

*Collier Handbook for
Creditors' Committees*

Collier Handbook for Creditors' Committees

DAVID S. KUPETZ

Troutman Pepper Locke LLP
Los Angeles, California

Richard Levin and Henry J. Sommer

COLLIER EDITORS-IN-CHIEF

2026

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call or email:

Ryan D. Kearns, at 513-257-9021
Email: ryan.kearns@lexisnexus.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at (800) 833-9844
Outside the United States and Canada, please call (518) 487-3385
Fax Number (800) 828-8341
LexisNexis® Support Center <https://supportcenter.lexisnexus.com/app/home/>

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940
Outside the United States and Canada, please call (518) 487-3385

Library of Congress Card Number: 87-73449

ISBN: 979-8-3417-2116-6 (print)

Cite as:

DAVID S. KUPETZ, COLLIER HANDBOOK FOR CREDITORS’ COMMITTEES ¶ [000.00]
(Matthew Bender [Year])

Example:

DAVID S. KUPETZ, COLLIER HANDBOOK FOR CREDITORS’ COMMITTEES ¶ 1.01 (Matthew Bender 2025)

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2025 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved. Originally published in: 1987.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexus.com

MATTHEW  BENDER

Table of Contents

A COMPLETE SYNOPSIS FOR EACH CHAPTER APPEARS AT
THE BEGINNING OF THE CHAPTER

About the Author

Acknowledgments

| | |
|------------------|---|
| CHAPTER 1 | Introduction and Scope of Handbook |
| <hr/> | |
| CHAPTER 2 | The Role of a Chapter 11 Creditors' Committee |
| <hr/> | |
| ¶ 2.01. | In General |
| ¶ 2.02. | Small Business Cases |
| | [¶¶ 2.03–2.50 Reserved] |
| ¶ 2.51. | FORM: Motion for Order That a Creditors' Committee Not Be Appointed |
| ¶ 2.52. | FORM: Declaration in Support of Motion for Order That a Creditors' Committee Not Be Appointed |
| ¶ 2.53. | FORM: Notice of Motion for Order That a Creditors' Committee Not Be Appointed and Opportunity to Object |
| ¶ 2.54. | FORM: Order That a Committee of Creditors Not Be Appointed |
| | |
| CHAPTER 3 | Eligibility to Serve on a Chapter 11 Creditors' Committee |
| <hr/> | |
| ¶ 3.01. | In General |
| ¶ 3.02. | Member Must Be a Person |
| ¶ 3.03. | Holder of an Unsecured Claim |
| | |
| CHAPTER 4 | Appointment of a Chapter 11 Creditors' Committee |
| <hr/> | |
| ¶ 4.01. | Appointment by the United States Trustee |
| ¶ 4.02. | Appointment of the Chapter 11 Unsecured Creditors' Committee |
| ¶ 4.03. | Appointment of Additional Chapter 11 Committees |
| ¶ 4.04. | Determining the Size and Composition of the Chapter 11 Creditors' Committee |
| ¶ 4.05. | Appointing the Prepetition Unsecured Creditors' Committee |
| ¶ 4.06. | Caution Regarding Improper Solicitation of Committee Membership |
| | [¶¶ 4.07–4.50 Reserved] |

Table of Contents

| | |
|---------|---|
| ¶ 4.51. | FORM: Request for Appointment of Committee of Equity Security Holders |
| ¶ 4.52. | FORM: Motion for Order to Appoint a Committee of Equity Security Holders and Notice of Motion |
| ¶ 4.53. | FORM: Order Directing United States Trustee to Appoint Committee of Equity Security Holders |
| ¶ 4.54. | FORM: Request to Appoint as Members of a Committee of Unsecured Creditors the Members of a Committee Organized by Creditors Before the Commencement of the Case |
| ¶ 4.55. | FORM: Motion to Review Action of United States Trustee in Appointment of Creditors' Committee Organized Before Commencement of Case |
| ¶ 4.56. | FORM: Order Approving Appointment of Official Creditors' Committee |
| ¶ 4.57. | FORM: Request to Appoint a Creditor That Is a Small Business Concern to the Committee of Unsecured Creditors |
| ¶ 4.58. | FORM: Motion for Order to Appoint a Creditor That Is a Small Business Concern to the Committee of Unsecured Creditors and Notice of Motion |
| ¶ 4.59. | FORM: Order Directing United States Trustee to Appoint a Creditor That Is a Small Business Concern to the Committee of Unsecured Creditors |

| | |
|------------------|--|
| CHAPTER 5 | Acceptance of Appointment to and Resignation from a Chapter 11 Creditors' Committee |
|------------------|--|

| | |
|---------|---|
| ¶ 5.01. | Procedure for Acceptance |
| ¶ 5.02. | Right of a Committee Member to Resign |
| ¶ 5.03. | Resignation Procedure [¶¶ 5.04–5.50 Reserved] |
| ¶ 5.51. | FORM: Acceptance of Appointment as a Member of the Committee of Unsecured Creditors |
| ¶ 5.52. | FORM: Resignation from Committee of Unsecured Creditors |

| | |
|------------------|---|
| CHAPTER 6 | Changing the Membership of a Chapter 11 Creditors' Committee |
|------------------|---|

| | |
|---------|---|
| ¶ 6.01. | In General |
| ¶ 6.02. | Power of the United States Trustee to Change the Membership of a Chapter 11 Committee |
| ¶ 6.03. | Increasing the Size of a Chapter 11 Committee |

Table of Contents

| | |
|---------|---|
| ¶ 6.04. | Removing Committee Members |
| ¶ 6.05. | Replacing a Committee Member |
| ¶ 6.06. | Who May Request a Change in Committee Size or Composition |
| ¶ 6.07. | Requests for Additions to a Chapter 11 Committee |
| ¶ 6.08. | Requests to Remove a Creditor from a Committee |
| ¶ 6.09. | Review of the United States Trustee’s Power to Act or Refuse to Act; Availability of Judicial Relief [¶¶ 6.10–6.50 Reserved] |
| ¶ 6.51. | FORM: Notice of Resignation of Committee Member and Request for Appointment of Replacement Committee Member |
| ¶ 6.52. | FORM: Request for Appointment of Additional Committee Members; Committee Too Small |
| ¶ 6.53. | FORM: Request for Appointment of Additional Committee Members; Creditors Improperly Excluded |
| ¶ 6.54. | FORM: Request for Removal of Committee Member |
| ¶ 6.55. | FORM: Request for Removal of Committee Member; Competitor |
| ¶ 6.56. | FORM: Request for Removal of Committee Member; Hostile Creditor |
| ¶ 6.57. | FORM: Request for Removal of Equity Security Holders’ Committee Member; Hostile Equity Security Holder |
| ¶ 6.58. | FORM: Request for Removal of Committee Member; Conflict of Interest |

| | |
|------------------|---|
| CHAPTER 7 | Convening the First Meeting of a Chapter 11 Creditors’ Committee |
|------------------|---|

| | |
|---------|--|
| ¶ 7.01. | In General |
| ¶ 7.02. | When to Convene the First Meeting of an Official Committee |
| ¶ 7.03. | Prepetition Creditors’ Committee in Existence |
| ¶ 7.04. | Prepetition Unofficial Committee Not in Existence |
| ¶ 7.05. | Location or Remote Format for the First Meeting of the Official Creditors’ Committee |
| ¶ 7.06. | Physical Arrangements for the First Meeting of an Official Chapter 11 Committee |

Table of Contents

CHAPTER 8 Organizing a Chapter 11 Creditors' Committee

| | |
|---------|---|
| ¶ 8.01. | Goals of Organization |
| ¶ 8.02. | Opening Remarks by the United States Trustee |
| ¶ 8.03. | Circulating a Sign-Up Roster |
| ¶ 8.04. | The Initial Agenda |
| ¶ 8.05. | Election of a Chair |
| ¶ 8.06. | Election of a Vice-Chair |
| ¶ 8.07. | Selection of a Secretary |
| ¶ 8.08. | Selection of Legal Counsel |
| ¶ 8.09. | Selection of Accountants |
| ¶ 8.10. | Selection of Investment Banker |
| ¶ 8.11. | Choosing Other Professionals |
| ¶ 8.12. | Roster of Committee Members |
| ¶ 8.13. | Disclosure of Present or Potential Conflicts of Interest |
| ¶ 8.14. | Confidentiality of Committee Meetings |
| ¶ 8.15. | Formation of Subcommittees |
| ¶ 8.16. | Committee Meeting Schedule |
| | [¶¶ 8.17–8.30 Reserved] |
| ¶ 8.31. | FORM: Initial Agenda # 1 |
| ¶ 8.32. | FORM: Initial Agenda # 2 |
| ¶ 8.33. | FORM: Application by Unsecured Creditors' Committee to Employ Secretary |
| ¶ 8.34. | FORM: Declaration of Secretary Proposed to Be Employed by Unsecured Creditors' Committee |
| ¶ 8.35. | FORM: Order Authorizing Unsecured Creditors' Committee to Employ Secretary |
| ¶ 8.36. | FORM: Order Authorizing Unsecured Creditors' Committee to Employ Secretary Already Employed by Another Committee |
| ¶ 8.37. | FORM: Application for Order Authorizing the Retention of as Counsel for the Official Committee of Unsecured Creditors of |
| ¶ 8.38. | FORM: Notice of Application for Order Authorizing the Retention of as Counsel for the Official Committee of Unsecured Creditors of |
| ¶ 8.39. | FORM: Declaration of in Support of Application for Order Authorizing the Retention of |

Table of Contents

| | |
|---------|--|
| | as Counsel for the Official Committee of Unsecured Creditors of |
| ¶ 8.40. | FORM: Order Authorizing Employment and Retention of as Counsel for the Official Committee of Unsecured Creditors of |
| ¶ 8.41. | FORM: Application of Official Committee of Unsecured Creditors of for Entry of an Order Authorizing the Employment and Retention of as Lead Counsel Nunc Pro Tunc to [For Use in Larger Chapter 11 Cases] |
| ¶ 8.42. | FORM: Declaration of in Support of Application to Retain and Employ as Lead Counsel to the Official Committee of Unsecured Creditors of Nunc Pro Tunc to [For Use in Larger Chapter 11 Cases] |
| ¶ 8.43. | FORM: Declaration of Chairperson of the Committee, in Support of Application to Retain and Employ as Lead Counsel to the Official Committee of Unsecured Creditors of [For Use in Larger Chapter 11 Cases] |
| ¶ 8.44. | FORM: Order Authorizing the Employment and Retention of as Lead Counsel for the Official Committee of Unsecured Creditors [¶¶ 8.45–8.59 Reserved] |
| ¶ 8.60. | FORM: Application by Unsecured Creditors’ Committee to Employ Accountants |
| ¶ 8.61. | FORM: Declaration of Accountant Proposed to Be Employed by Unsecured Creditors’ Committee |
| ¶ 8.62. | FORM: Order Authorizing Unsecured Creditors’ Committee to Employ Accountants |
| ¶ 8.63. | FORM: Application by Unsecured Creditors’ Committee to Employ Investment Banker |
| ¶ 8.64. | FORM: Declaration of Investment Banker Proposed to Be Employed by Unsecured Creditors’ Committee |
| ¶ 8.65. | FORM: Order Authorizing Unsecured Creditors’ Committee to Employ Investment Banker |
| ¶ 8.66. | FORM: Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of The Bankruptcy Code Authorizing the Employment and Retention of as Restructuring and Financial Advisor to the Official Committee of Creditors Holding Unsecured Claims |

Table of Contents

| | |
|---------|---|
| ¶ 8.67. | FORM: Declaration of Representative Restructuring and Financial Advisor Proposed to be Employed by Unsecured Creditors' Committee Pursuant to 11 U.S.C. § 1103(a) and Bankruptcy Rule 2014 |
| ¶ 8.68. | FORM: Order Granting Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of The Bankruptcy Code Authorizing the Employment and Retention of as Restructuring and Financial Advisor to the Official Committee of Creditors Holding Unsecured Claims |
| ¶ 8.69. | FORM: Notice of Hearing re Application for Order Authorizing Retention of as Special Litigation Counsel for the Official Committee of Creditors Holding Unsecured Claims [U.S.C. § 1103(a), Fed. R. Bankr. P. 2014, and Local Bankruptcy Rule] |
| ¶ 8.70. | FORM: Application for Order Authorizing Retention of as Special Litigation Counsel for the Official Committee of Creditors Holding Unsecured Claims [U.S.C. § 1103(a), Fed. R. Bankr. P. 2014 and Local Bankruptcy Rule] |
| ¶ 8.71. | FORM: Order Granting Application for Order Authorizing Retention of as Special Litigation Counsel for the Official Committee of Creditors Holding Unsecured Claims [U.S.C. § 1103(a), Fed. R. Bankr. P. 2014 and Local Bankruptcy Rule] |
| ¶ 8.72. | FORM: Notice of Application of the Official Committee of Unsecured Creditors of Pursuant to 11 U.S.C. §§ 328(a) and 1103(a), Fed. R. Bankr. P. 2014 and 5002, and Local Bankr. R. for Entry of an Order Authorizing Retention and Employment of as its Forensic Accountants and Litigation Support Consultants Nunc Pro Tunc to |
| ¶ 8.73. | FORM: Application of the Official Committee of Unsecured Creditors of, Pursuant to 11 U.S.C. §§ 328(a) and 1103(a), Fed. R. Bankr. P. 2014 and 5002, and Local R. 2014-1, for Entry of an Order Authorizing Retention and Employment of as its Forensic Accountants and Litigation Support Consultants Nunc Pro Tunc to |
| ¶ 8.74. | FORM: Declaration in Support of the Application of the Official Committee of Unsecured Creditors of, for Authority to Retain as its Forensic Accountants and Litigation Support |

Table of Contents

Consultants, Nunc Pro Tunc to

¶ 8.75. FORM: Order, Pursuant to 11 U.S.C. §§ 328(a) and 1103(a), Fed R. Bankr. P. 2014 and 5002, and Local Rule
Authorizing Retention and Employment of . . . as its Forensic Accountants and Litigation Support Consultants to Official Committee of Unsecured Creditors. 8-162

¶ 8.76. FORM: Application for an Order Pursuant to 11 U.S.C. §§ 328, 330, and 1103 and Federal Rule of Bankruptcy Procedure 2014 Authorizing the Retention and Employment of Local and Conflicts Counsel to the Official Committee of Unsecured Creditors

¶ 8.77. FORM: Notice of Application for an Order Pursuant to 11 U.S.C. §§ 328, 330, and 1103 and Federal Rule of Bankruptcy Procedure 2014 Authorizing the Retention and Employment of Local and Conflicts Counsel to the Official Committee of Unsecured Creditors

¶ 8.78. FORM: Declaration of in Support of Application for an Order Pursuant to 11 U.S.C. §§ 328, 330, and 1103 and Federal Rule of Bankruptcy Procedure 2014 Authorizing the Retention and Employment of Local and Conflicts Counsel to the Official Committee of Unsecured Creditors

¶ 8.79. FORM: Order Pursuant to 11 U.S.C. §§ 328, 330, and 1103 and Federal Rule of Bankruptcy Procedure 2014 Authorizing the Retention and Conflicts Counsel to the Official Committee of Unsecured Creditors

¶ 8.80. FORM: Application for an Order Authorizing the Employment and Retention of as Energy Markets Advisor to the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 328(a), 330(a), and 1103(a), and Fed. R. Bankr. P. 2014(a) and 2016

¶ 8.81. FORM: Notice of Application for an Order Authorizing the Employment and Retention of Energy Markets Advisor to the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 328(a), 330(a), and 1103(a), and Fed. R. Bankr. P. 2014(a) and 2016

¶ 8.82. FORM: Declaration of in Support of Application for an Order Authorizing the Employment and Retention of as Energy Markets Advisor to the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 328(a), 330(a), and 1103(a), and Fed. R. Bankr. P. 2014(A) and 2016

Table of Contents

| | |
|---------|---|
| ¶ 8.83. | FORM: Order Authorizing the Employment and Retention of as Energy Markets Advisor to the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 328(a), 330(a), and 1103(a), and Fed. R. Bankr. P. 2014(a) and 2016 |
| ¶ 8.84. | FORM: Application of Official Committee of Unsecured Creditors for Entry of an Order Authorizing Retention of Intellectual Property Consultants |
| ¶ 8.85. | FORM: Notice of Application of Official Committee of Unsecured Creditors for Entry of an Order Authorizing Retention of Intellectual Property Consultants |
| ¶ 8.86. | FORM: Declaration of in Support of the Application of the Official Committee of Unsecured Creditors for an Order Approving the Retention and Employment of as Intellectual Property Consultants |
| ¶ 8.87. | FORM: Order Authorizing Retention of Intellectual Property Consultants to the Unsecured Creditors' Committee |
| ¶ 8.88. | FORM: Application of the Official Committee of Unsecured Creditors Pursuant to Sections 328(a), 330 and 1103(a) of the Bankruptcy Code, Fed. R. Bankr. P. 2014(a) and Local Bankr. Rule for Authorization to Retain and Employ as Real Estate and Asset Liquidation Consultants |
| ¶ 8.89. | FORM: Notice of Application of the Official Committee of Unsecured Creditors Pursuant to Sections 328(a), 330 and 1103(a) of the Bankruptcy Code, Fed. R. Bankr. P. 2014(a) and Local Bankr. Rule for Authorization to Retain and Employ as Real Estate and Asset Liquidation Consultants |
| ¶ 8.90. | FORM: Declaration of in Support of the Application of the Official Committee of Unsecured Creditors for an Order Approving the Retention and Employment of as Real Estate and Asset Liquidation Consultants |
| ¶ 8.91. | FORM: Order Authorizing the Official Committee of Unsecured Creditors to Retain and Employ as Real Estate and Asset Liquidation Consultants |
| ¶ 8.92. | FORM: Application to Employ as Local Counsel to the Official Committee of Unsecured Creditors |

Table of Contents

¶ 8.93. FORM: Notice of Application to Employ as
Local Counsel to the Official Committee of Unsecured
Creditors

¶ 8.94. FORM: Declaration of in Support of
Application to Employ as Local Counsel
to the Official Committee of Unsecured Creditors

¶ 8.95. FORM: Order Granting Application to Employ
. as Local Counsel to the Official
Committee of Unsecured Creditors

¶ 8.96. FORM: Roster of a Creditors’ Committee

¶ 8.97. FORM: Designation of Representatives by Member of
Unsecured Creditors’ Committee

¶ 8.98. FORM: Motion for Full Disclosure of Information Regarding
Claims Against the Debtor and Its Affiliates

¶ 8.99. FORM: Disclosure Statement by Members of the Unsecured
Creditors’ Committee

CHAPTER 9 By-Laws for a Chapter 11 Creditors’ Committee

¶ 9.01. The Purpose of By-Laws

¶ 9.02. Committee Membership

¶ 9.03. Representatives

¶ 9.04. Proxies

¶ 9.05. Vacancy

¶ 9.06. Officers

¶ 9.07. Subcommittees

¶ 9.08. Meetings

¶ 9.09. Trading Claims

¶ 9.10. Amendments to the By-Laws

¶ 9.11. Certification
[¶¶ 9.12–9.50 Reserved]

¶ 9.51. FORM: By-Laws of the Official Unsecured Creditors’
Committee

¶ 9.51A. FORM: By-Laws of the Official Committee of Unsecured
Creditors of

¶ 9.52. FORM: Designation of Committee Member’s Representative

¶ 9.53. FORM: Change of Designation of Committee Member’s
Designated Representative

¶ 9.54. FORM: Proxy

Table of Contents

| | |
|---------|---|
| ¶ 9.55. | FORM: Waiver of Notice and Written Consent for Holding of Special Meeting |
|---------|---|

| | |
|-------------------|---|
| CHAPTER 10 | Rules of Procedure for a Chapter 11 Creditors' Committee |
|-------------------|---|

| | |
|----------|---------------------------|
| ¶ 10.01. | In General |
| ¶ 10.02. | Classification of Motions |
| ¶ 10.03. | Precedence of Motions |
| ¶ 10.04. | Order of Business |
| ¶ 10.05. | Voting |

| | |
|-------------------|--|
| CHAPTER 11 | Multiple Committees in Chapter 11 Cases |
|-------------------|--|

| | |
|----------|---|
| ¶ 11.01. | In General |
| ¶ 11.02. | Discretionary Appointment of Multiple Committees by the United States Trustee |
| ¶ 11.03. | The Need for Adequate Representation |
| ¶ 11.04. | The Cost Factor |
| ¶ 11.05. | The Size of the Case |
| ¶ 11.06. | Widely and Publicly Held Claims or Equity Security Interests |
| ¶ 11.07. | Conflicts Within a Committee |
| ¶ 11.08. | The Problem of Disruption and Delay |
| ¶ 11.09. | Alternative to the Appointment of a Separate Committee |
| ¶ 11.10. | Solvency or Insolvency of the Debtor |
| ¶ 11.11. | Affiliated Cases |
| ¶ 11.12. | Dissolving an Optional Committee |
| ¶ 11.13. | A Committee Appointed Under the Code May Not "Dissolve" Itself |
| | [¶¶ 11.14–11.50 Reserved] |
| ¶ 11.51. | FORM: Motion for Appointment of Equity Security Holders' [Subordinated Secured Debenture Holders'] Committee |
| ¶ 11.52. | FORM: Opposition of Official Unsecured Creditors' Committee to Motion for Appointment of Equity Security Holders' [Subordinated Secured Debenture Holders'] Committee |
| ¶ 11.53. | FORM: Order Directing Appointment of Equity Security Holders' [Subordinated Secured Debenture Holders'] Committee |

Table of Contents

| | |
|----------|---|
| ¶ 11.54. | FORM: Order Denying Motion for Appointment of Equity Security Holders' [Subordinated Secured Debenture Holders'] Committee |
| ¶ 11.55. | FORM: Motion of the Official Committee of Unsecured Creditors for an Order for (A) Disbanding the Official Committee of Security Holders Appointed by the United States Trustee or, Alternatively, (B) Limiting the Scope of Duties and Fees and Expenses Which May Be Incurred by Such Committee |
| ¶ 11.56. | FORM: Notice of Motion of the Official Committee of Unsecured Creditors for an Order (A) Disbanding the Official Committee of Equity Holders Appointed by the United States Trustee or, Alternatively, (B) Limiting the Scope of Duties and Fees and Expenses Which May Be Incurred by Such Committee |
| ¶ 11.57. | FORM: Order Granting the Official Committee of Unsecured Creditors' Motion for an Order Disbanding the Official Committee of Equity Security Holders Appointed by the United States Trustee |
| ¶ 11.58. | FORM: Order with Respect to the Official Committee of Unsecured Creditors' Motion for an Order Disbanding the Official Committee of Equity Security Holders Appointed by the United States Trustee |

| | |
|-------------------|--|
| CHAPTER 12 | Accommodating Disparate Interests Within a Single Chapter 11 Creditors' Committee |
|-------------------|--|

| | |
|----------|------------|
| ¶ 12.01. | In General |
|----------|------------|

| | |
|-------------------|--|
| CHAPTER 13 | Duties of a Chapter 11 Creditors' Committee |
|-------------------|--|

| | |
|----------|--|
| ¶ 13.01. | In General |
| ¶ 13.02. | Duty to Employ Attorneys, Accountants or Other Agents: Section 1103(a) |
| ¶ 13.03. | Duty to Consult: Section 1103(c)(1) |
| ¶ 13.04. | Duty to Investigate: Section 1103(c)(2) |
| ¶ 13.05. | Duty to Participate in the Formulation of a Plan: Section 1103(c)(3) |
| ¶ 13.06. | Duty to Advise: Section 1103(c)(3) |
| ¶ 13.07. | Duty to Request the Appointment of a Trustee or Examiner: Section 1103(c)(4) |
| ¶ 13.08. | Duty to Provide Access to Information |

Table of Contents

| | |
|----------|---|
| ¶ 13.09. | Duty to Solicit and Receive Comments from Creditors |
| ¶ 13.10. | Duty to Perform Other Services: Section 1103(c)(5) [¶¶ 13.11–13.50 Reserved] |
| ¶ 13.51. | FORM: Motion for Order Requiring Unsecured Creditors’ Committee to Provide Access to Information |
| ¶ 13.52. | FORM: Notice of Hearing on Motion for Order Requiring Unsecured Creditors’ Committee to Provide Access to Information |
| ¶ 13.53. | FORM: Declaration in Support of Motion for Order Requiring Unsecured Creditors’ Committee to Provide Access to Information |
| ¶ 13.54. | FORM: Objections of Committee of Creditors Holding Unsecured Claims to Motion for Order Requiring Unsecured Creditors’ Committee to Provide Access to Information |
| ¶ 13.55. | FORM: Order Granting in Part and Denying in Part Motion for Order Requiring Unsecured Creditors’ Committee to Provide Access to Information |
| ¶ 13.56. | FORM: Motion by Committee of Creditors Holding Unsecured Claims for Protective Order re Providing Access to Information and Soliciting Comments |
| ¶ 13.57. | FORM: Notice of Hearing on Motion by Committee of Creditors Holding Unsecured Claims for Protective Order re Providing Access to Information and Soliciting Comments |
| ¶ 13.58. | FORM: Protective Order for Committee of Creditors Holding Unsecured Claims re Providing Access to Information and Soliciting Comments |
| ¶ 13.59. | FORM: Protective Order for Committee of Creditors Holding Unsecured Claims re Providing Access to Information and Soliciting Comments [Alternative Form] |
| ¶ 13.60. | FORM: Notice of Hearing on Motion of the Official Committee of Creditors Holding Unsecured Claims for an Order Establishing Procedures for Compliance with 11 U.S.C. § 1102(b)(3) and Retention of Website Administration Agent in Connection Therewith |
| ¶ 13.61. | FORM: Motion of the Official Committee of Creditors Holding Unsecured Claims for an Order Establishing Procedures for Compliance with 11 U.S.C. § 1102(b)(3) and Retention of a Website Administration Agent in Connection Therewith |
| ¶ 13.62. | FORM: Order Establishing Procedures for Compliance by the Official Committee of Creditors Holding Unsecured Claims with 11 U.S.C. § 102(b)(3) and Retention of a Website |

Table of Contents

| | |
|----------|---|
| | Administration Agent in Connection Therewith |
| ¶ 13.63. | FORM: Notice of Establishment of an Informational Committee Website and Email Address for General Unsecured Creditor Inquiries |
| ¶ 13.64. | FORM: Notice of Motion and Motion of the Official Committee of Creditors Holding Unsecured Claims for Order Approving Information Access Protocol Under Section 1102(B)(3) of the Bankruptcy Code [Alternative Form] |
| ¶ 13.65. | FORM: Declaration of in Support of Motion of the Official Committee of Creditors Holding Unsecured Claims for Order Approving Information Access Protocol Under Section 1102(B)(3) of the Bankruptcy Code |
| ¶ 13.66. | FORM: Order Granting Motion of the official Committee of Creditors Holding Unsecured Claims for Order Approving Information Access Protocol Under Section 1102(B)(3) of the Bankruptcy Code |
| ¶ 13.67. | FORM: Motion of the Official Committee of Unsecured Creditors for an Order Clarifying Requirement to Provide Access to Confidential or Privileged Information |
| ¶ 13.68. | FORM: Order Clarifying Requirement to Provide Access to Confidential Information or to Privileged Information |
| ¶ 13.69. | FORM: Application of Official Committee of Unsecured Creditors for Entry of an Order Authorizing the Employment and Retention of as the Information Agent for the Official Committee of Unsecured Creditors |
| ¶ 13.70. | FORM: Notice of Application of Official Committee of Unsecured Creditors for Entry of an Order Authorizing the Employment and Retention of as the Information Agent for the Official Committee of Unsecured Creditors |
| ¶ 13.71. | FORM: Declaration of in Support of Retention of as Information Agent for the Unsecured Creditors' Committee |
| ¶ 13.72. | FORM: Order Authorizing the Retention of Information Agent for the Official Committee of Unsecured Creditors |

CHAPTER 14 Powers of a Chapter 11 Creditors' Committee

| | |
|----------|--|
| ¶ 14.01. | In General |
| ¶ 14.02. | Power to Employ Attorneys, Accountants or Other Agents |
| ¶ 14.03. | Power to Consult: Section 1103(c)(1) |

Table of Contents

| | |
|-----------|---|
| ¶ 14.04. | Power to Investigate: Sections 1103(c)(2) and 1109(b); Bankruptcy Rule 2004 |
| ¶ 14.05. | Power to Participate in Formulation of a Plan: Section 1103(c)(3) |
| ¶ 14.06. | Power to Advise Those Represented by the Committee as to Any Plan Formulated: Section 1103(c)(3) |
| ¶ 14.06A. | Power Generally to Advise Those Represented by the Committee and to Solicit and Receive Comments: Section 1102(b)(3) |
| ¶ 14.07. | Power to Collect and File Acceptances or Rejections: Section 1103(c)(3) |
| ¶ 14.08. | Power to Request the Appointment of a Trustee or Examiner: Section 1103(c)(4) |
| ¶ 14.09. | Power to Perform Such Other Services as Are in the Interest of Those Represented: Section 1103(c)(5) |
| ¶ 14.10. | Right to Appear and Be Heard: Section 1109(b) |
| ¶ 14.11. | Power to File a Plan: Section 1121(c) & (e) |
| ¶ 14.12. | Power to Request Conversion or Dismissal of the Case [¶¶ 14.13–14.30 Reserved] |
| ¶ 14.31. | FORM: Motion of the Official Committee of Creditors Holding Unsecured Claims Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for Entry of Order Authorizing Expedited Discovery from the Debtors |
| ¶ 14.32. | FORM: Order Granting Motion of the Official Committee of Creditors Holding Unsecured Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Authorizing Expedited Discovery from the Debtors [¶¶ 14.33–14.44 Reserved] |
| ¶ 14.45. | FORM: Objection of the Official Committee of Unsecured Creditors to Debtors’ Motion for an Order Shortening Notice Period for Debtors’ Motion for Entry of an Order Approving Adequacy of Disclosure Statement [¶¶ 14.46–14.50 Reserved] |
| ¶ 14.51. | FORM: Advice of Committee’s Determination Relative to Plan |
| ¶ 14.52. | FORM: Solicitation of Acceptance of Plan |
| ¶ 14.53. | FORM: Solicitation of Rejection of Plan |
| ¶ 14.54. | FORM: Motion by Committee of Creditors Holding Unsecured Claims for Leave to Prosecute Adversary Proceeding (Preference) |

Table of Contents

- ¶ 14.55. FORM: Motion by Unsecured Creditors' Committee for Leave to Intervene in Pending Adversary Proceeding: Fed. R. Civ. P. 24(a)(1)
- ¶ 14.56. FORM: Motion by Unsecured Creditors' Committee for Leave to Intervene in Adversary Proceeding: Fed. R. Civ. P. 24(a)(2) or 24(b)
- ¶ 14.57. FORM: Motion of the Official Committee of Unsecured Creditors to Intervene in Adversary Proceeding Pursuant to Stipulation by the Adversary Parties
- ¶ 14.58. FORM: Notice of the Motion of the Official Committee of Unsecured Creditors to Intervene in Adversary Proceeding Pursuant to Stipulation by the Adversary Parties
- ¶ 14.59. FORM: Stipulation on Standing of Official Committee of Unsecured Creditors to Pursue Avoidance Claims and Related Bankruptcy Law and State Law Claims on Behalf of Estate
- ¶ 14.60. FORM: Order Approving Stipulation on Standing of Official Committee of Creditors Holding Unsecured Claims to Pursue Avoidance Claims and Related Bankruptcy Law and State Law Claims on Behalf of Estate
[¶¶ 14.61–14.69 Reserved]
- ¶ 14.70. FORM: Motion of the Official Committee of Unsecured Creditors to Appoint a Chapter 11 Trustee Pursuant to 11 U.S.C. §§ 1104(a)(1) and 1104(a)(2)
[¶¶ 14.71–14.74 Reserved]
- ¶ 14.75. FORM: Limited Objection and Reservation of Rights of the Official Committee of Unsecured Creditors to Entry of a Final Order (1) Authorizing Use of Cash Collateral and Providing for Adequate Protection, and (2) Granting Liens and Providing Superpriority Administrative Expensive Status
- ¶ 14.76. FORM: Objection of the Official Committee of Unsecured Creditors to the Debtors' Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Provide Adequate Protection
- ¶ 14.77. FORM: Statement of the Official Committee of Unsecured Creditors Regarding Order (A) Approving Bid Procedures and Bid Protections; and (B) Approving the Form and Manner of Notices Thereof
- ¶ 14.78. FORM: Statement of the Official Committee of Unsecured Creditors Regarding Debtors' Motion for an Order: (I) Approving Agreement of Sale and Authorizing the Sale of Substantially All of the Debtors' Assets; (II) Authorizing the

Table of Contents

Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests Pursuant to Section 363(b), (f), and (m) of the Bankruptcy Code; and (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases

CHAPTER 15 Confidentiality of Nonpublic Information

| | |
|----------|--|
| ¶ 15.01. | In General [¶¶ 15.02–15.50 Reserved] |
| ¶ 15.51. | FORM: Stipulation re Use and Dissemination of Confidential Information (Nonpublic Debtor) |
| ¶ 15.52. | FORM: Stipulation re Use and Dissemination of Nonpublic Information of the Debtor (Securities Publicly Traded) |
| ¶ 15.53. | FORM: Notice of Hearing on Motion of the Official Committee of Creditors Holding Unsecured Claims for Entry of an Order Permitting Securities Trading upon Establishment of an Ethical Wall |
| ¶ 15.54. | FORM: Motion by Committee of Creditors Holding Unsecured Claims for Entry of an Order Permitting Securities Trading upon Establishment of an Ethical Wall |
| ¶ 15.55. | FORM: Order Permitting Securities Trading upon Establishment of an Ethical Wall [¶¶ 15.56–15.59 Reserved] |
| ¶ 15.60. | FORM: The Official Committee of Unsecured Creditors’ Ex Parte Motion for Entry of an Order Authorizing the Committee to File Under Seal Its Objection to Approval of the Disclosure Statement with Respect to the Joint Plan of Reorganization for and Its Affiliated Debtors |
| ¶ 15.61. | FORM: Order Granting the Official Committee of Unsecured Creditors’ Ex Parte Motion for Entry of an Order Authorizing the Committee to File Under Seal Its Objection to Approval of the Disclosure Statement with Respect to the Joint Plan of Reorganization for and Its Affiliated Debtors |
| ¶ 15.62. | FORM: Motion of the Official Committee of Unsecured Creditors for (1) a Determination Regarding the Debtors’ Confidentiality Designations and (II) Entry of an Order Authorizing the Committee to File Certain Portions of its Motion for an Order Pursuant to Bankruptcy Rule 2004 |

Table of Contents

| | |
|-------------------|--|
| | Directing Examination and Production of Documents by the Debtors Under Seal |
| ¶ 15.63. | FORM: Ex Parte Motion for an Order Authorizing the Official Committee of Unsecured Creditors to File Under Seal its Unredacted Objection to the Debtors' Designations as "Confidential," "Highly Confidential," and/or "Professionals' Eyes Only" of Information Redacted in the 2004 Motion [¶¶ 15.64–15.69 Reserved] |
| ¶ 15.70. | FORM: Motion of the Official Committee of Unsecured Creditors to Provide the Committee with Access to Certain Portions of the Examiner's Report Based on the Crime-Fraud Exception to the Attorney-Client Privilege or Attorney Work-Product Doctrine |
| ¶ 15.71. | FORM: Notice of Hearing on the Motion of the Official Committee of Unsecured Creditors to Provide the Committee with Access to Certain Portions of the Examiner's Report Based on the Crime-Fraud Exception to the Attorney-Client Privilege or Attorney Work-Product Doctrine |
| ¶ 15.72. | FORM: Order Providing the Committee with Access to Certain Portions of the Examiner's Report Based on the Crime-Fraud Exception to the Attorney-Client Privilege or Attorney Work-Product Doctrine |
| CHAPTER 16 | Fiduciary Responsibilities of Members of a Chapter 11 Creditors' Committee |
| ¶ 16.01. | The Member of a Chapter 11 Committee as a Fiduciary |
| ¶ 16.02. | Nature and Extent of the Fiduciary Responsibility of Chapter 11 Committee Members |
| ¶ 16.03. | Limitations of Fiduciary Responsibility |
| ¶ 16.04. | Remedies for Breach of Fiduciary Responsibility |
| CHAPTER 17 | Negotiation and Confirmation of the Plan |
| ¶ 17.01. | In General |
| ¶ 17.02. | Classes of Claims and the Concept of Impairment |
| ¶ 17.03. | Subordination Agreements |
| ¶ 17.04. | Acceptance of a Chapter 11 Plan |
| ¶ 17.05. | Confirmation of a Chapter 11 Plan |
| ¶ 17.06. | Plan Confirmation Appeals—Equitable Mootness [¶¶ 17.07–17.10 Reserved] |

Table of Contents

| | |
|----------|---|
| ¶ 17.11. | FORM: Objection of the Official Committee of Unsecured Creditors to Motion of the Debtors for Entry of an Order Authorizing the Debtors to Assume Restructuring Support Agreement |
|----------|---|

| | |
|-------------------|--|
| CHAPTER 18 | Reimbursement of Expenses Incurred by a Chapter 11 Creditors' Committee and Its Members |
|-------------------|--|

| | |
|----------|---|
| ¶ 18.01. | Historical Background |
| ¶ 18.02. | Code Provisions Dealing with Compensation and Reimbursement of Expenses [¶¶ 18.03–18.50 Reserved] |
| ¶ 18.51. | FORM: Application for Reimbursement of Expenses by Member of Official Chapter 11 Creditors' Committee |

| | |
|-------------------|--|
| CHAPTER 19 | Compensation of Professionals Employed by a Chapter 11 Creditors' Committee |
|-------------------|--|

| | |
|----------|--|
| ¶ 19.01. | Statutory Provisions Authorizing Compensation and Reimbursement of Expenses of Professionals Employed by a Chapter 11 Creditors' Committee |
| ¶ 19.02. | Statutory Authorization for Chapter 11 Creditors' Committees to Employ Agents |
| ¶ 19.03. | Compensation Prohibited |
| ¶ 19.04. | Compensation of Chapter 11 Committee Professionals When There Are No Free Assets |
| ¶ 19.05. | No Compensation for Prepetition Services |
| ¶ 19.06. | Compensation for Postpetition Services Rendered Without Court Order |
| ¶ 19.07. | Grounds for Denying Compensation |
| ¶ 19.08. | Employment of Professionals by More Than One Chapter 11 Committee |
| ¶ 19.09. | Compensation for Fee Defense [¶¶ 19.10–19.60 Reserved] |
| ¶ 19.61. | FORM: Exhibit A—Customary and Comparable Compensation Disclosures with Fee Applications |
| ¶ 19.62. | FORM: Exhibit B—Summary of Timekeepers Included in This Fee Application |
| ¶ 19.63. | FORM: Exhibit C-1—Budget |
| ¶ 19.64. | FORM: Exhibit C-2—Staffing Plan |

Table of Contents

- ¶ 19.65. FORM: Exhibit D-1—Summary of Compensation Requested by Project Category
- ¶ 19.66. FORM: Exhibit D-2—Summary of Expense Reimbursement Requested by Category
- ¶ 19.67. FORM: Exhibit E—Summary Cover Sheet of Fee Application

CHAPTER 20 Compensation of Professionals Employed by Members of a Chapter 11 Creditors’ Committee

- ¶ 20.01. In General

CHAPTER 21 Unofficial Committees: Expense Reimbursement and Compensation of Professionals

- ¶ 21.01. Official Committees and Their Professionals Are Not Required to Prove “Substantial Contribution”
- ¶ 21.02. Reimbursement of Expenses Incurred by an Unofficial Chapter 11 Creditors’ Committee and Its Members
- ¶ 21.03. Compensation of Professionals Employed by an Unofficial Chapter 11 Creditors’ Committee
- ¶ 21.04. Awards to Unofficial Committees Are Unusual
- ¶ 21.05. Rule 2019 of the Federal Rules of Bankruptcy

CHAPTER 22 Termination of a Chapter 11 Creditors’ Committee

- ¶ 22.01. In General
- ¶ 22.02. Power of Court to Disband Official Committee
[¶¶ 22.03–22.50 Reserved]
- ¶ 22.51. FORM: Final Decree Closing Chapter 11 Case

CHAPTER 23 The Chapter 7 Creditors’ Committee

- ¶ 23.01. In General
- ¶ 23.02. Election of a Chapter 7 Creditors’ Committee
- ¶ 23.03. Role of a Chapter 7 Creditors’ Committee
- ¶ 23.04. Compensation by the Chapter 7 Estate of Attorneys and Other Agents Employed by a Creditors’ Committee and Reimbursement of Expenses

Table of Contents

CHAPTER 24 The Creditors' Committee in Chapter 9 Municipal Debt Adjustment Cases

| | |
|----------|--|
| ¶ 24.01. | Municipal Debt Adjustment Under Chapter 9 |
| ¶ 24.02. | Statutory Structure of Chapter 9 |
| ¶ 24.03. | Plan of Debt Adjustment |
| ¶ 24.04. | Reservation of State Power to Control Municipalities and Limitations on Jurisdiction and Powers of Court |
| ¶ 24.05. | Appointment of Creditors' Committee in Chapter 9 Cases |
| ¶ 24.06. | Compensation of Creditors' Committee, Professionals in Chapter 9 Cases |
| ¶ 24.07. | Compelling the Debtor to Disclose Financial Information to the Creditors' Committee |

CHAPTER 25 The Creditors' Committee in Nonbankruptcy Workouts

| | |
|----------|---|
| ¶ 25.01. | The Role of an Informal Creditors' Committee in Out-of-Court Workouts |
| ¶ 25.02. | Selection of an Out-of-Court Creditors' Committee |
| ¶ 25.03. | Expense Reimbursement and Compensation of Professionals |

CHAPTER 26 Conclusion

TABLE OF CASES

TABLE OF STATUTES

INDEX

About the Author

DAVID S. KUPETZ

DAVID S. KUPETZ is a partner with Troutman Pepper Locke LLP. He is an expert in troubled transactions, crisis avoidance consultation, workouts, restructurings, reorganizations, bankruptcies, receiverships, creditors' rights, assignments for the benefit of creditors and other nonbankruptcy insolvency proceedings. He represents debtors (in restructurings and workouts and in chapter 11 reorganization cases), secured creditors, unsecured creditors' committees, assignees for the benefit of creditors, buyer/sellers of businesses/assets in distressed circumstances and other entities in insolvency and bankruptcy situations. Mr. Kupetz has written many articles on bankruptcy and insolvency topics. He served as a contributing author to *Collier Forms Manual* for many years. Mr. Kupetz is a graduate of the University of California, Santa Barbara (B.A., 1983) and the UC College of the Law, San Francisco (J.D., 1986). Mr. Kupetz was admitted to the California Bar in 1986.

CHAPTER 1

Introduction and Scope of Handbook

This *Handbook* is intended for use primarily by representatives of creditors or interest holders who serve on chapter 11 committees and counsel for committees. Since the representatives will frequently not be lawyers, the chapters of this *Handbook* directed toward committee members have been kept as nontechnical. This *Handbook* is not designed as a treatise on chapter 11 of the Bankruptcy Code. Rather, it is designed to serve two primary functions in aid of committee members: first, to present procedural and organizational suggestions to enable a creditors' committee or equity security holders' committee to function effectively; second, to provide an overview of the role, duties and powers of such committees in a chapter 11 case. Additionally, this *Handbook* provides guidance to and forms for use by counsel for committees.

The procedural and organizational chapters of this *Handbook* are Chapter 7, convening the first meeting of a committee; Chapter 8, organizing a committee; Chapter 9, by-laws for a committee; Chapter 10, rules of procedure for a committee; and Chapter 12, accommodating disparate interests within a chapter 11 creditors' committee. These procedural or organizational chapters are essentially "how-to" in nature and are not encumbered by extensive legal citations.

In the balance of the *Handbook*, Chapters 2, 13 and 14 discuss the role, duties and powers of chapter 11 creditors' committees. Chapter 3 deals with eligibility to serve on a committee; Chapters 4, 5, 6 and 22 with the creation, composition and termination of committees. Chapters 15 and 16 cover the confidentiality of nonpublic information and, in general, fiduciary responsibilities of committee members. Chapter 17 provides guidelines for plan negotiations through a presentation of the statutory requirements of plan content, plan acceptance and plan confirmation. Chapters 18, 19, 20 and 21 deal with matters of compensation and expense reimbursement. These chapters of the *Handbook* are more technical in nature. They contain a great deal of information and should be of assistance to lawyers as well as nonlawyers dealing with the problems discussed. These chapters, of neces-

sity, contain numerous legal citations and quotations to give insight into how the legal problems presented have been decided by the courts, as well as how some have been addressed by Congress.

Although the *Handbook* is primarily for those who serve on and represent chapter 11 creditors' and equity interest holders' committees, the chapters on creditors' committees in chapter 7 liquidation cases, creditors' committees in chapter 9 municipal debt adjustment cases, and creditors' committees in nonbankruptcy workouts are provided to round out the complete subject matter of the *Handbook*.

CHAPTER 2

The Role of a Chapter 11 Creditors’ Committee

SYNOPSIS

| | | |
|--------|--|------|
| ¶ 2.01 | In General | 2-1 |
| ¶ 2.02 | Small Business Cases | 2-4 |
| | [¶¶ 2.03–2.50 Reserved] | |
| ¶ 2.51 | Form: Motion for Order That a Creditors’ Committee Not Be Appointed. | 2-8 |
| ¶ 2.52 | Form: Declaration in Support of Motion for Order That a Creditors’ Committee Not Be Appointed. | 2-10 |
| ¶ 2.53 | Form: Notice of Motion for Order That a Creditors’ Committee Not Be Appointed and Opportunity to Object. | 2-12 |
| ¶ 2.54 | Form: Order That a Committee of Creditors Not Be Appointed. | 2-13 |

¶ 2.01 In General

The first questions usually asked by committee members not familiar with chapter 11 cases or proceedings thereunder are, “Why am I here?,” “What is expected of me?” and “What role will this chapter 11 committee be expected to play in the chapter 11 case?” The answers to these questions will normally be given by a representative of the United States trustee at the informal status conference of the 20 largest creditors or at the time the creditors’ committee is first convened. The role of a creditors’ committee in chapter 11 cases may be explained in many different ways; perhaps the best explanation was given in the House Report issued in connection with the House version of the Bankruptcy Reform Act of 1978.¹ The House Report stated that

¶ 2.01

¹ H. Rep. No. 95-595, 95th Cong., 1st Sess. 401 (1977), *reprinted in* Vol. C Collier on Bankruptcy, App. Pt. 4(d)(i) (Matthew Bender 16th ed.).

chapter 11 committees will be the primary negotiating bodies for the formulation of a plan of reorganization. They will represent the various classes of creditors and equity security holders from which they are selected. They will also provide supervision of the debtor in possession and of the trustee, and will protect their constituents' interests.

From the foregoing statement, the two primary functions of a chapter 11 committee are discernible. The role of a committee is to investigate the affairs of the debtor and negotiate a plan. Put another way, a chapter 11 committee polices the case, recommending the respective distribution of the debtor's reorganization value among the different classes of creditors and equity security holders. This involves a determination by the committee of the viability of the debtor's management and business plans. When the committee is armed with the facts uncovered as a result of its investigation, the committee is in a position to engage in meaningful negotiation with the debtor in possession or trustee relative to the terms of a plan of reorganization that would equitably distribute the economic interests of the debtor among the different competing classes of creditors and equity security holders or, if necessary, that would liquidate the business of the debtor and distribute fairly the proceeds of such liquidation. When the roles of the debtor in possession or trustee and the various chapter 11 committees are properly carried out, the reorganization process will be moved forward as expeditiously and economically as possible, avoiding unnecessary, time consuming and expensive litigation.

The role of a creditors' committee in chapter 11 will vary from case to case and depend on the size and complexity of the case and also on whether a trustee or examiner has been appointed.² Nevertheless, the fundamental role remains the same: to ascertain the facts and negotiate a plan, if that is possible. "Creditor Committees have the responsibility to protect the interest of the creditors; in essence, the function of a creditors' committee is to act as a watchdog on behalf of the larger body of creditors which it represents."³

In *In re Seascope Cruises, Ltd.*,⁴ the court pronounced that "the creditors' committee is not merely a conduit through which the debtor speaks to and negotiates with the creditors generally; an effective committee must necessarily be adversarial if it is to fulfill its role as watchdog in a chapter 11

² 7 Collier on Bankruptcy, ¶ 1103.05[1][a] (Matthew Bender 16th ed.).

³ *Ritchie Capital Mgmt., L.L.C. v. Kelley*, 785 F.3d 273, 280–81 (8th Cir. 2015), quoting *Loop Corp. v. United States Tr.*, 379 F.3d 511, 519 (8th Cir. 2004) (internal quotation marks omitted).

⁴ 131 B.R. 241 (Bankr. S.D. Fla. 1991).

case.”⁵ So, too, the court in *In re General Homes Corp.*⁶ stated that “committees play an active and vital role in the administration of a Chapter 11 case and the development of a viable plan of reorganization.”⁷ On the other hand, that court also held that “it is necessary to the reorganization process that a committee exercise its role carefully and judiciously, and not bring to the attempted reorganization tactics invoked for the improper purposes of harassment or delay.”⁸ “The primary job of the Creditors’ Committee in a Chapter 11 case is to represent the interests of unsecured creditors.”⁹

If a plan is not feasible, the creditors’ committee may recommend liquidation of the debtor so that the interests represented by the creditors’ committee are maximized. However, the creditors’ committee may not just function as a liquidation advisor.¹⁰

To play its proper role in a chapter 11 case, the members of the creditors’ committee must be prepared to devote time, effort and intelligence to the representation of the interests of the committee’s constituency.

⁵ *In re Seascope Cruises, Ltd.*, 131 B.R. 241, 243 (Bankr. S.D. Fla. 1991).

⁶ 34 C.B.C.2d 215, 181 B.R. 898 (Bankr. S.D. Tex. 1995).

⁷ *In re General Homes Corp.*, 34 C.B.C.2d 215, 221, 181 B.R. 898, 902 (Bankr. S.D. Tex. 1995).

⁸ *In re General Homes Corp.*, 34 C.B.C.2d 215, 221, 181 B.R. 898, 902 (Bankr. S.D. Tex. 1995). The court refused to permit a compromise of an adversary proceeding initiated by the creditors’ committee one day prior to the plan confirmation hearing that sought equitable subordination of secured claims and other relief. The court noted that in advocating the compromise the parties sought to avoid expenses and (to some) professional embarrassment. Ultimately, the court found that these considerations, as well as others such as probability of success on the merits, potential difficulty in collecting a judgment, and complexity and expense of litigation, were outweighed by the need to offer guidance to creditors’ committees in light of the dearth of guidance that statutory and case law thus far has provided. For further discussion, see ¶ 14.10 *infra*.

⁹ *In re Cascade Acceptance Corp.*, 2011 Bankr. LEXIS 752, at *1 (Bankr. N.D. Cal. Mar. 1, 2011) (“In many Chapter 11 cases, the Committee is an ally of the debtor in possession supporting efforts to reorganize, often in the face of opposition from secured creditors. That was not the case here. The Committee was a thorn in the side of the Debtor in this case from its inception.”).

¹⁰ *In re Lyons Transp. Lines*, 123 B.R. 526, 24 C.B.C.2d 1438 (Bankr. W.D. Pa. 1991).

¶ 2.02 Small Business Cases

The Bankruptcy Reform Act of 1994¹ amended various sections of chapter 11 of the Bankruptcy Code to permit an expedited and less expensive procedure for reorganizing a “small business,” which was defined as a person engaged in commercial or business activities (other than those relating primarily to owning or operating real estate), with noncontingent, liquidated debts of \$2 million or less.² The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005³ deleted the definition of small business and replaced it with definitions of “small business case” and “small business debtor.”⁴ Section 101(51C) defines a “small business case” as a case filed under chapter 11 in which the debtor is a small business debtor. Section 101(51D) defines a “small business debtor” as follows:

The term “small business debtor”—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than \$3,424,000⁵ (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of

¶ 2.02

¹ Pub. L. No. 103-394 (1994), *reprinted in* Vol. E. Collier on Bankruptcy, App. Pt. 9(a) (Matthew Bender 16th ed.).

² Former 11 U.S.C. § 101(51C), added by the 1994 Act, defined a small business as follows:

“small business” means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000.

³ Pub. L. No. 109-8 (2005), *reprinted in* Vol. E-2, Collier on Bankruptcy, App. Pt. 10(a) (Matthew Bender 16th ed.).

⁴ Added by Pub. L. No. 109-8, § 432(a) (2005).

⁵ This amount applies in cases commenced on or after April 1, 2025. For cases commenced on or after April 1, 2019, and before April 1, 2022, the dollar amount is \$2,725,625. For cases commenced on or after April 1, 2022, and before April 1, 2025, the dollar amount is \$3,024,725.

unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include—(i) any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$3,424,000⁶ (excluding debt owed to 1 or more affiliates or insiders)[.]

Prior to the enactment of the Small Business Reorganization Act of 2019 (“SBRA”),⁷ section 1102(a)(3) provided that “[o]n request of a party in interest in a case in which the debtor is a small business debtor and for cause, the court may order that a committee of creditors not be appointed.” Under the 2019 amendment, section 1102(a)(3) was changed to provide that “[u]nless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case” The “cause” for which the court may order that a committee be appointed is uncertain. One example could be where a prepetition committee was in place. If a representative committee can be and is appointed and functions actively, the case will not meet the definitions of “small business case” or “small business debtor” and the small business rules will not apply. The creditors’ committee role will be the same as in other chapter 11 cases.

As a result of the then-emerging impact of the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was enacted on March 27, 2020.⁸ The CARES Act expanded application of the SBRA. Before the enactment of the CARES Act, a company or an individual engaged in commercial or business activities with less than \$2,725,625 in total non-contingent liquidated debt, including secured and unsecured claims, could elect to file under subchapter V of chapter 11. Under that CARES Act, that debt limit was raised to \$7,500,000 for one year through March 27, 2021. Subsequently, the COVID-19 Bankruptcy Relief Extension Act of 2021 signed by President Biden on March 27, 2021, extended the increased debt ceiling through March 27, 2022.⁹

However, there was a delay in further extending the increased debt limit. Ultimately, on June 21, 2022, President Biden signed the Bankruptcy

⁶ This amount applies in cases commenced on or after April 1, 2025. For cases commenced on or after April 1, 2019, and before April 1, 2022, the dollar amount is \$2,725,625. For cases commenced on or after April 1, 2022, and before April 1, 2025, the dollar amount is \$3,024,725.

⁷ Pub. L. No. 116-54 (2019), effective February 19, 2020.

⁸ Pub. L. No. 116-136 (2020), effective March 27, 2020.

⁹ Pub. L. No. 117-5 (2021).

Threshold Adjustment and Technical Corrections Act¹⁰ into law, which raised the debt limit back to \$7.5 million for businesses electing treatment under the Small Business Reorganization Act, codified under subchapter V of chapter 11. The act was originally approved by the U.S. Senate on April 7, 2022, and later approved by the U.S. House of Representatives on June 7, 2022, before being sent to the president for signature. The act's two-year sunset provision, however, arrived on June 21, 2024, without Congress providing for any extension of the elevated \$7.5 million debt limit or otherwise enacting the increased debt limit into law. Earlier in 2024, legislation to further extend the \$7.5 million limit was introduced in the United States Congress,¹¹ but was not enacted into law by June 21, 2024. Accordingly, the debt limit for Subchapter V dropped to \$3,024,725 for cases filed on or after June 22, 2024. Effective as of April 1, 2025, the debt limit for Subchapter V increased to \$3,424,000.

The chapter 11 process under subchapter is designed to be streamlined (with both certain procedural and substantive requirements that apply in other chapter 11 cases eliminated or only applicable subject to court imposition) and less costly. There is no appointment of a creditors' committee in a subchapter V case, unless the court orders otherwise.¹² Further, in subchapter V, unlike in other chapter 11 cases, only the debtor may file a plan, there is no disclosure statement requirement (unless the court orders otherwise), the absolute priority rule is inapplicable, and the requirement that at least one impaired consenting class accept a plan that impairs a class of claims is eliminated so long the plan is fair and equitable and does not discriminate unfairly, but "fair and equitable" is defined differently in subchapter V cases to permit a debtor to retain an interest in the business after confirmation.¹³

In *Lear Capital, Inc.*,¹⁴ the court approved a settlement that provided for the formation of a committee to represent the debtor's customers. The court issued an order providing that "[p]ursuant to 11 U.S.C. §§ 1181(b), 1102(a)(2), and 1102(a)(3), the United States Trustee is directed to appoint an official committee of customer creditors in this case" and that section

¹⁰ Pub. L. No. 117-151 (2022)

¹¹ S. 4150 ("Bankruptcy Threshold Adjustment Extension Act").

¹² 11 U.S.C. § 1181(b).

¹³ 11 U.S.C. § 1181(a) and (b).

¹⁴ Case No. 22-10165 (BLS) (Bankr. D. Del. 2022).

“1103 is applicable in the . . . case.”¹⁵ Section 1102 regarding appointment of committees and section 1103 providing the powers and duties of committees do not apply in subchapter V cases, unless the court orders otherwise, as it did in *Lear Capital*. Accordingly, in what likely will be a small minority of subchapter V cases, creditors’ committees may be appointed.

In *In re Bonert*,¹⁶ a chapter 11 case commenced prior to the enactment of SBRA, the bankruptcy court approved the debtor’s amendment of its chapter 11 petition to elect treatment under subchapter V. Over the objection of the creditors’ committee, the court approved this request, stating that “[t]he Court finds re-designation to Subchapter V to be appropriate on the specific facts of this case. However, it is important for the Court to emphasize that re-designation will not necessarily be proper in all Chapter 11 petitions commenced prior to the effective date of SBRA.”¹⁷ The court further explained that it would allow the creditors’ committee to continue in existence “if it can demonstrate that its continued existence will improve recovery to creditors, will assist in the prompt resolution of this case, and is necessary to provide effective oversight of the Debtors.”¹⁸

¶¶ 2.03–2.50 [Reserved]

¹⁵ Case No. 22-10165 (BLS) (Bankr. D. Del. 2022), docket no. 254 (June 27, 2022).

¹⁶ 2020 Bankr. LEXIS 1783 (Bankr. C.D. Cal. June 3, 2020).

¹⁷ 2020 Bankr. LEXIS 1783, at *7–8.

¹⁸ 2020 Bankr. LEXIS 1783, at *8–9.

¶ 2.51 Form: Motion for Order That a Creditors' Committee Not Be Appointed.

UNITED STATES BANKRUPTCY COURT

. DISTRICT OF

| | | |
|--|---|---|
| <p>In re</p> <p>.,</p> <p style="text-align: right;">Debtor.</p> | } | <p>Chapter 11</p> <p>Case No.</p> <p>Date:</p> <p>Time:</p> <p>Place:</p> |
|--|---|---|

Motion for Order That a Creditors' Committee Not Be Appointed

The motion of respectfully represents:

1. Movant is the United States trustee for the district in which the above-captioned case is pending and, as such, has standing to bring this motion.

2. The debtor is a small business debtor within the definition of 11 U.S.C. § 101(51D) of the Bankruptcy Code. The debtor is engaged in commercial or business activity, and the debtor's primary activity is not the owning or operating of real property and activities incidental thereto. The debtor's aggregate, noncontingent, liquidated, secured and unsecured debts as of the date of the petition initiating the above-captioned case do not exceed \$2 million. No committee of unsecured creditors has been appointed herein.

3. Cause exists for the court to make its order that a committee of creditors not be appointed herein. To wit as shown by the declaration of attached no hereto:

a. The debtor has only unsecured creditors who might otherwise qualify to serve on an official committee of creditors holding unsecured claims. All (but) of such creditors have stated that they would not serve on a committee of creditors in this case.

b. Appointment of an official creditors' committee in this case is not necessary to secure adequate representation of the unsecured creditors.

WHEREFORE, movant requests that this court, pursuant to section

1102(a)(3) of the Bankruptcy Code, make its order that a committee of creditors not be appointed in this case.

Dated:

By:
Attorney for Movant

¶ 2.52 Form: Declaration in Support of Motion for Order That a Creditors' Committee Not Be Appointed.

UNITED STATES BANKRUPTCY COURT

. DISTRICT OF

| | | |
|---|---|---|
| <p>In re</p> <p>.,</p> <p>Debtor.</p> | } | <p>Chapter 11</p> <p>Case No.</p> <p>Date:</p> <p>Time:</p> <p>Place:</p> |
|---|---|---|

Declaration of in Support of Motion for Order That a Creditors' Committee Not Be Appointed

I,, declare under penalty of perjury as follows:

1. I am a case analyst in the office of the United States trustee assigned to this case and have personal knowledge of the facts stated herein and, if called as a witness, could competently testify thereto.

2. On (date), I spoke by telephone with, creditors holding unsecured claims in the above-captioned case who would otherwise be eligible to serve on an official creditors' committee and inquired whether would be willing to serve on such a committee, if formed. informed me that he/she would not be willing to serve and stated his/her belief that an unsecured creditors' committee would not be necessary to secure adequate representation of unsecured creditors in this case.

3. As shown by the schedules of the debtor, there are only unsecured creditors of the debtor and, to my knowledge, they are acquainted with one another and are in communication without the need of an official committee of creditors.

Dated:

By:

¶ 2.53 Form: Notice of Motion for Order That a Creditors' Committee Not Be Appointed and Opportunity to Object.

UNITED STATES BANKRUPTCY COURT

. DISTRICT OF

| | | |
|--|---|---|
| <p>In re</p> <p>.,</p> <p style="text-align: right;">Debtor.</p> | } | <p>Chapter 11</p> <p>Case No.</p> <p>Date:</p> <p>Time:</p> <p>Place:</p> |
|--|---|---|

Notice of Motion for Order That a Creditors' Committee Not Be Appointed and Opportunity to Object

TO ALL PARTIES IN INTEREST IN THE ABOVE-CAPTIONED CASE, INCLUDING ALL PARTIES WHO HAVE REQUESTED SPECIAL NOTICE:

PLEASE TAKE NOTICE that the United States trustee has on (date) filed a motion for an order that a committee of creditors not be appointed in this case. A copy of said motion is attached hereto. Unless an objection is filed by a party within days from the date of this notice, the court may enter its order granting the motion and ordering that a creditors' committee not be appointed in this case.

Dated:

By:
Attorney for Movant

¶ 2.54 Form: Order That a Committee of Creditors Not Be Appointed.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF

In re

Debtor.

Chapter 11

Case No.

Date:

Time:

Place:

Order That a Committee of Creditors Not Be Appointed

The United States trustee for this district having filed a motion requesting that the court make its order that a committee of creditors not be appointed in this case, and it appearing from the notice of motion and proof of service filed with the court that adequate notice has been duly given to all parties in interest, including all parties who have requested special notice; and it further appearing that no objection to the granting of said motion has been filed.

Now, good cause appearing from the allegations of the motion and the declaration of attached thereto, it is

ORDERED that a committee of creditors, otherwise authorized by section 1102 of the Bankruptcy Code, not be appointed in this case.

Dated:

By:
Bankruptcy Judge