

## **INFORMATION FOR PROSPECTIVE CREDITOR COMMITTEE MEMBERS ON CHAPTER 11 CASES**

For those of you who are not attorneys, or for whom this is a first experience, a word about reorganization cases under Chapter 11 of the Bankruptcy Code and the role of an unsecured creditors' committee may be helpful.

### **CHAPTER 11, GENERALLY**

In most Chapter 11 reorganization cases filed under the Bankruptcy Code, management hopes to revitalize its business and to present a plan of repayment (in whole or in part) to its creditors which will meet with the approval of its creditors and otherwise comply with the requirements of the Bankruptcy Code for final Court approval, or "confirmation" as it is called under the Code. Unless a trustee is appointed to operate the business, the debtor will have an exclusive right to file a plan during the first 120 days after the case is filed. After 120 days (unless the Court orders otherwise) the debtor and/or any other party, including a creditor or the creditors' committee, may file a plan. There is no requirement (unless a date has been specifically set by the Court on request of some party) that the debtor must file a plan within the first 120 days or by any subsequent date.

Before a plan can be circulated to creditors, a hearing on disclosure is held. At that time, the person proposing the plan must show the Bankruptcy Judge that his disclosure statement gives enough information to creditors to allow them to make an informed decision as to whether or not to vote for the plan. If the Judge finds the disclosure adequate, the plan, disclosure statement and ballots will be mailed to creditors for voting. If the plan is approved by creditors and confirmed by the Court, payment to creditors can begin according to the terms of the plan.

The present management of the debtor will remain in possession and in control of its business unless the Court orders that a trustee be appointed, the case is dismissed, or the case is converted to a liquidating proceeding. The Court will normally enter such an order only when requested by the United States Trustee, a creditor or other party in interest. In most cases, such an order will be entered only after creditors and the debtor have been advised that such action has been requested and an opportunity for a hearing is afforded so that the requested action may be contested.

## **THE UNITED STATES TRUSTEE**

The United States Trustee for Region 9, which is comprised of the judicial districts established for the States of Ohio and Michigan, is charged with the responsibility of supervising the administration of all bankruptcy cases pending within those districts. The United States Trustee will not serve as, or perform the functions of a trustee of the debtor's estate. Rather, the United States Trustee will move to insure that the debtor and its management are operating in good faith and in conformity with the Bankruptcy Code and other laws, and that the debtor is directing its efforts in a manner which will maximize the potential for an effective reorganization. This is accomplished through certain financial reporting requirements and other controls placed on the debtor and, in some cases, periodic visits to the debtor's place of business. The United States Trustee is not a representative nor an advocate for the interests of any particular group of creditors.

## **CREDITORS' COMMITTEE**

Section 1102(a) of the Bankruptcy Code charges the United States Trustee with the duty of organizing and appointing a committee of creditors holding unsecured claims. The creditor's committee does not "run the business" or otherwise control the assets of the debtor's estate. The debtor in possession (or trustee, if one has been appointed) is in control. It is assumed that the committee will represent the interests of all unsecured creditors and attempt to maximize recovery for all unsecured creditors in its negotiations with the debtor, the secured creditors, and other parties in the case. In order to aid the unsecured creditors' committee in accomplishing these goals, the Bankruptcy Code specifically sets out certain duties and powers of a committee. The Bankruptcy Code specifically provides that a creditors' committee may:

1. Review the progress and status of the case and discuss the same with the debtor. Also, the debtor is required to file periodic financial reports with the Court and the Office of the United States Trustee. These reports should provide valuable information for the committee.
2. Investigate the financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of the business.
3. Participate in the formulation of a plan.
4. Ask the Court to appoint an examiner in the case. An examiner is a professional (often a CPA) with the expertise to investigate the business and file a report drawing conclusions regarding the viability of the same, the competence of past or current management, possible fraud, etc.

5. Request the appointment of a trustee. A trustee is an independent third party charged with the responsibility of controlling estate assets.
6. Ask the Court to either dismiss the case or to convert it to one under Chapter 7 (liquidation). One cause for dismissal or conversion is unreasonable delay which is prejudicial to creditors.

The Bankruptcy Code provides further that the debtor must meet with the creditor's committee to transact such business as may be necessary and proper, and that the debtor shall furnish to the committee, upon request, information concerning the debtor's business and its administration. If in the performance of its duties, the committee would be aided by the services of an attorney, accountant or other professional, the Code provides a means for the appointment of such individuals as may be selected by the committee. The compensation of such individuals will be paid from assets of the debtor's estate, and will not be chargeable directly to individual committee members.

### COMMITTEE MEETINGS

The Office of the United States Trustee will appoint committee members. The committee ordinarily consists of those persons who hold the seven largest unsecured claims and who are willing to serve. Generally, at the first meeting of creditors the committee will:

1. Elect a chairman.
2. Discuss the status of the case, with and without the debtor present.
3. Consider whether and which of the committee's powers should be invoked.
4. Make plans for future meetings. Such meetings will not involve the Court and will be called at times and places convenient to committee members.

### POSTSCRIPT

Service on the committee is strongly encouraged, but purely voluntary. The healthy tension created between the debtor and an active creditors' committee is beneficial in determining if and when the court should be requested to convert a case to a liquidating proceeding. In other cases an active committee can facilitate the filing of a plan which will maximize the return to unsecured creditors and allow the debtor to continue in business as a revitalized concern.

The staff of the office of the United States Trustee looks forward to working with you toward a successful resolution of this case. Should you have any questions, please feel free to contact our office.