

ONE MORE DECISION FROM THE DELAWARE BANKRUPTCY COURT CONCERNING BANKRUPTCY RULE 2019

January 27, 2010

To Our Clients and Friends:

On January 22, 2010, the United States Bankruptcy Court for the District of Delaware handed down the most recent in a string of decisions concerning the application of Rule 2019 of the Federal Rules of Bankruptcy Procedure. In the Chapter 11 proceedings of Accuride Corporation (“Accuride”) and its affiliates, Judge Brendan Shannon issued an order requiring a group of holders of notes issued by Accuride (the “Noteholder Group”) to disclose the claims and interests owned by the members of the Noteholder Group and the time and price of acquisition of these claims and interests. In so doing, Judge Shannon followed 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 decision of Judge Mary Walrath of the Delaware Bankruptcy Court in *In re Washington Mutual, Inc.*, 2009 WL 4363539 (Bankr. D. Del. 2009), applying Rule 2019 to *ad hoc* committees and informal groups of creditors and equity security holders and rejected the recent contrary decision of Judge Sontchi of the Delaware Bankruptcy Court in *In re Six Flags, Inc.*, Case No. 09-12019 (Bankr. D. Del. Jan. 20, 2010). In addition, the court took the unusual step of directing the debtors to withhold further payments to the Noteholder Group pending compliance with Rule 2019.

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 prior updates, the Bankruptcy Court for the Southern District of New York, the Delaware Bankruptcy Court and several other courts have handed down a series of sometimes contradictory decisions concerning the application of the rule.¹ Meanwhile, an amendment to Rule 2019 has been proposed by the Judicial

¹ For more background concerning Rule 2019 and its application, including a discussion of *Northwest*, *Washington Mutual* and *Six Flags*, 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*, available at <http://www.debevoise.com/newsevents/pubs/publications/http://www.debevoise.com/newsevents/pubs/publications/detail.aspx?id=7f651a88-dce4-42c8-a3a8-409f28f99e93> and Client Update of January 19, 2010, entitled *Delaware Bankruptcy Court*

Conference Advisory Committee on Bankruptcy Rules, which in its current form would subject *ad hoc* committees and informal groups of creditors and equity security holders to Rule 2019 as modified. Public comments on the proposed amendment are due by February 16, 2010 after which the Advisory Committee will determine whether to submit the proposed amendment to the Standing Committee on Rules of Practice and Procedure.

DECISION

In *Accuride*, the Noteholder Group consisted of noteholders who had signed an agreement to support the plan of reorganization proposed by the debtors, provided debtor-in-possession financing and entered into a commitment to backstop a rights offering in connection with the plan of reorganization. Pursuant to the orders approving the financing and the backstop commitment, the professionals for the Noteholder Group, including legal counsel and financial advisor, were being compensated by the estate on a current basis. In connection with a dispute surrounding the plan of reorganization, the Official Committee of Equity Security Holders filed a motion for an order compelling the Noteholder Group to comply with Rule 2019, prohibiting further participation in the case by the Noteholder Group pending compliance with Rule 2019 and directing the debtors to withhold further payments to or on behalf of the Noteholder Group pending compliance with Rule 2019. After a hearing, the court issued an order granting the motion including the relief requested.

Please feel free to contact us with any questions.

Richard F. Hahn
+1 212 909 6235
rfhahn@debevoise.com

Steven R. Gross
+1 212 909 6586
srgross@debevoise.com

Michael E. Wiles
+1 212 909 6653
mewiles@debevoise.com

George E.B. Maguire
+1 212 909 6072
gebmaguire@debevoise.com

My Chi To
+1 212 909 7425
mcto@debevoise.com

Jasmine Ball
+1 212 909 6845
jball@debevoise.com

Jae Sun Chung
+1 212 909 6106
jchung@debevoise.com

Declines to Compel Six Flags Noteholder Group to Disclose the Amounts of Their Claims and Prices Paid for Such Claims, available at <http://www.debevoise.com/newsevents/pubs/publications/detail.aspx?id=83176dfe-f3ed-4307-8775-abde15b8ff62>