

Proposed amendment to Bankruptcy Rule 2019
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Cc:
"Uzzi, Gerard"

My name is Thomas Lauria. I am the head of the financial restructuring practice at White & Case. We regularly represent debtors, creditors, equity holders, investors and other parties in interest in large chapter 11 cases.

I believe that Bankruptcy Rule 2019, as it currently exists, is being applied to require creditors, who choose to act together for the purposes of retaining advisors and to being heard, to disclose proprietary information regarding their claims that other participants may keep private. This gives rise to a number of serious issues, including:

- It restricts and retards creditor participation in bankruptcy cases (which is contrary to one of the express fundamental objectives of the chapter 11 process--maximizing creditor participation); and
- It wrongfully focuses attention on the price a party pays for debt (a matter which is supposed to be entirely irrelevant to the rights of the creditor absent extraordinary circumstances).

In addition, the rule ignores the fact that nearly every major participant in a bankruptcy case is representing multiple parties and interests; for example, a bank agent represents all the members of the syndicate; a labor union represents the interests of its members; a pension plan (or the PBGC as a successor) represents the interests of the pensioners. And yet none of these entities are subjected to BR 2019 scrutiny. As a consequence, the rule is applied in a discriminatory fashion directed primarily at distressed debt investors, whose capital plays the essential function of providing liquidity to the holders of claims who are not otherwise able to effectively participate in a the often prolonged and difficult process of chapter 11 administration.

I think that there is a rational basis for eliminating BR 2019 as an admission ticket to participation in the reorganization process, and instead relying on the rules of discovery when a matter arises that makes the information covered by the Rule relevant to the case.

I would be happy to discuss this matter with the committee in a more complete fashion at a mutually convenient time.

Thanks.

Tom

Sent from my BlackBerry Wireless Handheld