



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
51 S.W. FIRST AVENUE  
ROOM 1411  
MIAMI, FLORIDA 33130**

**LAUREL MYERSON ISICOFF**  
*US Bankruptcy Judge*  
(305) 714-1752

November 26, 2007

Peter G. McCabe  
Secretary, Committee on Rules of Practice  
and Procedure  
Washington, D.C. 20544

**Re: Chapter 15 and the Use of Official Form 1**

Dear Mr. McCabe:

The purpose of this letter is to express my concern regarding the use of Official Form 1 to file a Petition for Recognition pursuant to Chapter 15 of the United States Bankruptcy Code.

Recently a bankruptcy trustee from the United Kingdom filed a Petition for Recognition using the required Official Form 1. The UK Trustee had overseen the U.K. bankruptcy of an individual, Ms. Fielding,<sup>1</sup> who received her discharge in the U.K. proceeding, and then moved to the United States. The U.K. Trustee sought to obtain and liquidate some of Ms. Fielding's jewelry that constituted U.K. estate assets.

Official Form 1, entitled "Voluntary Petition", required that the U.K. Trustee put Ms. Fielding's name as the "Debtor" which, of course, is technically accurate. The consequence of the filing of the "Voluntary Petition" was that when Ms. Fielding sought to use her credit card, the card was declined because of the pending bankruptcy. However, Ms. Fielding had not filed bankruptcy and was not, by virtue of the pending petition for recognition, a debtor in a pending bankruptcy case.

11 U.S.C. §1504, titled "Commencement of Ancillary Case", provides that a chapter 15 case is commenced by the filing of a petition for recognition under 11 U.S.C. §1515. A petition for recognition of a foreign proceeding may only be filed by a foreign representative.

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<sup>1</sup>Pursuant to agreed order, and to remedy the problem I am outlining in this letter, I purged the petition, thus, while the chapter 15 case remains open - Case No. 07-17417 - Official Form 1 no longer appears on the court docket.

11 U.S.C §1511, entitled "Commencement of Case under Section 301 or 303", provides that a foreign representative may commence an involuntary case of the debtor under 11 U.S.C. §303<sup>2</sup>, or a voluntary case of the debtor under 11 U.S.C. §§301 or 302, but only if the petition has been recognized as a foreign main proceeding.

The use of Official Form 1 to file a petition for recognition of a foreign proceeding is, consequently, inconsistent with Chapter 15 of the Bankruptcy Code. A petition for recognition under section 1515 to commence an ancillary case must be accompanied by certain documents and statements that are not relevant to, or necessary for, the commencement of a bankruptcy case under sections 301 or 302. Moreover, the foreign representative's authority to commence a bankruptcy case of the debtor is, as set forth in section 1511, delimited by two alternative conditions precedent, even after recognition is granted. Either the foreign proceeding has been recognized as a main proceeding, whereby the foreign representative would then commence a case (a separate case) under section 301 or 302<sup>3</sup>, or the foreign representative would file, and properly serve, an involuntary petition under section 303, which would then require the normal review process prior to entry of an order for relief in the case opened when the involuntary petition was filed

The use of Official Form 1 for a petition for recognition creates two problems - first, it creates the very problem that Section 1511 was designed to prevent, that is, a U.S. bankruptcy case of a debtor prior to determination by a court that such an act is authorized. Second, it creates confusion regarding the requirements for opening an ancillary case. In the case of Ms. Fielding, the foreign representative properly filed a pleading called "Petition for Recognition" that set forth the statements, and attached the documents, required by 11 U.S.C. §1515. Nonetheless, the foreign representative's petition was refused until, in addition, the foreign representative filed Official Form 1

I understand that the Rules Committee previously discussed this issue. If my understanding is correct, I would respectfully request the committee reconsider its decision. In any event, I respectfully submit that the required use of Official Form 1 when a petition for recognition is filed should be eliminated

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<sup>2</sup>Bankruptcy Rule 1010 appears to have an error as well. Nothing in Chapter 15 requires service of a petition for recognition of a foreign proceeding, but if service is required, there is nothing that supports treatment of a petition for recognition of a foreign main proceeding different than the treatment of a petition for recognition of a foreign non-main proceeding. Any difference only comes into play once the petition is granted. The relevance of Bankruptcy Rule 1010, then, would only apply when the foreign representative, once recognized, filed an involuntary petition against the debtor.

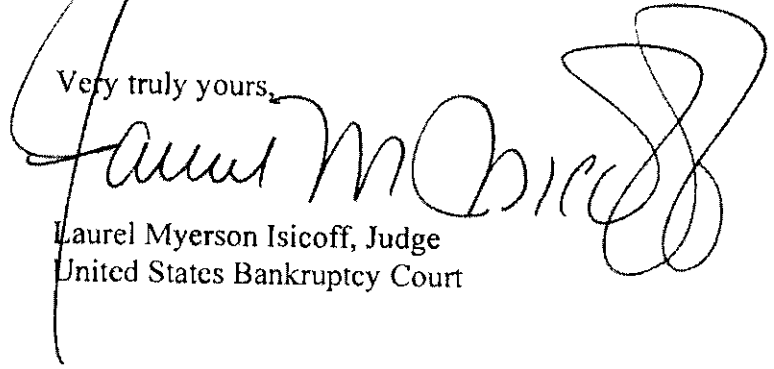
<sup>3</sup>Indeed, it does not appear the foreign representative would necessarily need to file in the same jurisdiction in which the foreign proceeding was recognized. Otherwise the verbiage in section 1511(b) would be superfluous.

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Please feel free to contact me if you have any questions regarding the facts outlined in this letter. I hope you and yours have a happy and healthy holiday season. Thank you for your consideration

Very truly yours,

A handwritten signature in black ink, appearing to read "Laurel Myerson Isicoff". The signature is written in a cursive, flowing style with large loops and a long vertical line extending downwards from the start of the signature.

Laurel Myerson Isicoff, Judge  
United States Bankruptcy Court

LMI/em