be calculated on a 1984 decline in contributions of the parent. A judgment in the *[debtor's subsidiary's name]* case was granted in favor of the [pension fund's name] in the amount of 25% of [debtor's subsidiary's name]'s net worth to be paid over time based on that Court's equitable application of the statute to avoid what it deemed to be the potential liquidation of [debtor's subsidiary's name].

7. On November 20, 1986, [objecting parties' names] served on the Pension Fund a 60-page discovery request with approximately 450 parts and subparts. The Pension Fund filed Motions to Quash the Discovery and for Sanctions, to Dismiss the Joint Objections of [objecting parties' names], and to Consolidate the Objections of the Debtor, the Trustee, and [objecting parties' names] and to Remand the Matter to Arbitration.

8. It appears to the Court that partial and complete withdrawal liability claims have all attributes in common. The contingent claim for a complete withdrawal in the amount of $26,357,365.86 is sufficiently similar in basis to the partial withdrawal claim in the fixed amount of $17,120,963.12 to be allowed as the same.

9. The Debtor had knowledge that a withdrawal liability claim had been timely filed and that the claim had become fixed for a partial withdrawal at least one year before the

Restated Joint Plan of Reorganization was confirmed. The Amended Joint Disclosure Statement of [objecting party's name] and [debtor's trustee's name], Trustee of [debtor's subsidiary's name], was approved by the Bankruptcy Court on November 12, 1985. The Disclosure Statement contained in Part 5 a description of "Multiemployer Pension Plan Withdrawal Liability" which sets forth the originally filed contingent claim for withdrawal liability in the amount of approximately $26,000,000 and the fact that the Pension Fund was claiming a present withdrawal liability of approximately $19,000,000. The Debtor, therefore, has not been prejudiced by an amendment which reduces the amount of the originally filed contingent claim.

10. The Pension Fund could not calculate the fixed claim for withdrawal liability earlier than 1985 due to the statutorily provided formula for calculation which included the 1984 reduction in contributions of the Debtor, [debtor's subsidiary's name].

11. There would be no damage to the Plan of Reorganization or the Debtor to permit amendment of the timely filed contingent claim for a complete withdrawal to reduce the amount of the claim asserted against the Debtor to $17,120,963.12.

Based on the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

1. To the extent that any of the foregoing Findings of Fact constitute Conclusions of Law, they are included herein.

2. Notwithstanding the decisions of the Bankruptcy Courts in *In re T.D.M.A.*, 66 B.R. 992 (Bankr. E.D. Pa. 1986), and *In re Amalgamated Foods, Inc.*, 41 B.R. 616 (Bankr. C.D. Cal. 1984), cited in the response of [objecting parties' names] which are contrary to the holding of the United States District Court for West Virginia in *In re Hawley Coal Mining Corp.*, 47 B.R. 392 (S.D. W. Va. 1984), which remanded a dispute over the amount of a withdrawal liability claim to arbitration, and notwithstanding the other case law authority set forth in the response, the Court believes that the applicable law is 29 U.S.C. § 1401(a) of MEPPAA. MEPPAA and the prevailing case law require arbitration of objections to withdrawal liability claims filed in bankruptcy proceedings. Therefore, the Court concludes, as a matter of law, that all disputes of withdrawal liability must be arbitrated pursuant to 29 U.S.C. § 1401(a)(1).

3. Alternatively, it is always within the discretion of the Bankruptcy Court to refer matters to arbitration.

Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The $17,120,963.12 fixed claim for partial withdrawal relates back to the original contingent proof of claim filed on April 25, 1984 and will be considered as timely filed.

2. The Pension Fund's Motion to Consolidate Objections and Remand to Arbitration is granted.

3. Objections to the Pension Fund's withdrawal liability claim of $17,120,963.12 shall be arbitrated as provided by MEPPAA.

4. All discovery matters shall be held in abeyance pending conclusion of the arbitration.

Dated: April 9, 1987

Honorable Rufus W. Reynolds
U.S. Bankruptcy Judge

Exhibit II-6. Sample Order Establishing an Interim Fee and Expense Reimbursement Procedure for Professionals (Reimbursement Prior to Court Approval)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re	)	Chapter 11
	)	
	)	Case No.
	)	Case No.
	)	
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	
Debtors	)	Jointly Administered under
	)	Case No.

Order Establishing Interim Fee and Expense Reimbursement Application Procedure

The Motion of Debtors for an Order establishing a procedure for the payment of interim compensation and for the reimbursement of expenses incurred by professionals employed herein as authorized by the Court, and members of the Unsecured Creditors' Committees appointed by the United States Trustee, has been duly considered by this Court. The Court is also familiar with the files and records in these jointly administered cases. The Court finds that notice of said Motion was duly given in accordance with the order limiting notice entered in this case, and that the adoption of an interim fee procedure is necessary in connection with the administration of these estates.

NOW, THEREFORE, IT IS HEREBY

ORDERED that, unless and until otherwise ordered by this Court, the procedure for reimbursement of expenses to members of the Unsecured Creditors' Committees and for awarding interim compensation and reimbursement of expenses to all attorneys, accountants, and other professionals employed pursuant to order of this Court shall be as follows:

A. On or before the twentieth day of each month the members of the Committees and the attorneys, accountants, and other professionals whose employment by the Debtor or the Committees appointed under 11 U.S.C. § 1102 shall have been authorized by this Court may submit statements to the Debtors by sending said statements for interim compensation to the appropriate individuals as set forth in the Uniform Guidelines for

Interim Compensation and Expense Reimbursement attached hereto as Exhibit A ("Uniform Guidelines") (1) for reimbursement of expenses paid or incurred on or before the last day of the preceding month, in the instance of Committee members or (2) for compensation and for reimbursement of expenses paid or incurred on or before the last day of the preceding month, in the instance of attorneys, accountants, and other professionals. Any expenses or compensation not billed in one month may be billed in a subsequent month.

B. All statements submitted to the Debtors in accordance with this Order shall be delivered to the attention of [debtors' employee's name and address], and shall contain the following information in either schedule or narrative form:

1. With respect to all expenses incurred by Committee members and those expenses of professional persons incurred away from their respective offices, the amount, the date incurred, and the nature thereof. The Debtors shall reimburse such expenses in accordance with the Uniform Guidelines attached hereto as Exhibit A and pursuant to any additional uniform procedures which are developed by the Debtors (which may include appropriate forms) by which such requests for reimbursement shall be submitted.

2. With respect to compensation to be paid, there shall be provided a daily accounting of the services rendered which shall include the date of the service rendered, an identification of the person or persons who performed the service, the time devoted in rendering the service on the day in question, and a description of the services so rendered.

3. With respect to office expenses, costs, and other special charges, a monthly description of all such charges (e.g., "long distance phone charges," "duplicating expenses," etc.), and a description of the method by which such charges are calculated.

4. A cover sheet in a form substantially similar to that attached hereto as Exhibit C.

C. Statements submitted by attorneys, accountants, and other professionals shall be based upon their respective normal and customary hourly rates for a case of this type as they exist from time to time. At least ten (10) days before the first interim monthly payment is sought, a schedule of such rates, together with a brief biographical sketch of each professional who is expected to devote a substantial portion of his/her time in rendering services in connection with these cases, shall be filed by each attorney, accountant, or other professional with the Court and served upon the persons listed on Exhibit B.

Not less than ten (10) days' notice of any proposed change in such hourly rates shall be given in the same manner. The parties upon whom notice is served may request a hearing before this Court as to the reasonableness of any such rates within such ten (10) day period. Only in the event a hearing concerning the reasonableness of the hourly rates is timely requested shall payments for interim compensation based on those changed rates be suspended until this Court shall have ruled thereon. If no hearing is timely requested, payments shall be made pursuant to the changed rates as set forth in the notice.

D. All statements submitted in accordance with paragraph B above shall be reviewed by the Debtors and, if acceptable and if no hearing under paragraph C above is pending, such statements will be paid within twenty days of receipt.

E. Payments shall be made as follows:

1. To attorneys, accountants, and other professionals, 100% of expenses and 75% of compensation for services rendered;

2. To Committee members, 100% of actual and reasonable expenses incurred.

F. Expenses of Committee members shall be paid by the Estate for which the Committee has been appointed. Fees and expenses of professionals retained by only one Committee shall be paid by the Estate for which the Committee has been appointed. Fees and expenses of professionals retained by more than one Committee shall be billed separately by such professionals to the appropriate Estate and shall be paid by such Estate.

G. Fees and expenses of professionals retained by the Debtors shall be billed by such professionals, as applicable and practicable, to the extent possible, separately to the Estate benefiting from such service and shall be paid by such Estate ("Allocated Fees and Expenses"). To the extent fees and expenses are not capable of allocation by a professional to individual Estates, such fees and expenses shall be paid by all Estates on a proportionate basis as follows: The Debtors shall, on a monthly basis, calculate the total of Allocated Fees to be paid by each Estate and the percentage that Allocated Fees paid by each Estate bears to the total Allocated Fees incurred by professionals retained by the Debtors. Each Estate shall be responsible for the payment of the same percentage of fees and expenses that are incapable of allocation. By way of example, assume that, in a given month, a total of $100,000 in fees have been billed by Debtors' professionals, $48,000 to [debtor's name], $42,000 to [debtor's name], and $10,000 to [debtor's name]. In that month, [debtor's name] shall pay 48% of the fees incapable of allocation, [debtor's name], 42%, and [debtor's name], 10%. The percentages of unallocated fees that each Estate pays shall vary from month to month, with the monthly variation in the allocation of Allocated Fees to each Estate.

H. Within forty-five days following the end of each three-month period, commencing with the period ending June 30, 1990, each party who has sought reimbursement of expenses or interim compensation shall file with the Court, and serve upon the persons listed on Exhibit B hereof, an application for approval of the payments actually billed during the preceding three-month period. The first application shall cover the period commencing April 2, 1990, and ending June 30, 1990. Counsel for the Unsecured Creditors' Committees may file a single application on behalf of all members of each Committee for reimbursement of expenses. Each application may be approved by the Court, in whole or in part, after notice and a hearing. If any party who has received one or more payments during a three-month period in accordance with paragraph E above fails to file an application for approval of those payments so received as required by this paragraph H, then the Debtors shall not pay such party any further monthly payments (whether for reimbursement of expenses or for compensation) unless and until an

application for approval of previously made payments has been filed with the Court, or unless otherwise ordered by the Court.

I. At any time on or after September 30, 1990, any professional person who has theretofore received interim compensation at 75% of customary hourly rates may file an application with the Court to receive as interim compensation amounts equal to the previously unpaid 25% ("Special Interim Compensation"). No professional person shall apply for Special Interim Compensation more than semi-annually. Any applications for Special Interim Compensation which shall be filed shall be heard at the same time and in the same manner as the applications described in paragraph H above. Nothing contained herein shall be construed as giving any party any right to be awarded any such Special Interim Compensation nor to prejudice the right of any entity to object to the Court's awarding of all or any portion of the Special Interim Compensation sought.

J. Within the period provided for objections in the Notice Pursuant to Rule 23 for each application for compensation by professionals retained by a Debtor, the Committee for the Estate of that Debtor shall file a report to the Court, with copies to the parties on Exhibit B, regarding the allowance of fees and expenses requested in that application. Within the period provided for objections in the Notice Pursuant to Rule 23 for each application for compensation by professionals retained by any Committee, the Debtor in that Estate shall file a report to the Court, with copies to the parties on Exhibit B, regarding the allowance of fees and expenses requested in that application.

K. Each party filing an application in accordance with paragraph H or paragraph I shall give notice of the filing of such applications to all entities entitled to such notice pursuant to Bankruptcy Rule 2002 and the order limiting notice entered in this case.

L. Nothing contained herein shall be construed to prejudice the right of any professional to seek an award of such additional compensation or expenses incurred in excess of the Uniform Guidelines at the conclusion of this case as may be appropriate under the provisions of 11 U.S.C. § 330.

M. Any entity whose employment has not been previously approved by this Court, but who desires the allowance and payment of an administrative expense under 11 U.S.C. § 503, shall file an application for such allowance with the Bankruptcy Court and shall serve a copy thereof upon the persons listed on Exhibit B hereof and all persons entitled to notice of such application pursuant to Bankruptcy Rule 2002 or order of this Court. The form of each such application and the information contained therein shall conform to the fullest extent appropriate to the other provisions of this Order. Nothing contained in this paragraph shall be construed as giving any person any right to have any administrative expense allowed or paid when sought, nor to prejudice the right of any party to object to the allowance or payment of all or any portion of the administrative expense alleged in any such application.

N. The failure of the Debtors, the Committees, any party-in-interest, or the United States Trustee to object to any particular item in any of the applications referred to in this Order shall not be deemed to prejudice their right to object to any similar matter in any future applications for compensation and/or reimbursement of expenses or to final allowance of compensation or reimbursement of expenses pursuant to 11 U.S.C. § 330.

O. All allowances of interim compensation and reimbursement of expenses made herein shall be without prejudice to any party in interest to seek reconsideration of the matter for cause.

P. All allowances of interim compensation and reimbursement of expenses made herein shall be subject to this Court's right to review the same prior to the conclusion of this case pursuant to 11 U.S.C. § 330.

Dated this _____ day of _____, 1990.

_____

Bankruptcy Judge

Exhibit A
Uniform Guidelines for Interim Compensation and Expense Reimbursement

A. Attorneys' Monthly Statements and Interim Applications for Compensation

All monthly statements for interim compensation for counsel to the Creditors' Committees shall be initially submitted on or before the twentieth day of each month to the Chair of the applicable Committee or his designee. The Chair, or his designee, after reviewing the statements, shall forward the statements to the Debtors' attorneys, with a letter certifying that the services rendered are within the scope of the work requested and that the fees requested are reasonable and appropriate. Once these statements and letters of certification are received by the Debtors, they will be handled in the same manner as are other attorneys' statements.

All monthly statements for interim compensation for Debtors' counsel shall be sent on or before the twentieth day of each month to [debtors' employee's name and address]. The Chief Financial Officer, after reviewing the statements, shall forward them to the Chief Executive Officer, who will certify that the services rendered are within the scope of the work requested and that the fees requested are reasonable and appropriate.

The Debtors' Accounting Department will review all numbers, calculations, and otherwise serve as a double-check on the Committee Chair, Chief Financial Officer and Chief Executive Officer approvals. Once the statements have been approved by the applicable Committee Chairs, Chief Financial Officer and Chief Executive Officer and checked by the Accounting Department, they may be paid.

B. Monthly Statements and Applications for Compensation by Other Professionals Employed by the Creditors' Committees

Professionals other than attorneys employed by the Creditors' Committees shall submit their monthly statements to the Chair of the applicable Committee, or his designee. The Chair, or his designee, shall review these monthly statements to assure that the work performed was within the scope of that requested and that the fees requested are reasonable and proper. Once this task is completed, the Chair, or his designee, shall forward the statement, together with a letter certifying the above, to the Debtors' Chief Financial Officer. When the monthly statements have been received by the Debtors, they will be processed as set forth in paragraph A.

C. Monthly Statements and Applications for Compensation by Other Professionals Employed by the Debtors

Professionals other than attorneys employed by the Debtors shall submit their monthly statements for compensation to the Debtors' Chief Financial Officer for review and approval. After the Chief Financial Officer has reviewed these statements and

approved same, they will be submitted to the Accounting Department for final review and payment.

Internal reviews of monthly interim statements shall be completed within twenty days of receipt and either paid or sent back with a statement of reasons as to why payment is not being made. The Debtors will prepare and circulate to those parties listed on Exhibit B a summary report of all fees and expenses requested and paid by each estate during the previous quarter.

D. Guidelines Relating to Interim Compensation Requests

1. Monthly statements shall be sufficiently detailed so as to permit identifying the project or tasks performed, the person performing the task and the hours spent by each employee of the firm rendering professional services.
2. The normal hourly rates for each involved individual employee of a professional organization for the current calendar year in which the application is being made shall be set forth.
3. Professionals rendering services to more than one estate who divide the fees for any particular service between estates shall disclose the manner by which such fees were divided between the estates in a cover sheet attached to each monthly request and in each fee application.
4. Where possible, work shall be performed by individuals whose level of experience is appropriate to the task.
5. Where possible in connection with routine legal matters, a single attorney working on the matter should be sufficient. Obviously, in complex problems and certain types of litigation where various levels of expertise and experience should be brought to bear, more than one attorney from a firm is expected to function on the task.
6. All quarterly interim applications filed by any professionals employed pursuant to Court Order should have attached copies of all monthly statements submitted for payment and should include a recap in summary form of the work performed and time spent as reflected in the interim statements and the Cover Sheet adopted in this District for all fee applications.
7. Compensation for attorneys', accountants', and other professionals' time spent in the preparation of monthly billings or quarterly interim applications for compensation should be billed monthly and will be paid at the normal billing rate schedule.

E. Reimbursement of Expenses

The question of expenses is a sensitive one. A statement of principles governing reimbursement of costs, which addresses itself to most significant issues, follows. With respect to members of the Creditors' Committees, it is the initial responsibility of each Chair, or his designee, to review and approve the expense reports submitted by the members of that Committee and to submit such expenses for payment.

F. Reimbursement of Costs and Expenses

1. General Principles

a. **Travel.** Air travel is expected to be a regular coach fare for all flights. For flights of two hours or more, business coach or first-class can be considered acceptable where written justification is submitted establishing a business basis for use of business coach or first-class seating and where the monetary difference between regular coach and first-class is reflected in the expense report. Where business coach or first-class travel is used and those involved do not wish to submit justification therefor, such parties may submit for reimbursement an amount equal to regular coach fare for that particular flight.

b. **Hotel and Meals.** Due to the wide variation in hotel and restaurant costs in the various cities in which meetings may be held, it is not possible to establish a single guideline for these types of expenses.

All persons will be required to exercise discretion and prudence in connection with hotel and meal expenditures. No reimbursement will be made for any expenditures for alcoholic beverages.

c. **Xeroxing.** Xeroxing and duplication charges are to be billed at no more than 15 cents per page.

d. **Documentation**. For all expenditures in excess of $50.00, documentation must be retained and made available to the Debtors on request. Where possible, receipts should be obtained for all expenditures. Where one professional or one Committee member pays a bill which includes more than his own expenses, the number and identity of the individuals involved must be included in the expense reimbursement request.

2. Creditors' Committee Expenses

a. Actual and reasonable expenses of one representative of each Creditors' Committee member will be reimbursed as well as the expenses of the professionals employed by the Committees.

b. To the extent that any individual Committee member may employ any professional or have any professional attend meetings or perform other services, such professional's expenses and fees will not be reimbursed by the Debtors' estate unless allowed under 11 U.S.C. § 503.

Exhibit B
Parties to Receive Monthly Fee Statements

All Statements

[Debtors' Employee's Name and Address]

[Debtors' Attorneys' Name and Address]

[Debtors' Attorneys' Name and Address]

[Bank Group's Counsel's Name and Address]

Statements of Professionals Retained in the [Debtor's Name] Case

[Creditors' Committee Counsel's Name and Address]

Statements of Professionals Retained in the [Debtor's Name] Case

[Creditors' Committee Counsel's Name and Address]

Statements of Professionals Retained in the [Debtor's Name] Case

[Creditor's Name and Address]

[Creditor's Name and Address]

Exhibit C
Cover Sheet for Application for Professional Compensation

[This exhibit is reproduced in this guide as Exhibit II-8.]

Exhibit II-7. Sample Orders Establishing Interim Fee and Expense Reimbursement Procedures for Professionals (Reimbursement After Court Approves Fee Applications)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re	)	
	)	
	)	Consolidated Case
	)	No.
	)	
	)	
Debtors	)	

Order Establishing Interim Fee and Expense Reimbursement Procedures

At Cincinnati, in said District, on January 5, 1984:

The applications of various parties for an order establishing a procedure for the payment of interim compensation and for the reimbursement of expenses incurred by the examiner, members of committees and professionals employed herein as authorized by this Court, came on for hearing before the undersigned Bankruptcy Judge on December 14, 1983 at 10:00 a.m. The Court has duly considered the application, the files and records in these cases and the statements of counsel present. The Court finds that notice of the hearing was duly given to the creditors of these estates and to all other parties entitled thereto and that the adoption of an interim fee procedure is necessary to the administration of the estates. Now, therefore, it is ORDERED that unless and until otherwise ordered by this Court, the procedure for reimbursement of expenses to committee members and for awarding interim compensation and reimbursement of expenses to the examiner, all attorneys, accountants and other professionals employed pursuant to order of this Court shall be as follows:

Reimbursement of Reasonable Costs and Expenses

A. On or before the twentieth day of each month, all committee members, the examiner and the attorneys, accountants and other professionals (whose employment by a debtor in possession, a committee appointed under 11 U.S.C. § 1102 or the examiner shall have been authorized by this Court) may submit statements to the debtors in possession for reimbursement of expenses paid or incurred on or before the last day of the

preceding month. Any expenses not billed for in one month may be billed for in a subsequent month.

B. All statements submitted to one or more of the debtors in possession in accordance with this order shall be delivered to the attention of [debtor's employee's name and address]. A copy shall be filed with this Court. The statements shall contain the following information in either schedule or narrative form:

1. *With respect to all expenses incurred by committee members and those expenses of professional persons incurred away from their respective offices,* the amount, the date incurred and the nature thereof. The debtors in possession and the committees appointed herein shall develop for use in these cases (subject to this Court's approval) a uniform set of guidelines as to reimbursable expenses and a uniform procedure (which may include appropriate forms) by which such requests for reimbursement shall be submitted.

2. *With respect to office expenses, costs and other special charges by professional persons,* a description of all such charges (e.g., "long distance phone charges," "duplicating expenses," etc.) and a description of the method by which such charges were calculated.

C. All of the statements and schedules submitted in accordance with paragraph B above shall be reviewed by debtors and debtors in possession and paid within thirty days of receipt as follows:

1. The statements of counsel, accountants or other professionals employed in a particular case shall be attributed to that case, and the debtor in that case shall pay (or be charged for) the statement in accordance with subparagraph E below.

2. Each statement or portion thereof which has been reasonably identified by the sender as relating to a particular case shall be attributed to that case and the debtor in that case shall pay (or be charged for) the statement or portion thereof in accordance with subparagraph D below.

3. The unallocated portions of the statements of counsel, the examiner, accountants or other professionals serving or employed in more than one case shall be allocated in accordance with any order issued by this Court regarding the allocation of administrative expenses. The debtor in each such case shall pay (or be charged for) the statements in accordance with subparagraph D below. (This allocation and payment shall be without prejudice to adjustments by the Court upon motion of any party in interest.)

D. Payments shall be made to committee members, the examiner, counsel, accountants and other professionals as follows: 100% of actual and reasonable expenses incurred. All such payments shall be subject to review and adjustment by this Court.

Interim Compensation and Court Applications

E. Within 20 days following the end of each three-month period (amended to the end of the month following the end of each 3 months), commencing with the period ending January 31, 1984, each party who has sought reimbursement of expenses and each party

or professional seeking interim compensation shall file with the Court and serve upon counsel to the debtors in possession, chairperson(s) and counsel for each committee of creditors (or equity holders) appointed herein and the Securities and Exchange Commission an application (1) for approval of the payments actually billed and (2) for interim compensation for services rendered during the preceding three-month period.

F. Applications for interim compensation submitted by attorneys, accountants and other professionals shall be based, subject to this Court's approval, upon their respective normal and customary hourly rates, as they exist from time to time, for a case of this type. At least 10 days before the first interim application is filed, a schedule of such rates shall be filed with the Court and served upon the following parties: [debtor's name and address], Attention: [debtor's employee's name]; [debtors' attorneys' name and address]; the Securities and Exchange Commission; and the chairperson(s) and counsel for each creditor's (or equity holder's) committee appointed in any of these cases. Not less than 30 days' notice of any proposed change in such hourly rates shall be given in the same manner. Any party in interest may request a hearing before this Court as to the reasonableness of any such rates, and no payments based on those rates questioned shall be made until this Court has ruled thereon.

G. *With respect to interim compensation, there shall be provided a daily accounting of the services rendered which shall include* the date of the service rendered; an identification of the person or persons who performed the service; the time devoted in rendering the service on the date in question; a description of the services so rendered; the services which remain to be rendered if interim compensation is sought; the amount of any compensation previously allowed by the Court; and, to the extent practicable, the identity of the debtor estate (by case number) in which or for which the services were rendered; provided, however, that the time reports and time records of the examiner which would normally accompany his application for approval of compensation may be separately filed with the Court to be held under seal and copies thereof need only be served upon the Securities and Exchange Commission.

H. All counsel shall be reimbursed on an interim basis for services rendered at a rate of 70% of the amount found by the Court to be reasonable and necessary, while the examiner, accountants and other professionals shall be reimbursed at a rate of 100% of the amounts found by the Court to be reasonable and necessary.

I. A hearing on these applications normally shall be commenced at 10:00 a.m. on the second or third Thursday of the month following the month in which the applications are filed. (The first of these hearings will commence on March 22, 1984 at 10:00 a.m.) If any party who has received one or more payments for reimbursement of expenses during a three-month period in accordance with paragraph D above shall fail to file an application for approval of those payments so received as required by paragraph E, then the debtors in possession shall not pay such party any further monthly payments unless and until an application for approval of previously made payments has been filed and ruled upon by the Court, unless otherwise ordered by the Court.

J. That portion of the interim compensation paid to the examiner, accountants and professionals (other than counsel) in accordance with paragraph H which is ultimately

approved and allowed by this Court shall be in full satisfaction of the claims of all such persons to receive reasonable compensation under 11 U.S.C. § 330.

K. The debtors in possession shall give notice of the filing of all applications filed pursuant to this order to all entities entitled to notice as shall be determined by order of this Court. Debtors in possession shall also publish a notice, in a form to be approved by the Court in the national edition of the *Wall Street Journal* on a single day falling at least 7 days prior to the hearing on the applications.

L. In connection with the administration of these estates, the parties may from time to time seek to employ counsel, accountants, appraisers and other professionals for a limited period of time or for a very limited purpose. In those instances the parties may, with the Court's approval, employ such persons on terms and conditions different from those set forth herein, including on a retainer, on an hourly basis or on a contingent fee basis.

IT IS FURTHER ORDERED, that nothing contained herein or done pursuant hereto shall be deemed to prejudice the right of any counsel to seek an award of such additional compensation at the conclusion of one of these cases as may be appropriate under the provisions of section 330 of the Bankruptcy Code, 11 U.S.C. § 330.

AND IT IS FURTHER ORDERED, that any person or entity whose employment has not been previously approved by this Court, but who desires the allowance and payment of an administrative expense under Bankruptcy Code § 503, 11 U.S.C. § 503, shall file an application for such allowance with this Court and shall serve a copy thereof upon counsel for the debtors in possession, the Securities and Exchange Commission and counsel for each committee appointed under Bankruptcy Code § 1102, 11 U.S.C. § 1102. The form of each such application and the information contained therein shall be consistent with the other provisions of this Order. All such applications filed and served on or before the twentieth day of the month preceding the month in which a regularly scheduled fee hearing is to be held shall be heard at the same time as the regularly filed requests for interim compensation. Any such applications not timely filed shall be heard at the next scheduled quarterly hearing. The debtors in possession shall give notice of the filing of all such applications to all entities entitled thereto as shall be determined by Order of this Court. Nothing contained in this paragraph shall be construed as giving any person any right to have any administrative expense allowed or paid when sought, nor to prejudice the right of any party to object to the allowance or payment of all or any portion of the administrative expense alleged in any such application.

IT IS SO ORDERED.

Randall J. Newsome
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re	)	
	)	
	)	Consolidated Case
	)	No.
	)	
	)	Chapter 11
Debtors	)	
	)	Honorable Randall J. Newsome
	)	Bankruptcy Judge

Supplemental Order Establishing Interim Fee and Expense Reimbursement Procedures

At Cincinnati, in said District, on March 30, 1984:

On March 22–23, 1984 the first interim fee and expense hearing was held pursuant to this Court's January 5, 1984 Order Establishing Interim Fee and Expense Reimbursement Procedures. Certain additional interim fee and expense reimbursement procedures were established as a result of this Court's review of the applications submitted and the arguments made during the course of this hearing. Now, therefore, it is ORDERED that the Order Establishing Interim Fee and Expense Reimbursement Procedures and this Court's February 8, 1984 Order (Expense Guidelines) are hereby supplemented as follows:

Reimbursement of Reasonable Costs and Expenses

1. **Items of Office Overhead.** No award of expenses will be made for items of office overhead such as secretarial overtime, professional overtime, heat and electricity, office supplies, word processing charges, meals and taxi fares incurred in connection with overtime work, messenger clerk time or mileage for intra-city travel.
2. **Limousines and other extraordinary transportation.** No award of expenses will be made for extraordinary forms of travel such as helicopters or private limousines except when such travel is explicitly documented to be a savings over comparable cab or air fare.
3. **First class airfare.** First class airfare will be reimbursed only under exceptional circumstances except that [debtors' attorneys' name] personnel traveling coast to coast may be reimbursed for first class travel upon a specific showing of the time billed for

work performed in transit. All professionals should minimize airfare expenses by using round-trip tickets when possible.

4. **Hotel bills.** All professionals and committee members should utilize the [debtors' name] corporate rate for hotel accommodations whenever possible.

5. **Overnight courier service.** The use of overnight courier service is discouraged. When overnight delivery is required, the most cost-effective service should be used.

6. **Expenses of committee members at hearings.** No award of expenses will be made to committee members or their individual counsel for attendance at hearings, provided, however, that the expenses of one member of a committee appointed in these cases will be allowed for attendance at hearings if requested by committee counsel for the purpose of testifying or advising counsel.

7. **Presentation of expenses.** All expenses in excess of $25.00 must be supported by copies of receipts. These receipts must accompany all monthly expense statements and quarterly applications for expense reimbursement and must be organized into a coherent statement of expenses, identifying the work performed or the reason for the expense and the professional incurring the expense. The Court will not consider expenses which are not supported by organized receipts.

Interim Compensation

8. **Non-attorney professionals.** All non-attorney professionals shall provide the Court with summaries of services performed specifying the type and purpose of each project, the number of individuals working on the project, the extent of duplication and interface with other professionals working on the project and an appraisal as to whether the time billed to the project should be discounted. To the extent possible, non-attorney professionals should also set forth all billings to non-debtor [debtors' name] entities and provide summaries of such work.

9. **Attorney time allocations.** Attorney professionals should indicate the amount of time spent on individual projects exceeding one hour, including telephone calls. Failure to do so in future applications may result in disallowance of the fees requested.

10. **List of abbreviations.** All applications for reimbursement of fees must be accompanied by a legend describing all abbreviations and codes appearing in attorney time records.

11. **Associate time.** Supervising attorneys should exercise control over the time spent by associates and paralegals on research, revision and editing. Supervising attorneys have a responsibility to instruct associates and paralegals on the appropriate amount of time to be allocated to individual projects.

12. **Random time.** In future fee applications, the Court will scrutinize closely billings of random hours by attorneys not assigned to these cases.

13. **Travel time.** Professionals will be compensated for travel time only during normal business hours or if services are actually performed while in transit. All time billed as travel time must indicate the basis on which it is billed.

14. **Discounted time.** It is the responsibility of professionals to exercise discretion in assessing the amount of time necessary to accomplish each task performed and to discount their fee applications accordingly. Discounted time should be reported in the fee application in full with an indication that all, or a portion, of such time was not charged.

Other Matters

15. **Allocation.** All fees and expenses shall be automatically allocated among the debtor corporations according to the Amended Order Authorizing Debtors in Possession to Maintain Existing Bank Accounts, Business Forms and Cash Management Systems entered on January 30, 1984 and the Order Approving Stipulation Regarding Charging of Expenses and Dismissal of Appeal entered on March 2, 1984 unless it can be specifically shown that one estate received the benefit of such fees and expenses. To the extent possible, any time allocated to non-debtor [debtors' name] affiliates should also be described in the application.

16. **Appearances.** All professionals submitting applications for interim compensation and reimbursement of expenses in excess of $10,000 must appear at the hearing scheduled to consider that application. The applications of any professional who fails to appear will be put over until the next scheduled fee hearing. No appearance is required for applications of less than $10,000 unless an objection has been filed with respect to such application or unless the professional is located in the Cincinnati area. (Subsequently amended to $40,000.)

17. **Notice.** (Abandoned after first interim fee hearing.) The notice to be published in the *Wall Street Journal* pursuant to paragraph 15 of the Order Establishing Caption and Notice Procedures to be Followed in Connection with Consolidated Cases entered by this Court on February 14, 1984, shall be limited to a statement that applications have been filed in these cases for reimbursement of expenses and compensation for services rendered and that such applications are on file with the Clerk of this Court and can be inspected in Room 735, United States Post Office and Courthouse, Cincinnati, Ohio 45202.

IT IS SO ORDERED.

RANDALL J. NEWSOME
Bankruptcy Judge

Copies: All Parties and Entities on Master Service List #18
All Persons and Entities Retained by Debtors and Committees
Examiner

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re	)	
	)	
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Chapter 11
Debtors in Possession	)	Reorganization

Administrative Order III
Establishing Fee and Expense Reimbursement Standards and Procedures for All Counsel, Committees and Professionals
Amended As of September 10, 1987

The Court, having determined that certain amendments to the procedure established by Amended Administrative Order III and the Addendum thereto are necessary and having requested the recommendations of the official committees and counsel regarding such amendments, hereby amends the procedure for approval of professional fees and expenses in the above-styled cases. All applications for compensation of applicable professionals must comply with the provisions of this Order within the time limits prescribed. Accordingly, it is

ORDERED as follows:

I. Applicability of This Order

A. The following procedures and standards with respect to allowance of fees and expenses of applicable professionals shall control in these cases until and unless amended on the Court's own motion or upon motion of a party in interest.

B. Applicable professionals include all professionals, attorneys, committee counsel, any examiner appointed in these cases, or other professionals who are appointed by the Court after application, pursuant to Paragraph V of Administrative Order II, to provide services for the Debtors In Possession (DIPs) or any other official committee or interest in this case.

C. Failure to comply with this Order may result in loss of administrative priority or total disallowance of fees.

II. Application to Employ Professional

A. Applications to employ professionals shall contain a brief biographical sketch of all "professionals" who are expected to work on the case. "Professionals" is defined to include all lawyers and accountants, local and out-of-town, who are available to perform services for the DIPs or any committee appointed by the Court to represent the interest of creditors or equity security holders. The application shall disclose the billing rate of each professional and his or her billing rates for nonbankruptcy-related services, the number of years of experience such professional brings to the case, a listing of all professional education seminars devoted to bankruptcy and insolvency practice which such professional has attended in the past three years, and a listing of the last three bankruptcy cases where the applicant served in a similar capacity as a Court-appointed professional and the judicial district of those cases.

B. Biographical sketches of members of firms not included in the original applications shall be submitted with the application in which that professional first requests compensation.

III. Allocation of Workload of Professionals and Review and Approval of Professional Fee Applications

A. **Authorization to Perform Services and Review of Fees.** The Court hereby designates the chairman of each Court-appointed committee to manage the Court-appointed professionals for that committee. The chairman must, with approval of the committee, authorize the work to be done by the professionals employed by his committee and shall review and submit, under his signature, fee applications for committee professionals only for work authorized by the committee and in amounts approved by the committee. The Committee Chairman shall select a supervising attorney or supervising professional from the members of the firms employed to represent the Committees.

B. **Allocation of Work.** Supervising attorneys and managing professionals shall strictly adhere to 11 U.S.C. § 330 in determining the allocation of work to be performed by their firms and shall exercise control over time spent by associates and paralegals on research, revision, and editing. Work shall be assigned to available professionals so as to obtain reliable results in the most economical fashion possible. Supervising attorneys and managing professionals shall certify that each function for which compensation is sought has been performed by the most suitable available professional or support person, measured by a balance of needed expertise in the subject area and the hourly billing rate of available persons.

IV. Procedure for Requesting Monthly Allowance of Reasonable Fees and Expenses

A. **Application for Payment.** Because the DIPs have public reporting requirements and are required to recognize and report major expenses in a timely fashion, the Court has concluded that "applicable professionals" shall file monthly applications for approval of fees and expenses, so that administrative expenses can be recognized timely. Notice to all parties contained on the Master Mailing Matrix of the applications filed on or before 5:00 p.m. on the twentieth (20th) day of the month shall be sent out on twenty (20) days' notice, with a date set for creditors to file written objections and/or requests for hearing. Applications filed after the twentieth (20th) day of the month shall be noticed the next month in the same manner. Applications not filed by the twentieth (20th) day of the *second* month following the month during which the services were rendered may be found by the Court to be late-filed and may be disallowed or subordinated for payment as set forth in section VI of this Order.

B. **Consideration of Fee Applications by Hearing.** The Court will not set hearings on fee applications unless there is a written request for hearing within the time prescribed by notice (written objections to fees will be considered by the Court but will not be scheduled for hearing unless specific written request for hearing is made). Upon receipt of timely filed requests for hearing on any fee application the Court will schedule a hearing as its calendar permits. Counsel need only appear at hearings on fee applications when they represent a party requesting hearing on an application or a hearing has been scheduled on an application which they have filed or otherwise have an interest.

C. **Consideration of Fee Applications Without Hearing.** The Court will consider and issue written Orders on fee applications and written objections thereto for which no timely request for hearing was made.

D. **Fee Application Auditor.** The DIPs shall designate one person from the internal audit staff as Fee Application Auditor. All applications which request fee allowance and reimbursement shall be filed with the Bankruptcy Clerk, and served upon counsel for the DIPs, counsel and chairman of any committee authorized to represent a class of interests, and the designated Fee Application Auditor. The Fee Application Auditor shall promptly review the same and within ten (10) days of the filing of such application, submit to the Clerk, over the signature of the Fee Application Auditor, an audit of the fee and/or expense requests in accordance with the procedures and standards established in this case. The fee application auditor will file additional analytical reports on the fees requested as directed by the Court. The Fee Application Auditor shall appear at all hearings held to consider allowance of professional fees and expenses.

E. **Expenses.** Expenses for which professionals in this case seek reimbursement shall be itemized as to amount, date, and nature, including the purpose for which the expense was incurred. Any expense over $100.00, for which reimbursement is sought, shall be accompanied by a receipt. No expense incurred by a professional from a third party shall be reimbursed by the DIPs to any greater extent than has been paid or incurred by the professional, except to recover tax imposed by a unit of government. Items of expense

billed are not to include overhead allocation or add-ons. Expenses must be organized in a coherent statement of expense which must identify the work performed and the reason for the expense and the professional who incurred the expense. No request for reimbursement of expenses other than in accordance with this standard will be allowed.

F. **Fees.** All professionals who seek compensation for professional efforts expended in this case shall itemize by date, to the nearest quarter-hour segment, the time for which they seek payment with sufficient description of the work performed to permit reviewing parties to make an intelligent judgment as to what was done and the reasonableness of the amount of time required to do it. When multiple tasks are billed in any single block of time, the narration must be adequate to permit reviewing parties to ascertain the approximate amount of time devoted to each separate task. The format of all fee applications shall include a listing of all work done by each professional on each date in the application period; this information shall be presented cumulatively for each date and not separately for each professional for each date. The itemization of work performed may be supported by legible copies of time sheets or by computer printouts of billed time. However, supporting documentation must reflect *each* activity performed, the attorney performing the work, a description of the work and the time spent. Documentation for meetings and conferences with parties or official committees in these cases need only reflect the attendance of those professionals for whom the application seeks compensation, but must identify the date and nature of the conference. Documentation of meetings and conferences with persons other than parties and official committees in these cases must identify the other professionals in attendance. In billing for time for telephone calls or conferences, documentation must detail the party called and the reason for the call or conference. Explanations of the nature of legal research performed and the purpose therefor must be provided for all time billed for legal research. If time is billed for drafting, proofreading or preparation of documents, the document must be identified. Charges for blocks of time without this information will not be allowed as an administrative expense in this case. All tasks performed by nonprofessionals (e.g., copying, typing, filing) shall be described and may be billed at a uniform hourly rate. The individual who performed each task must be identified. Each application shall summarize the hours charged for each individual and shall disclose that individual's job title and rate of compensation. Each application shall disclose the firm's total compensation billed and paid to date.

G. **Copy Fees.** Application for reimbursement of copying charges may be calculated by charging the actual machine charge for copies plus labor to make those copies; or a flat rate per copy to include labor may be requested. However, either method of calculation must not exceed the charge for copies that can be obtained from outside copying services and the method used must be stated.

H. 1. **Travel Per Diem.** Per diem expenses for lodging and meals will be limited to $100.00 per day for travel to Charleston, West Virginia, or other areas of Kanawha County. Per diem expenses for lodging and travel to New York City will be limited to actual and reasonable sums for lodging and meals considering the purpose of the trip,

number of days' notice to make advance reservations and subjects under review. Documentation for expenses to cities other than Charleston must be itemized.

Firms who have personnel claiming reimbursement for food and lodging for periods of 30 days or longer must seek long-term housing such as apartments or rental houses to further reduce the cost of lodging. Where lodging is obtained on a monthly basis, per diem food allowance will be limited to $35.00 per work day per person.

2. **Documentation of Travel Expenses.** Expenses claimed for travel shall be documented to reflect persons traveling, reason for travel, and separate expenses for which reimbursement is sought. Lodging and meal expenses shall be included in this itemization unless claimed at the per diem rate above. Expenses for cab and air fare must show where travel originates and terminates.

I. **List of Abbreviations.** All applications for reimbursement will use abbreviations as much as practicable and will contain a legend explaining those abbreviations.

V. A. Format for Fee Applications

1. Applications for payment of fees shall be filed with (a) a cover sheet that conforms substantially to the form attached as Exhibit A of this Order, (b) a summary depicting total hours, hourly rate and total compensation claimed by each professional and the total compensation and expenses requested and approved for the firm to date, and (c) the chronological documentation of work performed as required by Paragraph IV F of Administrative Order III. Individuals for whom payment is sought shall be referred to in the application by first initial and last name only. Professional histories need only be provided for individuals who were not included in the application for employment of the firm.

2. All itemizations of fees and expenses shall follow the formal format used by the firm of [law firm's name] for the period ending June 30, 1987, and shall contain a completed "Summary of Travel Expenses for Professional," attached as Exhibit B to this Order.

3. Applications shall be filed on a calendar monthly basis.

VI. Limitations on Professional Fees and Expenses to be Observed by All Who Seek Reimbursement by the DIPs in This Case

A. **Limitations on Expenses.** Travel when necessary for the performance of work in this case will be reimbursed at the least expensive public transportation rates available. Airfare will be reimbursed at no greater than coach class, unless no coach class seats are available.

B. **Overnight Courier Service.** Overnight courier service will be reimbursed when time constraints and the importance of a matter do not permit the use of regular mail service. In that event, the overnight service chosen must be the most cost-effective service available. Reimbursement requests for overnight courier service shall identify the material which was sent and the parties to whom such material was sent.

C. **Limousines and Other Extraordinary Transportation.** No award of expense will be made for extraordinary forms of transportation such as helicopters, private limousine and private charter, unless explicitly documented to be a savings over the comparable cab or airfare coach class.

D. **Items of Office Overhead.** No award of expense will be made for items of office overhead, heat and electricity, office supplies, word processing charges, messenger clerk time or mileage for intra-city travel.

E. **Travel Time.** Professionals will be compensated for travel time only if services are actually performed while in transit. All time billed as travel time must indicate the service that was performed during travel and whether any discounts on the prevailing rate were extended in light of that fact. Full compliance with Paragraphs IV E and F is expected.

F. **Discounting Time and Rate.** It is the responsibility of professionals to exercise discretion in assessing the amount of time necessary to accomplish each task performed and to discount their fee applications accordingly. Discounted time should be reported in the fee application in full with an indication that all or a portion of such time was not charged.

G. **Time Spent Preparing Fee Applications Compensable.** Time spent on preparation of fee applications will be compensated, but the expected quid pro quo will be a reasonable discount for time which has been unnecessarily expended in other endeavors or which is excessive under the particular circumstances and which would otherwise not be charged to other clients. Counsel should conform to the requirements announced by the U.S. Supreme Court in *Hensley v. Eckard,* 76 L. Ed. 2d 40, 51 (1983) quoting *Copeland v. Marshall,* 641 F.2d 880, 891, "Counsel . . . should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary. In the private sector, billing 'judgment' is an important component in fee setting."

H. **Limitation on Number of Counsel/Professionals Working on Any Given Project.** Fee applications presented by professionals where there are more than two attorneys or two accountants who have attended the same meeting, hearing, or worked on the same project shall not have fees allowed unless explanation is provided for the necessity of multiple attendance by counsel and accountants at the subject meeting or hearing.

VII. Effect of Noncompliance

Because the late filing of applications for compensation impairs the Court's ability to evaluate the services for which fees are requested and impairs the DIPs' ability to report accruing expenses to the public, any fee or expense for which compensation is requested in a manner other than as prescribed herein will, at the discretion of the Court, be disallowed or subordinated in whole or in part, to the pre-petition claims of unsecured and equity creditors, unless good cause is shown that such treatment is not in the interests of justice.

The Clerk is directed to transmit a copy of this Order to all professionals of record.

ENTERED: September 24, 1987,
after September 10, 1987
notice to all parties in interest.

_____

Judge

Exhibit A

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re	)	
	)	
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Chapter 11
Debtors in Possession	)	Reorganization

Fee Application of [Firm Name]

[Firm name] appointed as [counsel/accountant/auctioneer/appraiser, etc.] for [debtor, Unsecured Trade Creditors' Committee, etc.], requests compensation totaling _____ and reimbursement of expenses totaling _____ for the period of _____, 198__ through _____, 198__ for services performed pursuant to the [firm's/individual's] appointment in the case of [debtors' names], where applicable. The undersigned declare under penalty of perjury that the fees and expenses herein requested for services performed comply with Administrative Order III, as amended, and the Bankruptcy Code and Rules, and that the fee application is true and correct to the best of the undersigneds' knowledge and belief.

Date:

_____
Supervising Professional

This application has been reviewed and is approved by the Committee for submission to the Court.

Date:

_____
Chairman of the Committee

Exhibit B

[Debtor's Name]
Case No.
Summary of Travel Expenses for Professional:
For the Month of _____, 19_____
Name _____ Firm _____
Committee _____

Day	City	Transportation	Lodging	Meals	Other
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
	Total				

Total All Categories: $ _____

Exhibit II-8. Sample Cover Sheet for Fee Application for Professionals

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO

In re)
)
) Case No. _____
)
Debtors)

Cover Sheet for Application for Professional Compensation

Name of Applicant: _____

Authorized to Provide
Professional Services to: _____

Date of Order Authorizing Employment: _____

Period for Which
Compensation Is Sought: _____

Amount of Fees Sought: _____

Amount of Expense
Reimbursement Sought: _____

This is an: Interim Application _____ Final Application _____

If this is *not* the first application filed herein by this professional, disclose as to all prior fee applications:

Date Filed	**Period Covered**	**Total Requested (Fees & Expenses)**	**Total Allowed**
_____	_____	$ _____	$ _____
_____	_____	$ _____	$ _____
_____	_____	$ _____	$ _____
_____	_____	$ _____	$ _____
_____	_____	$ _____	$ _____

The Aggregate amount of fees and expenses paid to the Applicant to date for services rendered and expenses incurred herein is:

$ _____

Date: _____

Exhibit II-9. Sample Administrative Order for District Regarding Fees and Disbursements for Professionals in All Bankruptcy Cases

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Administrative Order

Re: Guidelines for Fees and Disbursements
for Professionals in Southern District of
New York Bankruptcy Cases

Pursuant to a resolution of the Board of Judges, all fee applications filed on or after July 1, 1991 will be reviewed in accordance with the annexed guidelines which have been approved by the Board of Judges, and which shall be subject to annual review as to adjustments to the expense reimbursement amounts for the following guideline items: D3 (photocopying), D5 (facsimile transmission), and D10 (overtime meals).

At: New York, New York
June 20, 1991

Hon. Burton R. Lifland
Chief Bankruptcy Judge

Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases[1]

The following guidelines apply in all bankruptcy cases in the Southern District of New York. They delineate information that each interim and final application for professional fees and expenses must contain, and guidelines for reimbursement of disbursements. Those provisions preceded by an asterisk (*) are mandatory guidelines to which an applicant must certify the application adheres. No deviation from those guidelines marked with an asterisk is permissible, regardless of circumstances. Fee applications must comply with the remainder of these guidelines, provided that if the fee application departs therefrom (a) the certification shall specifically so state, and (b) the application must explain why the applicant believes departure from the guidelines is justified in the circumstances. The presumption is that the Court will follow the guidelines set forth herein. Any application departing from these guidelines shall include, in the paragraph proffering the justification for departing from the guidelines, the amount that the applicant would be entitled to receive under the guidelines.

A. Certification

[*]1. Each application for fees and disbursements must contain a certification by the professional designated by the applicant with the responsibility in the particular case for compliance with these guidelines (the Certifying Professional), that (a) the Certifying Professional has read the application; (b) to the best of the Certifying Professional's knowledge, information and belief formed after reasonable inquiry, the application complies with the mandatory guidelines set forth herein; (c) to the best of the Certifying Professional's knowledge, information and belief formed after reasonable inquiry, the fees and disbursements sought fall within these guidelines, except as specifically noted in the certification and described in the fee application; and (d) except to the extent that fees or disbursements are prohibited by these guidelines, the fees and disbursements sought are billed at rates and in accordance with practices customarily employed by the applicant and generally accepted by applicant's clients.

[*]2. Each application for fees and disbursements must contain a certification by either the Certifying Professional or by the trustee, the debtor, or the chair of each official committee represented by the applicant that the trustee, the debtor, or the chair of each official committee (as to each respective committee's professionals) has reviewed the fee application and has approved it. If the Certifying Professional is unable to certify that the trustee, debtor or committee chair, as the case may be, has approved the application, then the application must so state.

---

[1] These guidelines shall apply to all professionals seeking compensation pursuant to 11 U.S.C. §§ 327, 328, 330 and 331, including investment bankers and real estate advisors, unless the Court, in the order of retention, provides otherwise.

[*]3. Each application for fees and disbursements must contain a certification by the Certifying Professional that the trustee, the chair of each official committee and the debtor have all been provided no later than 20 days after the end of each month with a statement of fees and disbursements accrued during such month. The statement must contain a list of professionals and paraprofessionals providing services, their respective billing rates, the aggregate hours spent by each professional and paraprofessional, a general description of services rendered, a reasonably detailed breakdown of the disbursements incurred and an explanation of billing practices.

[*]4. Each application for fees and disbursements must contain a certification by the Certifying Professional that the trustee, the chair of each official committee and the debtor have all been provided with a copy of the relevant fee application at least 10 days before the date set by the Court or any applicable rules for filing fee applications.

[*]5. The Certifying Professional and, where applicable, the trustee, the debtor, or the chair of each official committee providing a certification should be present at the hearing unless previously excused by the Court.

B. Time Records Required to Support Fee Applications

[*]1. Each professional and paraprofessional must record time in increments of tenths of an hour, and must keep contemporaneous time records on a daily basis.

[*]2. Time records must set forth in reasonable detail an appropriate narrative description of the services rendered. Without limiting the foregoing, the description should include indications of the participants in, as well as the scope, identification and purpose of, the activity that is reasonable in the circumstances, especially in relation to the hours sought to be charged to the estate for that particular activity.[2]

[*]3. In recording time, each professional and paraprofessional may describe in one entry the nature of the services rendered during that day and the aggregate time expended for that day without delineating the actual time spent on each discrete activity, provided, however, that if the professional or paraprofessional expends more than 1 hour on a particular activity the time record for that day must include, internally in the description

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[2] By way of illustration only, and not by way of limitation, the following descriptions are inadequate or incomplete:

1. J. SMITH - 1/10/91 - legal research re fraudulent transfers - 10.0
2. J. SMITH - 1/11/91 - lengthy telephone call with J. Doe re status - .7
3. J. SMITH - 1/12/91 - drafting motion papers - 6.0
4. J. SMITH - 1/13/91 - interoffice conferences w/ J. Doe and P. Jones re direction of case - 2.0
5. J. SMITH - 1/14/91 - meeting with creditors - 8.0
6. J. SMITH - document organization - 8.0
7. J. SMITH - 1/15/91 - various correspondence - 1.0

of services for that day, the amount of time spent on that activity. A hypothetical time record complying with this guideline is included in the margin.[3]

[*]4. To the extent a professional is engaged in rendering services in a discrete activity within the case (a) that can reasonably be expected to continue over a period of at least three months, and (b) that can reasonably be expected to constitute approximately 10-20% or more of the fees to be sought for an interim period, the professional shall establish a separate record entry for that matter, and record time therein separate from any other services in the case. Within that separate entry the professional shall comply with section B(3), including the *proviso* thereof. Examples of such discrete services within a case where such separate recording may be appropriate, in a particular case, include: an extended program of Rule 2004 examinations; sale of a significant asset or subsidiary; a significant adversary proceeding or contested matter; negotiating a plan; drafting and commenting on plan documents, disclosure statement, related corporate documents, etc.

Paraprofessionals working on such a discrete activity shall similarly account separately for their services and time.

5. The Court may direct, in the order scheduling the hearing on fees or otherwise, the fee applicant to make available to parties in interest, or to file with the Clerk of the Court, a copy of the contemporaneous time records required to be kept by Sections B(l)–(4). If the Court so directs, the Court shall provide that time record entries referring to or disclosing privileged material and confidential material may be excised from such records; provided, however, that if the excised material is sufficiently extensive to infringe upon the Court's ability to judge reasonableness of the services, the Court may request submission of *in camera*, unredacted time records.

C. Description of Services Rendered

1. Content of the Application. In addition to the description of services rendered to the trustee, the debtor or an official committee, as the case may be, each fee application must include:

[*]a. A statement at the outset thereof of (i) the amount of fees and disbursements sought; (ii) the time period covered by the application; and (iii) unless the order authorizing retention dispenses with this subparagraph, the total professional hours expended, as well as the total paraprofessional hours expended.

[*]b. Unless the order authorizing retention upon application therefor dispenses with this paragraph, a schedule showing the name of each professional, with his or her position in the firm, the name of each paraprofessional who worked on the case during the fee period, the year that the professional was licensed to practice, the hours worked by each professional and paraprofessional, and the hourly rate for each

---

[3] A complying time entry would be:

["Conf. W/X re 362 hearing; revising draft motion re ordinary course (1.1); numerous TCs re adeq. protection; conf. call W/Y, Z re taxes (1.4); review court filings . . . Total Time 3.8"]

professional and paraprofessional. Any change in hourly rates or billing practices from those utilized in the prior application period must be noted on the schedule.

2. To the extent an applicant is required by section B(4) hereof to maintain a separate time record, the fee application shall describe in reasonable detail the nature of that discrete activity as well as the results of the applicant's efforts. The description shall include an approximation of the percentage of the total fee requested in the application attributable to such activity.

[*]3. Any request for an enhancement of fees over the fee which would be consistent with section A(1)(d) hereof or which would be derived solely from applicable hourly rates must be specifically identified in the application, and the justification for the requested enhancement must be set forth in detail.

D. Reimbursement for Expenses and Services

1. **Certification.** Each application requesting reimbursement for services and expenses must contain a certification by the Certifying Professional that:

[*]a. In providing a reimbursable service, the applicant does not make a profit on that service.

b. In charging for a particular service, the applicant does not include in the amount for which reimbursement is sought the amortization of the cost of any investment, equipment, or capital outlay.

[*]c. In seeking reimbursement for a service which the applicant justifiably purchased or contracted for from a third party (such as temporary paralegal or secretary services, or messenger service), the applicant requests reimbursement only for the amount billed to the applicant by the third-party vendor and paid by the applicant to such vendor.

2. **Presentation of Disbursements and Expenses in Fee Application.**

[*]a. In requesting reimbursement for expenses and services, applicants are specifically reminded of other certifications required by these guidelines, and in particular the certification under section A(1)(c) hereof. Excessive charges shall not be reimbursed. To the extent that an applicant seeks reimbursement for expenses and services, the application shall categorize them (if applicable) in the following manner:

i. Photocopying
   a. Internal (see D(3))
   b. External (see D(1)(c))
ii. Telecommunications
   a. Toll charges (see D(6))
   b. Facsimile (see D(1)(c))
iii. Courier and freight (see D(6))
iv. Printing (see D(1)(a))
v. Court reporter and transcripts
vi. Messenger service (see D(l)(c))
vii. Computerized research (see D(4))

viii. Out of town travel expenses (see D(7))
a. Transportation
b. Lodging
c. Meals
ix. Word processing, secretarial and other staff services (see D(1)(b) and D(11))
x. Overtime expense (see D(9))
a. Non-professional
b. Professional
xi. Local meals (see D(10))
xii. Local transportation (see D(12))

Expenses and disbursements which do not fall within any of the foregoing categories and which exceed $500 in the aggregate should be listed separately and adequately described.

b. Support for each item for which reimbursement is sought must be kept. Such support shall be provided on request to the Court and the United States Trustee, and in appropriate circumstances to any party in interest provided that, where applicable, privilege or confidentiality can be preserved.

3. **Photocopying.** Photocopying shall be reimbursable at the lesser of $20 per page or cost.

4. **Computerized research.** Computerized legal services such as LEXIS and Westlaw are reimbursable to the extent of the invoiced cost from the vendor.

5. **Facsimile transmission.** A charge for out-going facsimile transmission to long distance telephone numbers is reimbursable at the lower of (a) toll charges or (b) if such amount is not readily determinable, $1.25 per page for domestic and $2.50 per page for international transmissions. Charges for in-coming facsimiles are not reimbursable.

6. **Postage, telephone, courier and freight.** The cost of postage, freight, overnight delivery, courier services, and telephone toll charges are reimbursable, if reasonably incurred. Thus, charges should be minimized whenever possible. For example, messengers and overnight mail should be used only when first-class mail is impracticable. Delivery of papers to professionals at their homes or similar locales by radio car or taxi is not reimbursable. Charges for local telephone exchange service are not reimbursable.

7. **Travel charges.** First class airfare, luxury accommodations and deluxe meals are not reimbursable, nor are personal, incidental charges such as telephone and laundry unless necessary as a result of an unforeseen extended stay. Mileage charges for out-of-town travel with one's own car are reimbursable at the lesser of the amount charged clients in the non-bankruptcy context or the amount allowed by the Internal Revenue Service for per mile deductions.

[*]8. **Proofreading.** Charges for proofreading for typographical or similar errors are not reimbursable whether the services are performed by a paralegal, secretary or temporary staff.

9. **Overtime expense.** Overtime for non-professional and paraprofessional staff is not reimbursable unless justified under the first paragraph of these guidelines. Any such

justification must indicate, at a minimum, that (a) services after normal closing hours are absolutely necessary for the case, and (b) the charges are for overtime expenses paid. The reasonable expenses of a professional required to work on the case after 8:00 p.m. are reimbursable *provided* that, if the professional dines before 8:00 p.m., the expense is reimbursable only if the professional returns to the office to work for at least 1-1/2 hours. In any event, the expense for an individual's meal may not exceed $20.00.

10. **Daytime meals.** Daytime meals are not reimbursable unless the individual is participating, during the meal, in a necessary meeting respecting the case.

11. **Word processing, secretarial and other staff services.** Daytime, ordinary business hour charges for secretarial, library, word processing and other staff services (exclusive of paraprofessional services) are not reimbursable unless such charges are not included in the firm's overhead for the purpose of setting billing rates, in which case the application shall so state. Special office charges, such as the temporary employment of additional staff: (a) necessitated by the case and (b) not incurred in replacement of permanent staff or to shift otherwise nonreimbursable charges, will be reimbursed if reasonable and justified in each instance.

12. **Local transportation.** Local taxi and limousine charges should be minimized and justified. Because of the proximity of mass transit to the Court, mass transit should be used whenever practicable.

Exhibit II-10. Sample Order Requiring Creditor Committee Review of Professionals' Fee Applications and Sample Creditor Committee Reports

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO IN BANKRUPTCY

In re	)	
	)	
	)	Case No.
	)	(Jointly Administered)
Debtors	)	

Supplement to Order Establishing Interim Fee and Expense Reimbursement Application Procedure

On October 21, 1986, this Court entered its order establishing a special procedure for the payment of interim fees and expenses to professionals and other parties entitled to reimbursement out of the Debtor's estate. The first fee requests have been submitted to the Court pursuant to that application, and the Court has made a preliminary review of those requests. Having made that review, it is appropriate that the Court's prior order be amended and supplemented as follows:

1. The order specifies that applications for approval of interim payments billed during each three-month period may be approved by the Court in whole or in part "after notice and a hearing." Sub-paragraph 3.H specifies that the Debtors-in-possession are to give notice of the filing of all applications. That notice should be in the form specified by Local Rule 23, should be given within fifteen (15) days following the due date for the filing of interim applications for approval, and a certificate of mailing of the notice should be filed with the Court.

2. This being a complicated case, the fee applications are significant. To the extent professional fees are paid, the Debtor's estate is diminished and the ultimate returns to the unsecured creditors will be reduced. Under these circumstances it is uniquely in the interest of the Creditors' Committee to monitor the fee requests and to be assured that the fees requested are reasonable in light of the services provided. The Creditors' Committee is, therefore, ordered to review the fee requests filed and to file a report with this Court on or before forty-five (45) days after the due date for the filing of interim fee applications, which report will either specifically recommend the entry of an order approving the fees as requested or will state any objections thereto. If objections are made, the Applications to which such objections are directed will be set for hearing. No order authorizing fees will enter until such time as the Committee's report is filed with the Court.

DATED: December 23, 1986

BY THE COURT:

Charles E. Matheson, Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF COLORADO IN BANKRUPTCY

In re	)	
	)	
	)	Case No.
	)	(Jointly Administered)
Debtor	)	

First Quarterly Report of the Audit Committee on Professional Fees and Expenses Through November 30, 1986

The Committee established by this Court to Review Professional Fees and Expenses ("The Audit Committee"), composed of [committee members' names], presents the following report regarding its investigation and analysis of applications for the approval of interim compensation of fees and expenses through November 30, 1986:

1. Exhibit A to this Report gives a narrative description of the process used by the Audit Committee in its investigation and analysis.

2. Exhibit B includes the forms and correspondence used by the Audit Committee in order to obtain the best possible data in which to make evaluations.

3. Exhibits C through M include the individual Summary Reports of each applicant. Only Exhibit C is reproduced.

4. With regard to each Summary Report, a recommendation is made to this Court either to approve the fees and expenses as submitted by the applicant, or a recommended penalty. Recommended penalties may be treated as objections and requests for hearing. Should an applicant, after reviewing the Audit Committee's Report with regard to its application, wish to reduce its application request by the amount of the recommended penalty, then, as to such applicant, the recommended penalty should not be treated as an objection and request for hearing.

5. Any recommended penalty is based on a thorough analysis of objective criteria and case law, but ultimately is a subjective opinion of the Audit Committee as prepared for the sole purpose of assisting this Court in its determinations.

6. This Report, and other interim reports which may be filed hereafter, do not address the issue as to whether an ultimate bonus should be paid to any of the applicants based on the criteria established in the case law. The Audit Committee believes that issue should be addressed in this case, but should only be addressed at the end of the case.

7. In discussions with applicants, various parties have stated that they believe certain judicial guidelines established by prior precedents are in substance inefficient, oppressive, and may even be more costly to the estate. The Committee has some sympathy with that position, but it is nonetheless bound to follow what it believes to be the law. Applicants should not be penalized for failing to achieve perfection, but nevertheless, applicants must submit adequately detailed statements for compensation.

8. The Audit Committee has been in the unenviable position of generally being pleased with the results of the work performed by professionals and yet there being certain deficiencies necessitating minor reductions.

9. The Committee has investigated the issue of the reasonableness of standard rates for professionals. The standard rates for attorneys will be addressed here, while the standard rates for accountants and other professionals will be addressed in each individual Summary Report. The issue of the reasonableness of standard rates for attorneys really involves two issues. The first is "Should non-Colorado-based counsel be paid at Colorado rates, or at higher New York rates?", and the second is "Are the rates charged appropriate?"

a. **New York Rates Versus Local Rates.** The Official Creditors' Committee in this case believed at the inception of the case that it needed the most thoroughly experienced committee counsel it could find, whether in Colorado or out of Colorado. Of those firms wishing to represent the Official Creditors' Committee, [law firm's name] had the most experience in representing creditors' committee groups. The Creditors' Committee did not believe that it could obtain the best results in this national bankruptcy case without the assistance, guidance and direction of [law firm's name]. The Official Creditors' Committee recognized from the outset that New York hourly rates would be higher than Colorado hourly rates. This is a case of national magnitude, necessitating the use of New York counsel, who should be entitled to New York rates. Thus, despite some case law to the contrary, the Audit Committee believes that [law firm's name] should be compensated at standard hourly rates charged by sophisticated bankruptcy counsel in New York.

b. **Reasonableness of Standard Hourly Rates.** The Audit Committee has analyzed the hourly rates charged by attorneys in this case and finds them to be within the range of appropriate rates for the work performed and the experience of each counsel. [Committee member's name] investigated New York hourly rates through rates submitted in other national bankruptcy cases, discussions with a New York contributing bankruptcy editor to the *Attorneys Fees Newsletter* and a recent article in the *Wall Street Journal* on New York attorneys fees (March 19, 1987). The Committee's investigation revealed that New York rates for top senior bankruptcy partners in New York law firms are in the range of $300.00 per hour to $350.00 per hour; for junior partners, $200.00 per hour to $210.00 per hour; and for middle level associates between $125.00 per hour and $145.00 per hour. [Law firm's name] meets these standards, so that no reduction should be made by reason of standard hourly rates to that firm. This Court is familiar with Colorado rates. Again, rates in other Colorado national bankruptcies were reviewed in light of the rates submitted by Colorado-based counsel. The Audit Committee finds these rates to be appropriate for a case of this magnitude and for the work performed and the expertise of the individual attorneys involved. Thus, no reduction should be made by reason of excessive hourly rates with regard to any Colorado-based counsel.

10. The Audit Committee wishes to express its thanks and appreciation to all of the applicants for their assistance, input and cooperation in helping the Audit Committee fulfill its duties.

11. The Audit Committee would appreciate any guidance which can be given by this Court as to its preparation of future reports, and an investigation and analysis of its audit of professional fees and expenses.

Respectfully submitted this 1st day of April, 1987.

THE AUDIT COMMITTEE ON
PROFESSIONAL FEES AND EXPENSES
IN [Debtor's Name]

By _____
[Committee Member's Name]

By _____
[Committee Member's Name]

By _____
[Committee Member's Name]

Exhibit A
Umbrella Narrative Report
by Committee to Audit Professional Fees

The committee to audit professional fees began its assignment by creating a review plan, including among other things, review criteria.

An initial examination of 1st applications for reimbursement of fees revealed deficiencies to varying degrees in almost all cases with respect to the Uniform Guidelines issued by the court and to other review criteria established by the committee in the review plan. Since the applicants were unfamiliar with our review criteria and format, we were inclined to be lenient in exercising judgment with regard to the adequacy of their applications.

These circumstances, combined with a plethora of differing formats, imposed an unusual burden on the committee just to structure the information in a manner where a reasonable audit could be undertaken. At least three applications have not been received on a timely basis, and the professionals involved have been instructed to capture their claim in the 2nd application.

Once the initial restructuring was accomplished and a first audit conducted, a letter was written to each applicant offering two options: (A) we would submit our report and recommendations based on the applications submitted, using our best judgment; or (B) the application could be amended to include more specifically the information required for the audit, as we delineated.

In all cases the applicants chose option B, or a variation thereto, and we established communication either by phone or in person to decide on how to proceed. The final response of each applicant will be covered in our individual applicant reports.

As to the methodology employed in the audit, we are enclosing herewith the Review Plan, all the worksheets, and other materials used, to insure to the greatest extent possible an equitable and just disposition of all claims.

Sampling techniques were used to a large extent when thought to be adequate and to conserve time and resources.

While the reports on the individual applicants will be specific, we want to raise some areas of general concern for the court's edification and consideration.

As our investigation and audit progressed we developed an early sense in our discussions with applicants, reinforced by subsequent discussion with the debtor in possession, of some shortcomings in the management and leadership of the debtor in possession in the early stages of the Chapter 11 proceedings. It further appears to us that certain of the professionals recognized these deficiencies and attempted to "fill the gap." We would single out [firms' names] in this regard.

While this lack of management direction may have penalized the estate, it is nevertheless to the credit of certain professionals that they took the initiative, since the pace with which the proceedings has occurred is commendable. It should also be pointed out that changes in management and management style began to improve and continue to improve the overall effort.

Our attempt to assess the reasonableness of hours requested was in many cases hampered by what we believe to be an inadequate description of tasks performed in appropriate time increments. When this belief prevailed we utilized alternative tests as to reasonableness, such as: level of experience, duplicative service gauged by claimed participation in such activity, accuracy of reporting telephone and other conferences, extent of claiming what appeared to be the "short hour," opinions of the debtor in possession and other qualified observers. The discussions with the debtor will be reflected in the reports for each individual applicant.

Some companies seem to lack or have not effectively communicated company policy with regard to travel time, intra- and inter-city, time claimed over meal conferences and "short hour" claims.

We also extracted, to the best of our ability, the mission statement of each applicant. In some cases this was clear and in others it was more obscure.

There were co-counsel arrangements both for the debtor in possession and the creditors' committee. In that arrangement there is inevitably some unavoidable duplication of effort. Nevertheless, we attempted to identify our judgment of excessive duplication.

With regard to major strategies, and the extent to which each claimant contributed we identified the following activities:

Legend: Major Activities
A - Control, valuation and sale of assets (TAC Agreement)
B - UAL litigation
C - Administration—Chapter 11
D - Improvement to estate through negotiations
E - Enhanced tax benefits

We will evaluate respective contributions in the individual reports where clear results are already in. With regard to projected results, recommendations will be made at the appropriate time.

Finally, we recognize that in spite of our emphasis and effort on format, the ultimate test is substance. Our recommendations will reflect that recognition to the best of our ability.

Exhibit B
Review Plan—Unsecured Creditors' Subcommittee

Objective:

Monitor applications for expense and compensation reimbursement submitted by all professionals so as to insure compliance with various Court Orders and to satisfy review criteria as established by the Creditors' Committee while seeking to insure equitable and just disposition of all claims.

Date	Responsibility of	Resource Required
Identify and prepare compendium of participating professionals along with each compensation proposal.		
Identify date initial report to be filed with Court. - Determine lead time required, including need for full committee approval. - Request extension if necessary to required date.		
Procedure for processing as derived from Court Order dated October 21, and supplements thereto building in step for Review Committee function. - Prepare time and events chart displaying routing and all dates precedent to and including those report dates for Credit Committee, and Debtors in Possession Notices of filing. - Incorporate Time and Events Chart as an addendum to the Review Plan.		

	Responsibility	Resource
Date	of	Required

Uniform guidelines for interim compensation and expense reimbursement.

- Refer to Court Order dated October 21, and subsequent orders or filings.
- Incorporate these guidelines into Plan Review Criteria.

Establish Review Criteria

- Validate appropriateness of hourly rates for each professional category.
  - Comparative rates—New York (other).
  - Rates in similar cases.
  - Examine issue of full credit for hours worked in connection with other activities.
    - Traveling.
    - Meals.
    - Performing lower rated work.
    - Determine allocation of time for various activities, i.e., skilled, semi-skilled, unskilled.
- Impact of other factors in testing hourly rate.
  - Size and complexity of case.
  - Special expertise.
  - Novelty and difficulty of questions.
  - Preclusion of other employment.

Date	Responsibility of	Resource Required

- Undesirability of case.
  - Application of all above would be to a limited number of categories.
  - Should they be implicit in those certain hourly rates or should a lower rate be assigned to those special categories and credit applied for these factors.
- Amount involved.
  - Amount involved should be considered in the context of how much influence by certain professionals.
- Audit of hours worked.
  - Develop ratios to test reasonableness.
  - Cross-check applications for duplicative services.
  - Court Order October 21, "Debtor's estate should not be required to pay, etc. . . . "
  - Check for non-contributory participation.
  - Eliminate claims for pre-petition services.
  - Substantiate all claims as services performed for the Debtor.
  - Assessment of reasonableness of hours reported.
  - Was work performed within scope requested.

	Date	Responsibility of	Resource Required

- Screen all applications for conformance with Court Order dated October 21, 1986, and supplements thereto.
  - Screen all claims line by line for conformance.
- Results obtained.
  - Define expected results.
  - 100 cents on dollars.
  - How rewarded.
  - Lower rates with bonus related to results.			

Identify sources of support for sub-committee. - Bar associations. - Accounting/auditing firms. - Universities. - Similar cases. - Libraries. - Organizations, if any, that specialize in guidelines for professional fees. - Other outside experts, as identified. - Comparative rates.			
Select most productive sources after screening process and pursue in depth.			

	Date	Responsibility of	Resource Required	Sources of Information See Decoding Sheet

Procedures for assimilating and evaluating data.
- Prepare compendium of participating professionals along with each compensation proposal.
- Prepare Time and Events Chart.
- Prepare screening checklist incorporating Uniform Guidelines for Interim Compensation and Expenses.
- Prepare grid to display comparative rates—NY/other, rates in similar cases.
- Prepare analysis of applications to surface hours claimed for work in connection with other activities, such as traveling, meals, performing lower rated work, etc.
  - In the case of lower rated work, enumerate to a reasonable extent number of hours.
- Prepare a research paper that addresses issue of "other factors" in evaluating hourly rate.
  - To what professional categories/individuals should "other factors" apply.
  - Should they be treated as a delta to another established rate or as a judgmental factor in corroborating proposed hourly rates.				

	Date	Responsibility of	Resource Required	Sources of Information See Decoding Sheet

- Prepare an audit of hours claimed utilizing elements described under "Audit of Hours Worked" heading.
- Prepare a measurement of results document.
  - Define expected results.
  - How should results be rewarded.
  - As implicit in recommended rate.
  - As a bonus plus recommended rate.				

	Date	Responsibility of	Resource Required
Conclusions and Recommendations. - Develop format for report to Court. - Prepare summary narrative.			

Decoding Sheet

A - Bar Associations
B - Accounting/Auditing Firms
C - Universities
D - Similar Cases
E - Libraries
F - Organizations that specialize in guidelines for professional fees
G - Other outside experts, as identified
H - Comparative rates, New York
I - Comparative rates, Other
J -
K -
L -
M -
N -

Uniform Guidelines for Interim Compensation Reimbursement

Reference: Court Order dated October 21, 1986

Name of applicant _____
For: Compensation
For period ending _____

Item	Compliance Satisfactory	Compliance Deficient	See Addendum Note
Sufficient detail			
Category of professional			
Hourly rate			
Appropriateness of rate for work performed			
Non-duplicative			
Copies of monthly statements attached and recap of work performed			
50% rate—billing work			
Hours claimed			

Worksheet
Evaluation of Hours Claimed

Name of professional _____

Date	Hours claimed	Time span involved	Normal work period	Percentage of hours claimed to normal work period	Percentage of hours claimed to normal work period doing work for others

Hours claimed outside normal working hours when identified	Hours noncontributory participation	Hours claimed pre-petition	Hours claimed for work not performed for debtor	Soft hour–hard hour assessment

General assessment

- Was work performed within scope requested
- Judgmental evaluation of reasonableness of hours reported

Worksheet
Evaluation of Work Performed

Name of professional _____

Type of work performed	Work environment	Professional involved	Hours claimed	Duplicative work check	Need additional review

See other side for notes.

Activity Categories
A - Review/Research
B - Strategy
C - Analysis Report
D - Negotiations
E - Clerical

Work Environment Categories
1 - Phone
2 - Office
3 - In Transit
4 - Meal Conference

Summary of Hours by Activity

Summary of Hours by Work Environment

Worksheet
Results Obtained

Name of applicant _____

For period ending _____

Results promised	Measurable attainment	Results reasonably expected	Measurable attainment	Identified as necessary activity in which no reasonable measurement is available

Optional compensation systems for professionals producing measurable results.

Comparison of Applications—First, Second, and Third Total Hours/Dollars

	First Application		Second Application			Third Application		
[Firm's Name]	564	$78,890	221	$37,863	(61%)	44	$6,647	(80%)
[Firm's Name]	145	17,765	10	2,500	(93%)	NO FILING		(NA)
[Firm's Name]	1,363	272,236	944	174,527	(31%)	577	114,805	(39%)
[Firm's Name]	NO FILING		503	44,647	(NA)	211	26,823	(58%)
[Firm's Name]	123	15,550	19	4,796	(84%)	NO FILING		(NA)
[Firm's Name]	NO FILING		1,142	120,609*		1,088	130,669	(.04%)
[Firm's Name]	1,298	141,541	122	22,910	(91%)	29	2,340	(76%)
[Firm's Name]	667	91,106	417	47,483	(38%)	217	24,167	(47%)
[Firm's Name]	165	33,003	117	22,961	(29%)	164	31,161	+40%
[Firm's Name]	4,310	319,254	2,881	228,629	(33%)	3,430	228,639	+19%
[Firm's Name]	NO FILING		NO FILING			116	7,613	(NA)
[Firm's Name]	3,095	380,932	2,183	284,997	(30%)	1,876	225,044	(14%)
[Firm's Name]	NO FILING		89	6,145		16	939	(82%)
[Firm's Name]	188	11,460	57	3,379	(70%)	44	2,693	(23%)
Total	11,924	$1,361,737	8,700	$1,001,716	(27%)	7,812	$801,540	(10.2%)
Average rate:	$114.20		$115.14			$102.60		
Comparison:								
- Hours	11,924		8,700		(27%)	7,812		(10.2%)
- Dollars	$1,631,737		$1,001,716		(26%)	$801,540		(20%)

* First and second quarter combined and received too late to include in second quarter report to the court.

Comments on Total Hours/Dollars
First Application Versus Second

- Largest percentage reductions among significant professional firms were in areas susceptible to duplicative effort and where the Committee has focused attention. Refer to preceding page—

  [Professional
  Firms' Names]

- As expected and revealed in the audit, there was a heavy concentration of activity in the pension and employee benefits areas with good results.

- In other areas, except [firm name], the trend is favorable. We will comment on this exception in [firm name]'s individual report.

Summary of Hours by Major Activities and Professional Firms—Second Application[a]

Professional[b]		Chapter 11	Airline Sale	UAL Matters	Pension Plans	Disputed Sales Tax and Other Claims	
[Firm Name]	2	--	--	-- 84	--	-- 57	
	3			53		61	
[Firm Name]	2	--	--	-- 71	--	-- 66	
	3			22		--	
[Firm Name]	2	--	--	-- 23	-- 199	--	
	3				661		
[Firm Name]	2	--	--	--	-- 117	--	
	3				164		
[Firm Name]		1,825	840				
	2	1,150	342	--	--	--	
	3	867	294		--	202	
					262	143	
[Firm Name]	2	--	--	-- 394	--	-- 98	
	3			228		80	
[Firm Name]	2	--	--	-- 503	--	--	
	3			211			
[Firm Name]	2	--	--	--	-- 1,142	--	
	3				1,088		
Totals 3rd Application		867	294	514	2,175	223	TOTAL - 4,073
		(1,825)	(840)	(1,026)	(--)	(--)	
		<1,150>	<342>	<1,075>	<1,458>	<423>	

2 - 2nd Application (1st Application)
3 - 3rd Application <2nd Application>

a. Approximate hours and dollars.
b. Professionals involved in major activities.

Comments on Summary of Hours by Major Activities and Professional Firms

This chart gives a quick overview as to focus of each professional on a particular subject. Thus, one can detect indications of duplicative services and/or reasonableness of hours for work reported. It also indicates trends from one period to the next to afford an experienced observer an opportunity to judge appropriateness of trend lines.

Conclusions:

- Chapter 11 activities trend continues down, as one would anticipate.
- Airline sale at about same level, but activities associated with it should be substantially completed.
- A major accomplishment in this period was resolution of the UAL matters. Appropriately, [professional firms' names] recorded most of the time for this effort.
- There are indications of duplication of effort in the pension area. We will address this further in individual reports.
- The percentage of hours devoted to major activities suggests the possibility of excessive nonproductive time, which the Committee will identify in individual summary reports as it is surfaced.

Rev. 9/87

Exhibit C
Summary Report

Applicant: [Professional Firm's Name]

Period Ending: February 28, 1989

Total Hours:	1,851.5	100% $'s:	$226,999.50	Average Rate:	$122.60
		75% $'s:	$170,249.62		

Allocation of Hours by Activity

Methodology: Reviews of application to produce attachment identified as "Work Sheet #1."

Purpose: Detect duplication of services, low productive or nonproductive time, assist in evaluation of results obtained and test scrupulous separation of functions.

Conclusions:

Hours breakdown by major subject matter:	
Hearing - Set aside JPA	24.0
Hearing - Estimation Motion	568.6
Hearing - [Name]	55.0
Motion - [Name]	51.3
Motion - [Name]	17.5
Response - [Name]	3.4
Response - [Name]	127.3
Motion - Postbar Date Claims	96.1
Reply - [Name]	46.1
Motion - [Name]	17.3
Statement - [Name]	32.1
Depositions	116.1
Interrogatories	92.5
Research	210.4
Travel	57.0

Exhibit 1
Reasonableness of Hours Worked

Definition and Methodology: As tested by:

A. Review criteria in Compendium marked Exhibit no. I
B. Courts
C. Practitioner's Guide to Compensation under Sections 506(c) and 331 of the Bankruptcy Code*
D. Work Sheet - "Allocation of Hours by Activity"
E. Work Sheet - "Conference Cross-check and Duplicative Services"
F. Work Sheet - "Soft Hours"
G. Work Sheet - "Adequacy of Description of Task in 10th's of Hour"
H. Debtor Evaluation
I. Auditor Summary Assessment

Purpose: Detect duplication of services, low productive or nonproductive time, assist in evaluation of results obtained, test scrupulous separation of functions and to provide data for maintenance of trend charts.

Conclusions: Descriptions of service performed were very adequate.

Reasonableness of hours worked is very difficult to determine due to the repetitious entries regarding the same task on the same subject.

The subject was identified in 84% of the entries pertaining to research.

* Recent publication—Berkowitz and Berkowitz.

1. **Duplicative Services and/or Non-Contributory Participation**

Definition: In this category, we attempted to identify to what extent, if any, non-essential participants (observers, etc.) were involved and evidence of duplicative services.

Methodology: A. "Work Sheet #3 - Conferences - Cross Check."
B. "Work Sheet #1 - Allocations of Hours by Activity."

Conclusions: When four or more people work on the same subject or attend the same meeting or hearing, it raises a lot of doubt about duplication and non-contributory hours.

See page 5.

2. **Accuracy of Reported Attendance at Conferences**

Definition: Conferences participated in by 2 or more professional firms.

Methodology: Matrix developed to record a heavy sampling of claimed attendance at a conference against which a cross-check was made to verify the attendance of other named participants.

The outcome was	97% accuracy	intra
	77%	inter

Conclusions: Acceptable

Results Obtained

Methodology:
A. As identified and verified from Application.
B. As supported by Work Sheet #1, "Allocation of Hours by Activity."
C. Input from Debtor.
D. Judgment of Audit Committee based on thorough review and tracking of the applications.

Conclusions:
1. Preparation and attendance at Hearing on Estimation Motion.
2. Preparation and attendance at hearing on partially setting aside JPA.
3. Preparation and teleconference hearing on motion.
4. Revised stipulation re settlement.

Results not recognized as yet.

Expenses Audit:

Identify problems, if any:

1. Total expenses for period: $53,059.34

2. Major expenses for this period break down as follows:

- Photocopy	$24,664.30	(123,321 copies at $.20 per copy charge used by client)
- Lexis	7,721.97	
- Clerical overtime	1,674.73	
- Travel	7,819.00	
- Telecopier	639.00	

All expenses which *could* be considered overhead, or certainly should not be considered a profit center, will be addressed in the final fee hearing.

Summary of Conclusions and Recommended Adjustment

Legend

A. Allocation of Hours by Activity
B. Reasonableness of Hours Worked
C. Results Obtained
D. Duplicative Services or Non-Contributory Participation
E. Accuracy of Reported Attendance at Conferences
F. Audit Committee Evaluation
G. Rates - New Applicants or Increased Rates Only
H. Expenses Claimed
I. Debtor Evaluation

A. _____
_____ Adjustment: 0
B. _____
_____ Adjustment: 0
C. _____
_____ Adjustment: 0
D. _____
_____ Adjustment: 0
E. _____
_____ Adjustment: 0
F. _____
_____ Adjustment: 0
G. _____
_____ Adjustment: 0
H. _____
_____ Adjustment: 0
I. _____
_____ Adjustment: 0

Exhibit II-11. Sample Order Authorizing Retention of Financial Advisors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
	)	Case No. (BRL)
	)	(Jointly Administered)
Debtors	)	

Order Authorizing Retention of [Financial Advisors' Name] *Nunc Pro Tunc,* As Financial Advisors for Debtors and Debtors in Possession

Upon the annexed application, dated January 23, 1992 (the "Application"), of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for an order pursuant to sections 327 and 328 of Title 11, United States Code (the "Bankruptcy Code"): (a) authorizing the Debtors to retain [financial advisors' name], *nunc pro tunc* as of December 11, 1991, to provide financial services in accordance with an engagement letter dated as of January 17, 1992 (the "Engagement Letter"), a copy of which is annexed to the Application as Exhibit A; and (b) approving the Engagement Letter, all as more fully set forth in the Application; and upon the affidavit of [managing director's name], a Managing Director of the firm of [financial advisors' name] (the "Affidavit") which is annexed to the Application as Exhibit B [not reproduced]; and the Court being satisfied that, except as set forth in the Affidavit and the Application, the members and associates of [financial advisors' name] who will be engaged in these cases represent no interest adverse to the Debtors' estates with respect to the matters upon which they are to be retained and they are disinterested persons under section 101(14) of the Bankruptcy Code, and that their employment is necessary and in the best interests of the Debtors' estates; and notice having been given to the United States Trustee for the Southern District of New York (the "United States Trustee") and the parties on the service list annexed to the notice of proposed order including: (a) the members of the committee of unsecured creditors appointed by the United States Trustee on December 20, 1991 (the "Creditors' Committee"); (b) counsel to the Creditors' Committee; and (c) parties that filed notices of appearance in these cases; and it appearing that no other or further notice being necessary; and sufficient cause appearing therefor, it is

ORDERED, that the Application is granted in all respects; and it is further

ORDERED, that the Engagement Letter is approved in its entirety, except that, to the extent inconsistencies exist between the Engagement Letter and this Order, this Order shall control; and it is further

ORDERED, that the Debtors as debtors and debtors in possession are hereby authorized to employ and retain [financial advisors' name] as their financial advisor *nunc pro tunc* as of December 11, 1991, pursuant to the terms of the Engagement Letter in these Chapter 11 cases; and it is further

ORDERED, that [financial advisors' name] is authorized to serve as the Debtors' financial advisors until March 23, 1992, subject to an extension upon application to this Court; and it is further

ORDERED, that [financial advisors' name]may seek compensation in the baseline amount of $150,000 per month (or a prorated portion thereof) and reimbursement for expenses subject to the prior approval of this Court upon application by [financial advisors' name] for interim or final allowance of compensation and reimbursement of expenses in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, dated June 20, 1991, the Local Rules of this Court and such other rules, law or order as may be applicable; and it is further

ORDERED, that the Court shall review the requested compensation for reasonableness in light of the nature and scope of services actually rendered and that the amount of compensation actually awarded by the Court shall be determined in accordance with section 330(a)(1) of the Bankruptcy Code and thus may differ from the amount of compensation provided for under the Engagement Letter; and it is further

ORDERED, that [financial advisors' name] shall maintain time records in increments of tenths of an hour and shall keep contemporaneous time records on a daily basis and detailed records of any actual and necessary costs and expenses incurred in connection with the services set forth in the Application and the Affidavit.

Dated: New York, New York
January ___, 1992

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION TO ENTRY OF
THE FOREGOING ORDER:

United States Trustee for
the Southern District of New York

By: _____

[Firm Name]
Counsel for the Official Committee
of Unsecured Creditors

By: _____
[Attorney's Name]

[Address]

Exhibit A

[Financial Advisors' Letterhead]

January 17, 1992

[Name and Address
of Debtor's President
and CEO]

Dear [President's Name]:

This letter agreement (the "Agreement") will confirm the understanding between [debtor's name], its affiliates and subsidiaries (collectively, the "Company") and [financial advisors' name] pursuant to which the Company has retained [financial advisors' name] as its financial advisor on the terms and subject to the conditions set forth herein, to provide certain services in connection with a complete or partial recapitalization, restructuring, reorganization, liquidation of assets under a plan of reorganization or otherwise and/or refinancing of the Company in the case commenced by the Company under Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"), as more particularly described below (the "Reorganization"). This Agreement shall become effective upon the entry of an order by the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") that is acceptable in form and substance to [financial advisors' name] and the Company (the "Retention Order") approving all the terms and conditions of this Agreement pursuant to an application for the retention of [financial advisors' name] to be promptly submitted by the Company.

1. **Certain Definitions.** For the purposes of this Agreement, unless otherwise specified, all defined references shall have the meaning as set forth in Schedule I hereto.

2. **Retention.** The Company hereby retains [financial advisors' name], and [financial advisors' name] agrees to act as financial advisor to the Company, subject to the terms of this Agreement, in evaluating, structuring, implementing and otherwise providing advice in connection with the Reorganization pursuant to a prenegotiated plan of reorganization or other plan of reorganization or other court-approved transaction or other filing pursuant to the Federal or any state's bankruptcy laws, as described more particularly below.

Beginning on December 11, 1991 (or such other date that is approved by the Bankruptcy Court) and continuing through the Termination Date, [financial advisors' name] will provide the Company with general capital restructuring advice related to the Reorganization and, in connection therewith, hereby agrees to provide the following specific professional services (collectively, the "Services").

a. advise the Company with respect to the terms and timing of any transaction associated with the Reorganization (the "Transaction"); provided, however, that the

Company shall retain its own legal counsel and accountants for legal, accounting and tax advice;

b. assist the Company in preparing any required documents to the extent that such documents relate to the terms of a Transaction;

c. assist in the formulation of a plan or plans of reorganization;

d. assist in the negotiation and implementation of a plan or plans of reorganization;

e. assist in the development of a business plan;

f. perform valuations of the Company's assets and/or securities; and

g. render expert testimony that is reasonably necessary to support the feasibility of a plan or plans of reorganization, or, upon the Company's request, testimony regarding any other matter reasonably related to the implementation of the Reorganization.

Subject to Bankruptcy Court approval of additional compensation to [financial advisors' name] for rendering services other than the Services (such additional compensation shall be consistent with fees normally paid to [financial advisors' name] for such services and shall be mutually agreed upon by the Company and [financial advisors' name]) and further subject to the provisions of paragraph 3 below, upon the Company's request, [financial advisors' name] will render such other services, including, without limitation, services related to a sale of all or part of the Company's assets, as may, from time to time, be reasonably necessary to formulate and implement the Reorganization or such services that are reasonably related to the Services.

The Company will provide all financial and other information requested by [financial advisors' name] for the purposes of rendering Services pursuant to this Agreement. All non-public information provided by the Company and details of the proposed Transaction will be treated as confidential, unless disclosure is required by applicable law or pursuant to any court or administrative order or ruling or in any legal or administrative hearing or investigation and, in such event, [financial advisors' name] will promptly notify the Company so that it may seek an appropriate protective order and consult with the Company on the advisability of taking legally available steps to resist or narrow such request. [Financial advisors' name] may rely, without independent verification, on the accuracy and completeness of all information furnished by the Company or any other party or potential party to any transaction contemplated by this Agreement.

3. **Further Agreements.** The engagement of [financial advisors' name] by, and the rendering of services by [financial advisors' name] to, the Company pursuant to this Agreement does not and shall not involve any agreement, express or implied, on [financial advisors' name]'s part or any commitment by [financial advisors' name] to purchase, or to place or cause the placement of any of the Company's securities or to obtain financing for the Company or to act as its underwriter or dealer manager on the Company's behalf. Any such agreement by [financial advisors' name] would be subject to due diligence and execution of documents satisfactory to [financial advisors' name] and its counsel and further subject to Bankruptcy Court approval of the compensation for such services.

4. **Compensation.** As compensation for services to be rendered hereunder by [financial advisors' name], the Company agrees, subject to the provisions of paragraph 5 below, to pay [financial advisors' name] (or cause [financial advisors' name] to be paid) professional fees as follows:

a. As compensation for the Services to be rendered hereinunder, the Company agrees to pay to [financial advisors' name] a baseline amount of $150,000 per month (the "Monthly Fee"), or prorated portion thereof, subject to prior approval and adjustment by the Bankruptcy Court. [Financial advisors' name] shall keep detailed time records in one-tenth of an hour increments for [financial advisors' name]'s professionals. [Financial advisers' name] shall submit an application for interim or final allowance of compensation in accordance with the applicable provisions of the Bankruptcy Code and applicable rules.

b. In addition to the compensation to be paid to [financial advisors' name] as provided in paragraph 4(a) hereof, and without regard to whether any transaction is consummated, the Company shall pay to, or on behalf of, [financial advisors' name], all reasonable out-of-pocket expenses incurred by [financial advisors' name] in connection with the Services rendered hereunder, including any costs, expenses, and disbursements, as and when incurred, of investigating or preparing or defending itself as to disputes, if any, arising under or relating to the Services rendered hereunder, provided that all such reimbursement shall be subject to approval of the Bankruptcy Court, upon notice and hearing during the Chapter 11 proceedings.

5. **Termination.** Either the Company or [financial advisors' name] may terminate this Agreement upon 30 days' written notice, subject to section 6 hereof. If the Company terminates [financial advisors' name]'s services or [financial advisors' name] resigns for any reason, however, [financial advisors' name] shall be entitled to receive all of the amounts earned or payable pursuant to section 4 hereof up to and including the effective date of such termination or resignation.

6. **Survival of certain provisions.** The confidentiality, compensation and expense reimbursement provisions contained in sections 2 and 4 of this Agreement shall remain operative and in full force and effect regardless of (a) any investigation made by or on behalf of [financial advisors' name], (b) consummation of any Transaction, or (c) any termination or expiration of this Agreement, and shall be binding upon, and shall inure to the benefit of, any successors, assigns, heirs and personal representatives of the Company or [financial advisors' name].

7. Subject to the Debtors' prior consent, [financial advisors' name] shall have the right to apply to the Bankruptcy Court, upon confirmation of a plan or plans of reorganization or other successful completion of these Chapter 11 cases, for an additional fee reflective of [financial advisors' name]'s contribution to the Debtors' estates. The Bankruptcy Court shall make the final determination whether [financial advisors' name] shall be awarded such additional fee.

8. **Notices.** Notice given pursuant to any of the provisions of this Agreement shall be in writing and shall be mailed or delivered (a) to the Company, at [address and FAX

number], with a copy to [debtor's attorneys' name, address, and FAX number] and (b) to [financial advisors' name] at [address and FAX number].

9. **Construction.** This Agreement incorporates the entire understanding of the parties and supersedes all previous agreements between the Company and [financial advisors' name], and shall be governed by, and construed in accordance with, the laws of the State of New York as applied to contracts made and performed in such State.

10. **Severability.** Any determination that any provision of this Agreement may be, or is, unenforceable shall not affect the enforceability of the remainder of this Agreement.

11. **Headings.** The section headings in this Agreement have been inserted as a matter of convenience of reference and are not part of this Agreement.

12. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

13. **Third Party Beneficiaries.** This Agreement has been and is made solely for the benefit of the Company and [financial advisors' name] and their respective successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

If the foregoing terms correctly set forth our agreement, please confirm this by signing and returning to [financial advisors' name] the duplicate copy of this letter. Thereupon this letter, as signed in counterpart, shall constitute our agreement on the subject matter herein.

[Financial Advisors' Name]

By: _____
Managing Director

Confirmed and Agreed to on
this 23rd day of January, 1992

[Debtor's Name]

By: _____

Title: _____

Exhibit III-1. Sample Scheduling Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re	)	
	)	Reorganization Proceedings
	)	under Chapter 11
	)	
	)	Case Nos.
Debtors	)	and
	)	
	)	
Plaintiffs,	)	
v.	)	Adversary Proceeding
	)	No.
	)	Chapter 11
	)	Judge Sellers
on behalf of themselves and all others similarly situated,	)	
Defendants	)	

Scheduling Order

This matter is before the Court for the purpose of establishing a schedule for conducting further proceedings, pursuant to the Stipulation and Order of July 5, 1989 entered by the United States District Court for the Southern District of Ohio, Eastern Division, in Case No. _____. Following review of the draft order submitted by the named parties on July 11, 1989 and the objections of [objecting party's name] to the draft order and following consideration of the positions of counsel for the named parties stated at the July 12, 1989 conference with the Court, the Court believes that the following revised Scheduling Order should be entered.

A brief chronology of proceedings to date is appropriate. [Debtors' names] have brought this adversary proceeding (the "Action"), pursuant to Bankruptcy Rule 7023 and Fed. R. Civ. P. 23, to obtain declaratory and injunctive relief against a proposed defendant class of all persons with a security interest, as defined by 11 U.S.C. § 101(45), in property of a limited partnership in which, as of May 14, 1989, [debtors' names] or a

wholly owned [debtors' names] subsidiary served as a general partner ("the Partnerships").

After a hearing on May 24, 1989, the Court issued a temporary restraining order ("TRO") enjoining all persons receiving notice of the TRO from taking actions that would result in the final disposition of Partnership property or final judgments against the Partnerships during the pendency of the TRO. The TRO also imposed certain restrictions and obligations on [debtors' names] and its affiliates with respect to management of the Partnerships. The Court scheduled a hearing on [debtors' names] request for preliminary injunctive relief for June 13, 1989.

On June 1, 1989, [debtors' names] moved for certification of the defendant class, pursuant to Fed. R. Civ. P. 23(c). On June 8, 1989, [debtors' names] and four of the seven named defendants entered into a Stipulation and Agreement of Compromise and Settlement (the "Settlement"), and filed a motion requesting the Court to approve the Settlement pursuant to Bankruptcy Rule 7023 and Fed. R. Civ. P. 23(e). The Settlement, if approved by the Court, would result in the Court entering a proposed Final Judgment and Injunction (attached as Exhibit C to the Settlement) that would be binding on all parties and on all members of the proposed settlement class, as defined in ¶ 1(c) of the Settlement.

By Order of June 8, 1989 (the "June 8 Scheduling Order"), the Court scheduled a hearing on the fairness of the Settlement (the "Settlement Hearing") to begin June 19, 1989. If members of the settlement class wished to appear at the Settlement Hearing and object to the Settlement, they were directed to file their objections with the Court by June 16, 1989. The Court rescheduled the hearings on [debtors' names] motion for class certification and request for preliminary injunctive relief for June 30, 1989, in the event the Settlement were not approved. Pursuant to Fed. R. Civ. P. 23(e), the Court directed [debtors' names] to provide all members of the proposed settlement class with notice of the terms of the Settlement, the date of the Settlement Hearing, and their right to file an objection to the Settlement and appear at the Settlement Hearing. [Debtors' names] sent the required notice by Federal Express to each member of the settlement class on June 8 and 9, 1989. On June 9, 1989, the Court extended the TRO for an additional ten business days, pursuant to Bankruptcy Rule 7065 and Fed. R. Civ. P. 65(b).

On June 15, 1989, [defendant's name], one of three non-settling named defendants, filed a notice of appeal from the June 8 Scheduling Order and the June 9 Order extending the TRO. That appeal was later joined in by the other two non-settling defendants. At the same time, [defendant's name] filed a petition for a writ of mandamus and/or prohibition in the District Court (the "Mandamus Petition") challenging both orders, and requested the District Court to restrain this Court from proceeding with the Settlement Hearing on June 19, 1989. That writ was also later joined in by the other two non-settling defendants. On June 16, 1989, the District Court, in order to permit it to give full consideration to the Mandamus Petition, entered an order temporarily restraining this Court from proceeding with the Settlement Hearing pending the District Court's determination on the merits of the Mandamus Petition.

On June 23, 1989, the District Court entered an Opinion and Order, in which it found that the Mandamus Petition was without merit and therefore denied the Petition. Also on June 23, 1989, the District Court entered an order, pursuant to Bankruptcy Rule 8005, that enjoined all persons receiving notice of the order from taking any action that would result in the final disposition of Partnership property or in a final judgment against a Partnership during the pendency of the appeal from this Court's Orders of June 8 and 9, 1989. The District Court's order imposed the same restrictions and obligations on [debtors' names] and its affiliates that had been imposed by this Court's TRO.

On June 28, 1989, the three non-settling defendants filed a motion with the District Court to dismiss their appeal of this Court's orders of June 8 and 9, 1989. On July 5, 1989, the District Court entered a Stipulation and Order pursuant to Bankruptcy Rule 8001(c)(2), in which it dismissed the appeal on certain specified terms and conditions.

Accordingly, upon consideration of the terms and conditions of the Stipulation and Order entered by the District Court on July 5, 1989 and for good cause shown, it is hereby Ordered that:

1. The Settlement Hearing, previously scheduled for June 19, 1989, shall be held in Courtroom 148 in the U.S. Bankruptcy Court for the Southern District of Ohio at 85 Marconi Boulevard, Columbus, Ohio, commencing at 9:00 a.m. on July 27, 1989. The issues to be determined at the Settlement Hearing will include, among others, whether the settlement class should be formally certified for purposes of consummating and effectuating the Settlement, whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court and judgment entered thereon.

2. The Court shall have the right to reschedule or continue the Settlement Hearing without further notice other than the announcement at the Settlement Hearing or the rescheduled or continued hearing.

3. The Court shall have the right to certify the settlement class and to approve the Settlement, with any modification, presented and heard at the Settlement Hearing or at any continued hearings, that is consented to by the parties to the Settlement, without further notice to the members of the settlement class, unless such notice is determined by the Court to be required.

4. Unless the Court otherwise directs, any member of the settlement class who objects to the Settlement, to formal certification of the settlement class, and/or to the judgment and injunction to be entered pursuant to the Settlement, or who otherwise wishes to be heard, and who has, prior to the date of this order, filed with the Court documents described in the Court's Order of June 8, 1989, may appear and be heard by an appropriate representative or by legal counsel at the Settlement Hearing.

Any party not previously filing such documents, but who still wishes to appear and be heard may do so by one of the methods provided below:

a. Parties wishing merely to reiterate an opinion already on file with the Court may appear without leave of the Court through counsel for another party which has already filed a statement of grounds including that position. The name and address of each additional party, along with identification of the party's mortgage or other secured interest in the property of a partnership, should be filed and served on counsel

for the plaintiffs and each of the named defendants on or before July 24, 1989 by counsel accepting such additional representation. The Court does not expect or want supplemental filings of a substantive nature from the parties who have already made the required appearances.

b. Parties wishing to assert arguments not presently on file with the Court may do so only by requesting leave of the Court for cause shown on or before July 24, 1989. Any such motions should include as an attachment the documents required by the Court's Order of June 8, 1989.

Because of the large number of putative class members to be heard, the Court expects to impose time limits on oral argument and to otherwise establish rules regarding presentations of arguments. Therefore, the Court encourages counsel to contact named parties or the Reproduction Center on or after July 24, 1989 to inquire regarding the entry of any further pretrial orders concerning management of the Settlement Hearing.

The Court has not yet determined the existence or scope of non-named parties' roles and rights with respect to the presentation or cross-examination of witnesses. As of this time the Court believes putative class members should be entitled to present and cross-examine witnesses relating to the evaluation of the proposed Settlement. The issue is less clear, however, with regard to any unique defenses of individual members relating to the appropriateness of certification of this class for purposes of implementing the Settlement, should the Settlement be found to be otherwise appropriate.

5. If the Settlement shall be approved by the Court following the Settlement Hearing, a Final Judgment and Injunction shall be entered consistent with Paragraph 3 of the Settlement and Exhibit C thereto (subject to and including any modification thereto made with the consent of the parties as provided for in the Settlement).

6. If the Settlement is not approved by the Court or has not been ruled upon by the Court, the hearings on [debtors' names] motion for class certification and its request for preliminary injunctive relief shall be held in the same location as the Settlement Hearing commencing at 9:30 a.m. on August 3, 1989 and, if necessary, continuing on August 4, 1989. In that event, relevant pleadings may be filed and served in the same manner as pleadings directed to the Settlement Hearing, as follows:

Simultaneous statements of each party's position regarding class certification and/or the preliminary injunction	July 31, 1989
Replies to the statements by any party (if any)	On or before August 8, 1989

7. Appropriate discovery may proceed both on the issues to be determined in the Settlement Hearing and on [debtors' names] motion for class certification and request for preliminary injunctive relief. The parties will cooperate to arrive at a mutually agreeable

discovery schedule and are to coordinate discovery efforts so that multiple discovery devices need not be directed at a limited number of persons. Although the Court will not review discovery materials, unless properly admitted into evidence at a hearing or otherwise, the parties are given leave to file with the Court transcripts of depositions, responses to interrogatories and other discovery materials. Leave to file such material is given so that the Reproduction Center can be used to facilitate the dissemination of information efficiently and economically.

8. [Debtors' names] shall notify all members of the proposed settlement class of the terms of the District Court's Orders of June 23 and July 5, 1989 and of the terms of this Order, by either hand delivery or Federal Express (or comparable overnight) delivery service. The cost of the Federal Express (or comparable overnight) delivery service shall be paid by defendants [defendants' names], in an amount not to exceed $3,000, pursuant to the terms of the District Court's July 5, 1989 Stipulation and Order. Any amount in excess of $3,000 shall be paid by [debtors' names]. The Court hereby finds that notice given pursuant to this paragraph is sufficient pursuant to Bankruptcy Rule 2002.

9. The dates for the hearings and the schedule set forth herein are established for good cause shown under Bankruptcy Rule 9006.

B. J. Sellers
United States Bankruptcy Judge

July 13, 1989

Exhibit III-2. Sample Discovery Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re	)	
	)	
	)	Case No.
	)	Chapter 11
Debtor	)	Judge Sellers
	)	
Jointly Administered with	)	
	)	
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
	)	Case No.
Debtors	)	

Order Regarding Discovery on Trustee's Substantive Consolidation Motion and Adversary Proceeding

On June 8, 1990, the Trustee ("Trustee") for [debtors' names] filed a motion for Substantive Consolidation and an Adversary Proceeding seeking consolidation of filed and non-filed [debtor's name] corporate subsidiaries (together, the "Substantive Consolidation Motion"). Pursuant to the Scheduling Order entered on June 5, 1990 with respect to this motion, a conference was held by this Court on July 11, 1990 to establish schedules for discovery and a hearing of the Substantive Consolidation Motion and Adversary Proceeding and any objection thereto. Interested parties who complied with Paragraph 4 of the June 5 Scheduling Order ("Objecting Parties") participated in the July 11 Scheduling Conference. Based on the agreement of the parties who participated at that Conference, it is hereby ORDERED that discovery with respect to the Substantive Consolidation Motion will proceed according to the following schedule:

1. On or before August 1, 1990, the Trustee shall produce for inspection and copying by any Objecting Party a contents list and the documents that he has compiled as of that date on which he intends to rely in support of the Substantive Consolidation Motion; and the Trustee shall prepare and serve on the Objecting Parties and file with the Court a notice informing parties when and how the discovery documents may be obtained.

2. Any Objecting Party who wishes to discover additional information not contained in the documents produced by the Trustee pursuant to paragraph 1 above shall, within three weeks after the date on which the Trustee made said documents available for inspection and copying, file with the Court and serve on counsel for the Trustee a list of all items not previously produced by the Trustee which that party wishes to discover and, for each item listed, a statement of the reason(s) why that party needs to discover that item.

3. On August 29, 1990, a discovery conference will commence in this Court at 2:00 p.m. to schedule further discovery, if any, to coordinate such discovery (including the appointment of committees, if appropriate), and to resolve any discovery disputes that may exist at that time.

4. The hearing on the Substantive Consolidation Motion will commence in this Court on October 22, 1990.

Dated 7-24-90

B. J. Sellers
United States Bankruptcy Judge

Exhibit III-3. Sample Order Requiring Presentation of Evidence by Declarations

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re		)	
		)	Chapter
		)	
		)	Case No. LA _____BR
	Debtors	)	Adv. No. LA _____BR
		)	Motion No. _____BR
		)	
		)	Order Re Presentation of
		)	Evidence by Declarations
		)	for Court Trial: Filing
		)	Joint Pretrial Order
		)	Pursuant to Local Rule 121
v.	Plaintiffs	)	
		)	
		)	Date: _____
		)	Time: _____
		)	Place: Courtroom "A" 8th Fl.
	Defendants	)	

The following procedures are to be followed for the presentation of evidence to be offered at the trial of the above-entitled proceeding on _____.

The purpose of this pro dure is to ensure a fair and expeditious trial. The procedure is similar to a motion for summary judgment, except that the admissibility of a declaration is dependent upon the presence of the declarant at trial subject to cross-examination.

1. Declarations:

a. Except as herein provided, each party shall present the testimony of all its witnesses through declarations of said witnesses, under penalty of perjury, otherwise admissible under the Federal Rules of Evidence.

b. The only oral testimony which may be offered at trial by a party through its witnesses will be *strictly* limited to rebuttal testimony.

c. If a portion of a witness's declaration concerns an exhibit to be admitted into evidence at trial, the exhibit must be attached to the declaration.

d. If a party is unable to obtain a declaration of a witness, counsel for that party shall file a declaration stating the name of the witness and a detailed summary of the expected testimony and why counsel was unable to obtain the witness's declaration.

If the party intends to present the witness's testimony by a transcript of a deposition of the witness, only those portions of the transcript intended to be offered should be attached to its counsel's declaration.

e. The declaration of a witness for a party will be admissible at trial, subject to timely objections, and only if the declarant is present at trial, and subject to cross-examination.

2. Time for Filing Declarations and Objections to Declarations:

a. Plaintiff shall serve and file its declaration(s) on or before _____.

b. Defendant shall serve and file its declaration(s) and any evidentiary objections it has to plaintiff's declaration(s) on or before _____.

c. Plaintiff shall serve and file its reply declaration(s) and any evidentiary objections it has to defendant's declaration(s) on or before _____.

d. Defendant shall serve and file any evidentiary objections to plaintiff's reply declaration(s) on or before _____.

e. **No other declarations will be allowed.** The only additional evidence a party may offer at trial is *true* rebuttal evidence.

3. Time for Filing Briefs:

If a party wishes to file a trial brief, such brief must be filed with the party's declaration(s). **No other briefs will be allowed.**

4. Pretrial Order:

The parties shall file a joint pretrial order pursuant to Local Rule 121 on or before _____.

IT IS SO ORDERED.

Dated: _____

_____
BARRY RUSSELL
U.S. Bankruptcy Judge

Exhibit III-4. Sample Order Approving a "Hard" Claims Resolution Program

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11 Case Nos.
	)	
	)	
	)	
	)	
Debtors	)	

Order Approving "Hard" Claims Resolution Program

[Trustee's name] as Chapter 11 Trustee for [debtor's name], having filed a Motion for Approval of "Hard" Claims Resolution Program, and the Court having found that the entry of this Order will facilitate the resolution of disputes regarding claims for: (1) unpaid wages or compensation for services up to March 9, 1989 (including sick or injury leave payments due pre-petition to employees absent from work due to actual illness or injury and wages, compensation, sick or injury leave paid by checks not honored by banking institutions); (2) reimbursable employee expenses incurred up to March 9, 1989; (3) severance pay for certain claimants furloughed pre-petition and already receiving such payments; and (4) accrued or earned but unused vacation as of March 9, 1989 for certain claimants who have resigned, retired, been terminated, or died (collectively "hard claims"), it is

ORDERED that:

1. The attached letter, previously distributed to union counsel for review, shall be sent by [debtor's name] to each claimant who filed a claim for hard claims. That letter, in which [debtor's name] (i) reports the amounts listed on the creditor detail (or an amount reflecting amendments to [debtor's name]'s records) as the proposed amount of hard claims to be allowed; (ii) explains the hard claims resolution program; and (iii) provides an address available for claimants to respond, is hereby approved.

2. [Debtor's name] shall provide to union counsel or his/her designee a computer register that reflects the creditor detail information provided to each claimant represented by such union.

3. Each claimant who disputes the proposed amount of hard claims to be allowed must file a response with the Court and serve a copy upon [debtor's name] to be received no later than forty (40) days of the date of [debtor's name]'s letter (which shall be dated the same date it is mailed). The response shall explain claimant's reasons for disputing the proposed allowed claim amount and supply copies of any records or documents which support claimant's position.

4. A claimant's failure to respond shall result in the proposed hard claim amount becoming an allowed claim against [debtor's name].

5. [Debtor's name] and individual claimants shall take all reasonable steps to resolve differences. Toward that end, the Trustee will make representatives available in cities where it is deemed necessary in light of the type and number of unresolved claims to discuss differences that have not been reconciled through telephonic and written communications. Following resolution of claims, the Trustee shall move the Court to allow claims in the amounts agreed upon.

6. The Trustee shall request a hearing on disputed hard claims only after efforts to resolve differences under this procedure prove unsuccessful.

DATED at New York, New York this 19th day of July, 1990.

United States Bankruptcy Judge

DRAFT

Dear Employee Creditor:

[Debtor's name] is providing on the attached "Creditor Detail" the amounts it believes you are owed on those types of claims from your Proof of Claims for which it recognizes an obligation to pay you. [Debtor's name] refers to such claims as "hard claims." The procedure outlined in this letter is intended to fix that amount, that [debtor's name] will then ask the Court to "allow" for future payment. Any payments for hard claims will be made in accordance with a confirmed plan of reorganization (whenever that occurs), and may not be dollar-for-dollar. [Debtor's name] believes it may be some months before a plan is confirmed and payments are begun.

[Debtor's name] has listed the total amount it believes you are owed for each of the following types of claims.

1. unpaid wages as of March 9, 1989;
2. expenses as of March 9, 1989;
3. returned checks;
4. sick and injury leave payments due pre-petition to employees absent from work due to actual illness or injury but not yet paid;
5. vacation pay if [debtor's name] believes you meet the eligibility requirements of the pertinent collective bargaining agreement or the Employees Manual (i.e., an employee who has retired, resigned, terminated employment, or died); and
6. severance pay if you were furloughed and already receiving such payments on March 9, 1989.

[Debtor's name] requested and received Bankruptcy Court approval of a program directed toward resolving any disputes over the amounts due you for your hard claim without Bankruptcy Court involvement. *If resolution is not possible, however, you will have an opportunity to be heard in court as described more fully below.* Enclosed is a copy of the Court's Order approving the program, which provides that:

1. *If you agree* with the amounts reflected on the enclosed sheet, *you do nothing* and the amounts become allowed claims to be paid in accordance with a confirmed plan of reorganization (whenever confirmation occurs).

2. *If you do not agree* with the amounts shown, *you must respond within 40 days from the date that this letter is postmarked.* Your response must explain why you disagree with [debtor's name] records and supply copies of any available documents that support your position. *Your response* must be filed with (received by) the Bankruptcy Court no later than _____ 1990, at the following address:

United States Bankruptcy Court
[Debtor's Name] Claims Processing Center
Post Office Box 1587
Grand Central Station
New York, New York 10163

A *copy of your response* must also be served upon (received by) [debtor's name] no later than _____, 1990 at the following address:

[Debtor's Name and Address]

In order to ensure that the Court and [debtor's name] receive your objection by the deadline, [debtor's name] suggests that you mail it at least five (5) days before the deadline. If you wish to have a record of your mailing, you may consider sending your objection by certified mail.

3. If you disagree with [debtor's name]'s records and respond to this letter, [debtor's name] will contact you and try to resolve the differences. If your hard claims remain unresolved after your initial conversation, you may request records from [debtor's name] which support [debtor's name]'s calculations. Although it is expected that most differences will be reconciled through telephonic or written communication, [debtor's name] representatives will be available where it is necessary to deal with unresolved issues.

4. The Bankruptcy Court will be requested by [debtor's name] to approve hard claims upon which agreement has been reached as "allowed claims" that eventually will be paid in accordance with a confirmed plan of reorganization. Payment will be made following confirmation of the plan, whenever that occurs.

5. [Debtor's name] will request a hearing in Bankruptcy Court on claims that have not been reconciled through the procedures described above. You will receive notice of, and will be permitted to participate in, any hearing which relates to your claim.

Please carefully read the accompanying Order. *Remember, if you do not respond within 40 days of the date that this letter is postmarked, the amounts of your allowed hard claims will be the amounts shown in [debtor's name]'s records.*

[Debtor's name] looks forward to resolving differences concerning your hard claims without involving the Bankruptcy Court. *This procedure for reconciling hard claims has no effect upon other claims which you may have asserted.* If you have any questions about these procedures please call us at [debtor's phone number]. If you respond to this letter, you will be contacted by a [debtor's name] representative to discuss your response. At that time, the [debtor's name] representative will provide you with a telephone number to use in the reconciliation process.

Sincerely,

[Name]
Director, Claims Management

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11 Case Nos.
	)	
	)	
	)	
Debtors	)	

Response to Debtors' Creditor Detail

Name: _____ Address: _____

Employee No.: _____ _____

Day Telephone No.: _____ Evening Telephone No.: _____

Reasons I Don't Agree with Debtors' Calculation of Hard Claims

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Date: _____ Signature: _____

Exhibit III-5. Sample Order Establishing a Procedure for Resolution of Contested Claims

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re	)	
	)	Case No.
	)	
	)	
Debtors	)	

Order Establishing Procedure for the Resolution of Contested Claims

The Debtors herein have filed their objections to the claims of certain of the creditors and given notice of their objections to the creditors. Many of the creditors have objected to the proposed resolution of their claims and have requested hearings thereon. In order to expedite the process and to enable the parties to seek, in an orderly fashion, to resolve their disputes, it is hereby

ORDERED that the Debtors shall serve upon each creditor whose claim has been contested and who has requested a hearing thereon a copy of this order; and it is

FURTHER ORDERED that each such creditor shall, within twenty (20) days after service of this order on the creditor, explain to the Debtors by filing a written statement with Debtors' counsel the reason for asserting the claim that has been filed in these proceedings, which explanation must include any records or documents which support the claimant's position; and it is

FURTHER ORDERED that failure to respond to this order will result in the claimant's claim being allowed only in the amount proposed by the Debtors; and it is

FURTHER ORDERED that the Debtors and the claimants must engage in at least one attempt to resolve their differences before any such disputed claim may be set for hearing with this Court; and it is

FURTHER ORDERED that the Debtors and any claimant may request a hearing only on certification to the Court that they were unable to resolve the disputed claim pursuant to their settlement discussions. Such certification will further include an estimate of the amount of time necessary to hear the claim matter.

Dated:

By the Court:

_____

Charles E. Matheson, Chief Judge

Exhibit IV-1. Sample Order Appointing an Examiner

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	)	
	)	
	)	Consolidated Case
	)	No.
	)	
Debtors	)	Honorable Barry S. Schermer
	)	United States Bankruptcy Judge
	)	
	)	Motion

Order Appointing Examiner

A hearing was conducted on January 27, 1988, upon the Court's January 14, 1988 Notice and Show Cause Order and the Motion for Appointment of Examiner, filed by the Official Creditors' Committee. Based thereon and upon the record in these proceedings, the Court finds and concludes that the appointment of an examiner is necessary and appropriate to carry out the provisions of Title 11 and will promote the efficient, expedient and concise presentation and resolution of issues and disputes in these proceedings and is in the best interest of creditors, claimants, equity security holders, and all other interests of the estate. This order is entered pursuant to 11 U.S.C. §§ 105, 1104 and 1106, the Court deeming it necessary and proper to do so in order to avoid excessive administrative costs, to preserve property of the estate and to maintain early and ongoing stringent judicial management of the proceedings;

WHEREFORE, IT IS ORDERED:

1. The Court, after seeking recommendations from the interested parties, hereby appoints [attorney's name and firm], a disinterested party, as Examiner in these Consolidated Chapter 11 Proceedings. The Examiner may employ professionals upon application to and order of the Court. Compensation of the Examiner and any such professional shall be governed by applicable orders of the Court.

2. Upon application to the Court by any creditor, or party in interest to these consolidated proceedings (including the Examiner) and subject to approval of the Court, upon notice to the Debtors, the Secured Banks, the Creditors' Committee, and other parties in interest as the Court may direct, and upon a hearing thereon, the Examiner shall assist in the resolution and/or investigation of certain specifically defined disputes or other matters that may from time to time come before the Court, or for such other purposes as the Court may designate (any such resolution and/or investigation of disputes

or other matters being referred to herein as a "Designated Matter"). In connection with a Designated Matter the Examiner:

a. may formally or informally review business, financial or other data and documents possessed, controlled or filed by the Debtors, the Secured Banks or other parties in interest;

b. may examine formally or informally such persons and entities and inspect the records of such persons or entities;

c. may take such other actions as the Court may designate from time to time in separate order(s) with respect to a Designated Matter; and

d. may suggest proposed elements of a plan of reorganization.

3. The Examiner shall:

a. attend and be heard at the section 341 meeting and render such reports as he deems appropriate to the creditors at said meeting;

b. with respect to a pending Designated Matter, report monthly the status of said Designated Matter in separate reports or such other form as the Court may request, and file said reports with the Court and serve such reports upon counsel for the Debtors, the Secured Banks, the Creditors' Committee and those persons listed on the Master Service List;

c. with respect to a Designated Matter, facilitate and expedite, between and among the parties, the resolution of any contested or adversary matters raised in or specified under such Designated Matter, including but not limited to: (i) scheduling of document production; (ii) scheduling of witnesses and depositions; and (iii) preside at depositions and file recommendations upon any discovery disputes under Rule 7026 through 7037 within 5 business days of the filing of any unresolved objection;

d. report and confer with the Court at the Court's request, or at such times as the Examiner may deem in the best interest of all parties;

e. monitor the progress and the formulation of a plan of reorganization; and

f. take any necessary and appropriate actions in furtherance of assisting the Court and parties in bringing these proceedings to a just, prompt and economic disposition.

BARRY S. SCHERMER
United States Bankruptcy Judge

Copy mailed to:

Co-Counsel for Debtors

Exhibit IV-2. Sample Order Establishing Post-Confirmation Motion Procedures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:	)	
	)	
	)	BK No.
	)	Chapter 11
	)	
Debtor	)	

Order Establishing Post-Confirmation Motion Procedures

Following the entry of an order by the Court confirming the pending plan of reorganization on April 20, 1990, the Court convened a hearing on May 25, 1990 to consider various modifications in the ongoing motion and notice procedures appropriate to the post-confirmation stage of this case. Hearings in this complex reorganization proceeding have generally been held in accordance with the special standing orders on notice procedure and motion procedure entered by the Court on April 19, 1988 [Court Docket Nos. 545 and 546]. After consideration of the comments received at the hearing, and a review of the record in this case, and good cause appearing, it is
ORDERED:

1. Paragraphs B through F of the "Amended Order Establishing Motion Procedure" entered April 19, 1988 [Docket No. 546] are hereby amended effective September 1, 1990, to read:

B. The Court shall hold a regular motion day with regard to this case every other Monday at 2:00 p.m. commencing on September 10, 1990, except during the absence of the bankruptcy judge from the district.

C. Any motion, notice of the motion, and any supporting documents or papers shall be served upon the adverse party and any other parties as required under the Order Establishing Post-Confirmation Notice Procedures, no later than the Friday that is 24 days before the regular Monday Motion Day at which the motion will be heard (unless the Court, for good cause, as set forth below, prescribes a shorter time period) and shall be filed with the Court before, at the time of, or promptly after service. A motion shall include or be filed and served with a supporting memorandum of law and any declarations on which the moving party intends to rely. The original pleadings filed with the Court shall be accompanied by a transmittal letter to the attention of the calendar secretary indicating that the matter comes under this motion procedure order and (if not accompanied by a certificate of service and notice) the date of the hearing to be scheduled and the service list being used.

D. Unless the Court orders otherwise, each interested party responding to the motion shall, not later than the Friday that is 10 days before the Monday Motion Day at which the motion will be heard, serve upon the adverse party and other parties entitled to notice, and file with the Clerk before, at the time of, or promptly after service, either (i) a brief but complete written statement of all reasons in opposition thereto or in support or joinder thereof, an answering memorandum of law, and declarations on which the responding party intends to rely; or (ii) a written statement that the motion will not be opposed.

E. Failure to file and serve a timely opposition or response shall be deemed consent to the requested relief.

F. The moving party may, not later than the Wednesday before the Monday Motion Day at which the motion will be heard, serve a reply memorandum with declarations or other evidence attached. Service of reply papers on opposing parties shall be made by personal service or by overnight delivery service. The reply shall be filed with the Court not later than the Thursday before the hearing.

2. Notwithstanding the foregoing, due to existing scheduling conflicts, the actual motion day hearings in September–November will be as follows:

September 10, 1990,
September 24, 1990,
October 1, 1990,
October 15, 1990,
November 5, 1990;

and each alternate Monday thereafter.

3. All other provisions of the standing order entered April 19, 1988 on motion procedure shall remain in full force and effect.

DONE and ORDERED at Manchester, New Hampshire this 1st day of June, 1990.

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to serve Full List

Exhibit IV-3. Sample Order Establishing Post-Confirmation Notice Procedures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

	)	Chapter 11
In re	)	Case No.
	)	
	)	**Hearing**
	)	Date: May 25, 1990
	)	Time: 9:30 A.M.
Debtor	)	
	)	

Order Establishing Post-Confirmation Notice Procedure

Based on this Court's Order Setting Hearing on Post-Confirmation Procedures, entered May 7, 1990, a hearing was held before this Court on May 25, 1990. [Debtor's name], its Unsecured Creditors Committee, and its Equity Committee jointly submitted a statement, supported by [acquiring company's name], regarding post-confirmation procedures, in which certain simplified motion requirements and a shortened mailing list were recommended. Based on the record in this case, and good cause appearing, it is

ORDERED:

1. This Order supersedes paragraphs 5 through 10 of the Amended Order Establishing Notice Procedure Entered April 19, 1988 (Docket No. 545). All other provisions of that Order shall remain in effect.
2. The "Short List" shall include and be limited to the following entities:
   a. [Debtor's name] and its reorganization counsel [name];
   b. Counsel [names] and the Chairmen [names] of the Unsecured Creditors Committee and the Equity Committee;
   c. Counsel for [acquiring company's name] [name];
   d. Counsel for each of [debtor's name]'s Indenture Trustees [names];
   e. The United States Trustee;
   f. Counsel for the State of New Hampshire [names]; and
   g. The Examiner and his counsel [names].
3. The "Full List" shall include all entities listed on the Short List; counsel for and members of the Unsecured Creditors Committee and the Equity Committee, including separate non-appointed attorneys for individual committee members; and any creditor, equity security holder, or other party in interest who is currently on the Full List and who notifies [debtor's name], in writing, within 30 days after notice of this Order and an explanatory letter from [debtor's name], of an election to remain on the Full List.

4. Except as provided in paragraph 8 below, all notices required by Bankruptcy Rule 2002(a)(2), (3), or (7) shall be served on the Full List under this Order, and not on all scheduled creditors and shareholders, unless the Court specifically orders otherwise as to a particular matter.

5. All requests for an order or other relief, including any motion or application under Bankruptcy Rule 9013, 9014 or otherwise (other than in an adversary proceeding) or a complaint, counterclaim or third-party claim within an adversary proceeding, shall be served on the Short List and on the party against whom the order or other relief is sought.

6. Any opposition, reply, statement, request for a hearing, or other response to any document served under paragraphs 4 or 5 of this Order need be served only on the entity filing and serving the document to which response is being made and upon the Short List.

7. Service of any document on the Short List or on counsel for and members of the Unsecured Creditors Committee or the Equity Committee shall be by overnight delivery service, by hand delivery, or by telecopy. However, the United States Trustee need serve only reorganization counsel to [debtor's name] and counsel to (not members of) Committees with the special service under this paragraph.

8. Any motion by [debtor's name] to resolve a general unsecured (Class 10 or Class 10A) claim in an original filed amount of less than $25,000 or in an allowed amount of less than $10,000 may be filed and granted without notice or opportunity for hearing, unless, after oral or written notice to the Equity Committee, the Equity Committee advises [debtor's name] that it objects to the proposed resolution of the claim.

9. This Order is without prejudice to any request by a party in interest or an order of the Court on its own motion, that for good cause in a particular circumstance, this Court order a different notice procedure with respect to any particular entity or matter.

10. The Debtor shall promptly notify the Clerk of Court of any requests that it receives for an entity to remain on the Full List, as provided in paragraph 3 of this Order.

11. [Debtor's name] shall serve a copy of this Order upon the Full List as it currently exists.

DONE and ORDERED this 1st day of June 1990 at Manchester, New Hampshire.

JAMES E. YACOS
United States Bankruptcy Judge

Debtor to serve Full List

Exhibit IV-4. Sample Order Setting Final Fee Procedures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

	)	Chapter 11
In re	)	Case No.
	)	
	)	Hearing
	)	Date: May 25, 1990
	)	Time: 9:30 a.m.
Debtor	)	

Order Setting Final Fee Procedures

This Court held a hearing on May 25, 1990, on its Order Setting Hearing on Post-Confirmation Procedures, entered May 7, 1990 on various issues, including procedures for filing, hearing, and determining motions for allowance of final compensation. Based on the Order, on the Joint Statement of [debtor's name], the Unsecured Creditors Committee and the Equity Committee, which [acquiring company's name] supported, on the hearing, on the record in this case, and good cause appearing, it is

ORDERED:

1. The procedures set forth in this Order supersede paragraph 44 of the Order Confirming Third Amended Joint Plan of Reorganization.

2. For the purposes of the procedures established under this Order, parties and professionals who intend to seek payment by the estate of final compensation for services rendered in or in connection with this Chapter 11 case or reimbursement of costs or expenses (including attorneys' fees) incurred in or in connection with this Chapter 11 case ("final compensation") shall be divided into three categories:

   a. **Nonreorganization Professionals:** All professionals employed at the expense of the estate, including those previously designated by this Court as "nonreorganization counsel," accountants, the Examiner, his counsel, and his financial analyst, and including specifically the law firms of [names], and entities (other than those included in the next two subparagraphs) who wish to have included as part of an allowed claim any such compensation or reimbursement, are hereby defined as "nonreorganization professionals" for present purposes;

   b. **Nonestate Professionals:** Indenture trustees for any issue of outstanding securities of [debtor's name], the agents for [name] and [name] and all professionals retained or employed by them, are hereby defined as "nonestate professionals" for present purposes; and

c. **Reorganization Professionals:** Reorganization professionals whose employment has been authorized by court order at the expense of the estate (excluding any listed above) under sections 330(a) and 503(b)(2) of the Bankruptcy Code, or whose compensation is based upon a claim under either section 503(b)(3) or (4) of the Bankruptcy Code on account of a substantial contribution to the case or on a provision of the Third Amended Joint Plan or the Rate Agreement, including specifically—

i. the following professionals employed by [debtor's name]: [names] (for both its financial advisory services and its merger and acquisition services); by the Creditors Committee: [names]; and by the Equity Committee: [names];

ii. [creditors' names];

iii. the State of New Hampshire;

are hereby defined as "reorganization professionals" for present purposes.

Nonreorganization and Nonestate Professionals

3. All nonreorganization professionals and all nonestate professionals who intend to seek payment by the estate of final compensation shall file a motion for allowance of final compensation, or, if appropriate, a request for payment of final compensation as an administrative expense, for all services rendered or costs or expenses incurred through April 30, 1990, on or before *Friday, June 22, 1990,* in the form and manner required by the Bankruptcy Rules.

4. All motions or requests filed under paragraph 3 of this Order shall be served on the Full List, except that copies of billing detail attached to the motion or request need be served only on the United States Trustee, [debtor's name], counsel for [acquiring company's name], counsel for the Creditors Committee, and counsel for the Equity Committee and made available upon request to all other parties.

Nonreorganization Professionals

5. Any response, objection, or opposition to a request under paragraph 3 of this Order by a nonreorganization professional for final compensation shall be filed with this Court and served on the Short List and on the party requesting the compensation or reimbursement on or before *Tuesday, July 31, 1990.* Any reply by the requesting party shall be filed with this Court and served on the Short List and on the objecting party on or before *Tuesday, August 21, 1990.*

6. A hearing shall be held at *9:30 a.m.* on *Friday, August 24, 1990.* At that time, this Court will hear any requests filed under paragraph 2 of this Order by a nonreorganization professional to which no objection is made or as to which the objection does not involve a substantial question of law or fact and will fix a hearing schedule for any such objection that does involve a substantial question of law or fact.

7. The orders of this Court regarding interim compensation procedures shall no longer apply to nonreorganization professionals for any services rendered or costs

incurred after April 30, 1990. Any nonreorganization professional employed at the expense of the estate (other than the Examiner, his counsel, or his financial analyst) who renders services or incurs costs or expenses after April 30, 1990, may request payment from [debtor's name] in the ordinary course of business, without either prior or subsequent application to or approval of this Court, but payment for any such services rendered or costs or expenses incurred before the Effective Date of the Plan is subject to the continuing jurisdiction of this Court and may be reviewed, either before or after payment, upon an appropriate noticed motion.

Nonestate Professionals

8. Any response, objection, or opposition to a request under paragraph 3 of this Order by a nonestate professional for final compensation shall be filed with this Court and served on the Short List and on the party requesting the compensation or reimbursement on or before *Friday, August 17, 1990.* This Court will hear and consider at *9:30 a.m.*, on *Friday, August 24, 1990,* any request to which no objection has been made and will determine a date in late September, calendar permitting, for a hearing on any request to which an objection has been made. Any reply by the requesting party need not be filed immediately but shall be filed with this Court and served on the Short List and on the objecting party at least 10 days before the date set after the August 24th hearing for the hearing on the objection.

9. Any indenture trustee who renders services or incurs costs or expenses (including attorneys' fees) after April 30, 1990, may bill [debtor's name] and [debtor's name] may pay any such bill, in the ordinary course of business, without either prior or subsequent application to or approval by this Court, but payment for any such services rendered or costs or expenses incurred before the Effective Date of the Plan remains subject to the continuing jurisdiction of this Court and may be reviewed, either before or after payment, upon an appropriate noticed motion.

Reorganization Professionals

10. On or before *June 22, 1990,* reorganization professionals shall give [acquiring company's name]'s counsel in writing a nonbinding estimate, for [acquiring company's name]'s use for cash planning purposes, of any final compensation in addition to payments already received that the professional intends to seek for services rendered or costs or expenses incurred through April 30, 1990. Copies of the estimate shall be sent to [debtor's name] (c/o [name], Assistant Treasurer) and to counsel for the Creditors Committee and the Equity Committee but shall not be filed with the Court.

11. This Court will hear and consider at *9:30 a.m.*, on *Friday, August 24, 1990,* the question of an appropriate time for the filing and hearing of motions for final compensation of reorganization professionals in light of when the Effective Date of the Plan is then expected to occur.

12. Pending the filing of motions for final compensation for reorganization professionals, all orders of this Court regarding interim compensation shall continue to apply to reorganization professionals, as defined in this Order.

DONE and ORDERED at Manchester, New Hampshire this 1st day of June, 1990.

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to serve Full List

Exhibit IV-5. Sample Order Authorizing a Technical Advisor to Assist the Court in Making Final Fee Awards

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re	)	
	)	
	)	BK No.
	)	Chapter 11
	)	
Debtor	)	

Further Order on Post-Confirmation Procedures

Following the entry of an order by this Court on April 20, 1990 confirming the pending plan of reorganization in this case, the Court entered an "Order Setting Hearing on Post-Confirmation Procedures" on May 7, 1990 (Docket No. 3689) and conducted a hearing on May 25, 1990 to consider six enumerated matters relating to appropriate modifications in the standing and other orders in this case leading to entry of a final decree. The Court has separately this date entered orders dealing with the first three enumerated items. The following three enumerated items from the May 7, 1990 order remain open:

4. Fixing filing requirements and hearing procedures, and necessary accounting or other analytical aid to the Court, for final fee awards.

5. Termination or reduction in employment authorization of professional persons and related expenditures no longer required.

6. Fixing of deadlines and procedures leading to entry of a final decree and the closing of this case at the earliest possible date.

Except as set forth below, the remaining matters will be heard before this Court at *9:30 a.m.* on *Friday, August 24, 1990,* together with other matters scheduled for hearing that date.

With regard to item 4 listed above, the Court has entered orders dealing with certain aspects of the required procedures for application and hearing on final fee awards but has not yet dealt with the referenced question of "necessary accounting or other analytical aid to the Court" with regard to fee applications by Reorganization Professionals as defined in the separate order entered this date dealing with fee procedures.

It seems apparent that the Court will be faced with an unmanageable task (within any reasonable time frame) of reviewing and analyzing the expectable mountains of data,

involved with the final fee applications of the Reorganization Professionals, absent some aid beyond the present capability of the Court and its staff. From the hearing it also became apparent that the magnitude of this task is beyond the capability of the United States Trustee's office in Boston, which has only two secretaries and four attorneys to handle all the cases in Rhode Island, Massachusetts, New Hampshire and Maine.

In these circumstances I believe that there is the "cognizable judicial need for specialized skills" of a "technical advisor" necessary to aid the Court in the performance of its duties within the holding of the Court of Appeals in *Reilly v. United States*, 863 F.2d 149, 156 (1st Cir. 1988). As noted by the First Circuit in the *Reilly* case, this power is separate and distinct from the power of the court to appoint an expert witness under Rule 706 of the Federal Rules of Evidence and is an inherent power of a federal court when necessary to perform its duties.

The court in *Reilly* further indicates that the power to appoint a technical advisor should be exercised sparingly, and that the better practice would be to establish a "job description" for the advisor at the outset and provide advance notice to the parties of the proposed advisor's identity, and the advisor's intended duties, with opportunity to object on grounds such as bias or inexperience before the court makes the appointment (863 F.2d at 159-60).

The court in the *Reilly* case (863 F.2d at 157-58) also expressed its view of the appropriate limitations of a technical advisor's role when appointed:

> We start with a restatement of the principle derived from a watershed case anent technical advisors.[7] In *Ex parte Peterson*, 253 U.S. 300, 40 S. Ct. 543, 64 L. Ed. 919 (1920), the Supreme Court recognized that trial judges in the federal system possessed "inherent power to provide themselves with appropriate instruments required for the performance of their duties," including the power to "appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause." *Id.* at 312, 40 S. Ct. at 547. *See also* MCL 2d § 21.54 (indicating that court may appoint confidential advisor in complex litigation). Advisors of this sort are not witnesses, and may not contribute evidence. Similarly, they are not judges, so they may not be allowed to usurp the judicial function. *See Kimberly v. Arms*, 129 U.S. 512, 524, 9 S. Ct. 355, 359, 32 L. Ed. 764 (1889) (court may not, through appointment of a master or otherwise, "abdicate its duty to determine by its own judgment the controversy presented"); *see also* MCL 2d § 21.54 (advisors "should not be used to displace the parties' right to a resolution of disputes through the adversarial system"); cf. *La Buy v. Howes Leather Co.*, 352 U.S. at 256, 77 S. Ct. at 313 (special master's role is "not to displace the court"). A judge may not, for example, appoint a legal advisor to brief him on legal issues, since "determination of purely legal questions is the responsibility of the court itself." *Reed v. Cleveland Bd. of Educ.*, 607 F.2d at 747. Neither may a court employ a technical advisor to "undertake an independent mission of finding facts" outside the record of the case. *Johnson v. United States*, 780 F.2d 902, 910 (11th Cir. 1986) (citation omitted). In fine, the advisor's role is to act as a sounding board for the judge

—helping the jurist to educate himself in the jargon and theory disclosed by the testimony and to think through the critical technical problems.

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7. Because we are concerned exclusively with the appointment of a "pure" technical advisor, i.e., one who has not been asked to testify or to receive evidence and make findings, neither Fed. R. Evid. 706 nor Fed. R. Civ. P. 53 come into play. *See* text *supra* Part II(A); *see also supra* note 4.

The Court of Appeals in *Reilly* then considered at some length the actual use of the technical advisor by the district judge and found that the usage was in fact appropriate in the circumstances (863 F.2d at 58-59).

In the present case the Court itself obviously does have the ability to review and pass upon the reasonableness of fees requested in a bankruptcy reorganization proceeding, inasmuch as it is constantly called upon to perform that very function in such cases. However, this is not a normal reorganization case by any stretch of the imagination. The Court sees no need for aid in its *analytical* duties with regard to determining reasonable fees, but it does anticipate some serious need for *logistical* aid in breaking down the volume of data to be presented if the judicial task is to be accomplished within a time frame suitable to the parties and under certain constraints imposed by conditions to the Effective Date (in terms of total fees) pursuant to the confirmed plan of reorganization.

It will be necessary to organize the data into the appropriate groupings and subgroupings for an informed and intelligent application of the factors necessary for allowance of reasonable fees under the applicable caselaw. A technical advisor to be appointed in the present case in no sense would be permitted to pass upon or advise as to the reasonableness of any fee request and would otherwise be required to operate within the constraints indicated in the *Reilly* decision.

Certain of the parties in a telephone conference hearing discussion of this matter this week indicated that they believe that a more detailed list and breakdown of required data in the fee applications could be devised to serve the Court's purposes and would avoid the need for the appointment of a technical advisor. The Court is open to that suggestion as an arguably sufficient alternative, provided that the same is submitted on or before June 15, 1990 to be considered at the hearing on June 22, 1990 set forth below.

Considering all of the foregoing, the U.S. Trustee is hereby directed to investigate and determine whether there are available any individuals who would have the requisite legal, accounting, and/or computer-programming experience to serve as a technical advisor, in the sense envisioned by the Court with regard to the data supporting the fee applications of the Reorganization Professionals in this case, and who could act as a *neutral* advisor to the Court with no prior involvement with this case. The U.S. Trustee shall file a written report in that regard, including the name or names of any qualified individuals, on or before *June 15, 1990* and shall serve a copy of the same upon the Reorganization Professionals whose fee applications will be reviewed. The report shall also include a proposed "job description" for the technical advisor in the sense expressed in the *Reilly* decision. Responsive pleadings shall be filed by June 20, 1990. The Court will hear and consider the report at the scheduled hearing in this case on *Friday, June 22, 1990,* at *9:30 a.m.,* together with the other matters scheduled that date.

DONE and ORDERED at Manchester, New Hampshire this 1st day of June, 1990.

JAMES E. YACOS
BANKRUPTCY JUDGE

Debtor to serve Short List

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