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January 22, 2010

Via E-mail

Mr. John K Rabiej
Chief
Rules Committee Support Office
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Summary of Testimony regarding
Proposed Amendment of Federal Rule of Bankruptcy Procedure 2019

Dear Mr. Rabiej:

Thank you for your letter of January 12, 2010. Richards Kibbe & Orbe LLP ("RK&O") respectfully submits the attached Exhibit A summarizing the testimony it intends to present to the Advisory Committee on Bankruptcy Rules (the "Committee") concerning the proposed amendment to Federal Rule of Bankruptcy Procedure 2019 ("Proposed Rule 2019").

RK&O intends to submit a more complete written statement to the Advisory Committee prior to the February 5, 2010 hearing.

Very truly yours,

Jon Kibbe

Exhibit A

Brief Summary of RK&O Testimony

1. RK&O supports the vast majority of Proposed Rule 2019 -- the full disclosure of all bankruptcy claims (and related interests) held by informal or *ad hoc* committee members enables judges, debtors and other parties in interest to readily identify the economic interests (and potential private agendas) of parties actively participating in a bankruptcy proceeding.
2. RK&O respectfully disagrees with one aspect of Proposed Rule 2019 – the disclosure, directly or indirectly, of bankruptcy claim pricing information.
3. Proposed Rule 2019 would (i) require disclosure of pricing information if directed by the court, and (ii) indirectly require pricing disclosure by requiring disclosure of the "date" a claim is acquired.
    a. Disclosure of the date a claim is acquired is tantamount to disclosing the price paid for the claim because the deep liquidity of the bankruptcy claims market now allows parties to easily determine price levels for bankruptcy claims once a claimholder's date of purchase is disclosed.
4. In the rare case where disclosure of date of acquisition or price is relevant to an issue in a bankruptcy proceeding, the well-established discovery process or Rule 2004 examinations can be used to obtain such information.
    a. As currently drafted, Proposed Rule 2019 would permit parties to use the directly or indirectly disclosed pricing data merely to gain negotiating leverage.
5. There are good legal and practical reasons not to require disclosure, directly or indirectly, of pricing information.
    a. Disclosure of proprietary and confidential pricing information would substantially affect negotiating positions of parties in ways that are inimical to two bedrock principals of bankruptcy law: (i) the price paid for a bankruptcy claim is irrelevant to determining how the holder of the claim should be treated in the bankruptcy proceeding, and (ii) similarly situated creditors should receive equal treatment when seeking to enforce their rights.
    b. Because disclosure of the "date" a bankruptcy claim is purchased is a proxy for "price of purchase," any purported benefit obtained by such disclosure would be far outweighed by the potential misuse of the pricing information to subvert or distort the fundamental legal and equitable principles of bankruptcy procedure and practice.
    c. Disclosure of price and date may unintentionally (i) dissuade stakeholders from participating in the bankruptcy process, (ii) create pricing uncertainty, (iii) further divide creditor constituencies into two camps

(original holders and secondary purchasers), (iv) alter the balance of negotiations between debtors and creditors and among groups of creditors, and (v) otherwise disrupt key components of the bankruptcy process.

d. Liquidity in the secondary bank loan market and the bankruptcy claims market has benefited market participants and the bankruptcy process.

    i. Proposed Rule 2019 may inadvertently give credence to the position that acquisition price can affect a claimholder's ability to enforce its claim notwithstanding the lack of any legal or equitable support for such position.

        1. Eroding the bedrock assumption that each bankruptcy claim can be enforced according to its contractual terms regardless of acquisition price will create unwarranted uncertainty in predicting potential recoveries of bankruptcy claims.

e. Proposed Rule 2019 may dissuade creditors from joining together (in the form of *ad hoc* committees) to advance a common interest, effectuate an efficient reorganization and preserve value for all interested parties.

    i. *Ad hoc* committees increase efficiency in Bankruptcy Cases.

    ii. *Ad hoc* committees provide a vital role in representing creditors with common interests and advocate positions on behalf of a focused constituency.

        1. Participation on *ad hoc* committees increases the likelihood that creditors will participate in DIP, exit financing and related rights offerings.

    iii. To the extent investors avoid participating in *ad hoc* groups, bankruptcies will be negatively impacted.

    iv. Without *ad hoc* groups representing a common group of creditors, debtors may be reduced to negotiating with larger creditors on a "one off" basis.

    v. This will increase administrative expenses as parties are forced to confront and litigate common issues of law and fact on multiple occasions -- to the extent scarce resources are directed to resolving duplicative issues fewer resources can be devoted to resolving important impediments to a successful reorganization.

6. RK&O respectfully requests that Proposed Rule 2019 be revised to delete any requirement for the disclosure, directly and indirectly, of bankruptcy claim pricing information.

7. Such a revision would allow Proposed Rule 2019 to function as intended by providing courts, debtors and parties-in-interest insight into the economic interests and agendas of members of *ad hoc* committees without inadvertently promoting

the erosion of fundamental principals of bankruptcy law or limiting the active and beneficial participation of *ad hoc* committees in bankruptcy proceedings.