

DELAWARE BANKRUPTCY COURT DECLINES TO COMPEL SIX FLAGS NOTEHOLDER GROUP TO DISCLOSE THE AMOUNTS OF THEIR CLAIMS AND PRICES PAID FOR SUCH CLAIMS

January 19, 2010

To Our Clients and Friends:

At a hearing on January 8, 2010 in the Chapter 11 proceedings of Six Flags, Inc. (“Six Flags”) and its affiliates, Judge Christopher Sontchi of the United States Bankruptcy Court for the District of Delaware ruled that a group of holders of notes issued by a subsidiary of Six Flags (the “Noteholder Group”) was not required to comply with Rule 2019 of the Federal Rules of Bankruptcy Procedure, which would have required disclosure of, among other things, the amounts of claims or interests owned by the members of the Noteholder Group, the time of acquisition of their claims or interests and the prices paid for such claims or interests. In so doing, Judge Sontchi declined to follow the strict application of Rule 2019 to *ad hoc* committees or informal groups of creditors and equity security holders advocated in the decision of the United States Bankruptcy Court for the Southern District of New York in *In re Northwest Airlines Corp.*, 363 B.R. 701 (Bankr. S.D.N.Y. 2007) and the recent decision of Judge Mary Walrath of the Delaware Bankruptcy Court in *In re Washington Mutual, Inc.*, 2009 WL 4363539 (Bankr. D. Del. 2009).

BACKGROUND

Rule 2019 requires any entity or committee, other than an official committee, representing more than one creditor or equity security holder, to disclose: (i) the amounts of claims or interests owned by the members of the committee, (ii) the time of acquisition of such claims or interests, (iii) the amounts paid for such claims or interests and (iv) any sales or other dispositions of such claims or interests. As noted in a prior update, the Bankruptcy Court for the Southern District of New York in *Northwest* and the Delaware Bankruptcy Court in *Washington Mutual* strictly applied Rule 2019 to *ad hoc* committees or informal groups of creditors and equity security holders.¹ Meanwhile, an amendment to Rule 2019 has been proposed by the Judicial Conference Advisory Committee on Bankruptcy Rules, which in its current form would subject *ad hoc* committees or informal groups of creditors and equity

¹ For more background concerning Rule 2019 and its application, including a discussion of *Northwest* and *Washington Mutual*, please see our Client Update of December 17, 2009, entitled *Bankruptcy Court Compels Washington Mutual Noteholder Group to Disclose the Amounts of Their Claims and Prices Paid for Such Claims*: <http://www.debevoise.com/newsevents/pubs/publications/detail.aspx?id=7f651a88-dce4-42c8-a3a8-409f28f99e93>.

security holders to Rule 2019 as modified. Public comments on such proposed amendment are due by February 16, 2010 when the Advisory Committee will determine whether to submit the proposed amendment to the Standing Committee on Rules of Practice and Procedure.

DECISION

Focusing on the plain meaning of Rule 2019, Judge Sontchi held that the Noteholder Group was not an entity or committee representing more than one creditor because it was not “a subset of a larger group authorized by the larger group to act on its behalf.” The Judge found that the Noteholder Group had organized to share costs and to increase its influence with the court and that such actions alone did not render the Noteholder Group a committee. Stating that he fundamentally disagreed with the opinions in *Northwest* and *Washington Mutual*, Judge Sontchi argued that those courts had erred in looking so closely at the facts, such as the conduct of the creditors or equity security holders, rather than at what constitutes a committee as such term is commonly understood. The judge emphasized that since Rule 2019 was a disclosure rule which must be complied with upfront, it would be inconsistent with its purpose if Rule 2019 were applied on a case-by-case basis.

Judge Sontchi has indicated that he intends to issue a written opinion setting forth the reasoning behind his ruling. A notice of appeal of this decision was filed on January 15, 2010.

IMPLICATIONS

With this decision, two bankruptcy judges in Delaware—one of the most popular venues for corporate bankruptcy filing—have interpreted Rule 2019 inconsistently. We will continue to monitor any development in this matter.

Please feel free to contact us with any questions.

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