

**NEW YORK  
CITY BAR**

**COMMITTEE ON BANKRUPTCY AND CORPORATE REORGANIZATION**

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September 10, 2012

**Via Electronic Mail and U.S. Mail**

Re: Requested Resources for the United States Bankruptcy Court for the Southern District of New York

Dear Senators and Representatives:

I write on behalf of the Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York (the “**Committee**”) in support of the requests of the United States Bankruptcy Court for the Southern District of New York (the “**SDNY Bankruptcy Court**”) that (a) the position held by the recently retired Chief Judge Arthur J. Gonzalez be reinstated and (b) the Court receive adequate resources to permit it, including the office of the Clerk of Court (the “**Clerk’s Office**”), to function effectively.<sup>1</sup>

The Association of the Bar of the City of New York is a professional organization made up of more than 23,000 members. Its Committee on Bankruptcy and Corporate Reorganization comprises 49 members, including practitioners, scholars, bankruptcy court judges and government officials, committed to improving bankruptcy law and practice. The Committee includes many lawyers who regularly represent debtors, creditors and other parties-in-interest in business bankruptcy cases in courts throughout the country. Collectively, members of our Committee have been involved in nearly every major business bankruptcy filed in recent years.

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<sup>1</sup> The Committee understands that because of budget cuts in fiscal year 2012, the SDNY Bankruptcy Court lost 10% of its staff and is slated to lose more positions in fiscal year 2013. In addition, the Committee understands that the Court is expected to be affected by a proposed 24% budget cut under the Budget Control Act of 2011. This cut would be on top of an already-imposed 18% budget cut.

Attached hereto is a memorandum from Chief Judge Cecelia G. Morris of the SDNY Bankruptcy Court. As explained in more detail in the memo, the SDNY Bankruptcy Court believes that in order to continue to function at the same pace and with the same diligence as it has in the past, it is important that the judgeship previously held by the Hon. Arthur J. Gonzalez be reinstated and that the Court, and its Clerk's Office, receive sufficient financial resources to function effectively. The Committee wholeheartedly concurs for the reasons set forth herein.

As noted by Chief Judge Morris in her memo, many of the largest Chapter 11 cases in the world are filed in the SDNY Bankruptcy Court, including those of a number of the most renowned American and international companies. Presiding over cases in which major – sometimes even national – interests, financial and otherwise, are at stake, the judges of the SDNY Bankruptcy Court routinely face exceedingly complex and time-sensitive issues. A key factor in the realization of Chapter 11's goal of preserving and maximizing estate value is the judicial oversight provided by bankruptcy courts. In a typical case, there are generally three stages: a triage stage, the plan confirmation stage and the claims resolution / asset recovery stage. In the types of large cases regularly filed in the SDNY Bankruptcy Court, the first stage of a case often requires emergency consideration of myriad difficult and important motions and requests for relief that can be, and often are, instrumental in saving jobs, money and even the entire business of the Debtor and of other companies that depend on the Debtor. Owing to the size, complexity and importance of these cases, the later stages of plan confirmation and claims resolution are often very drawn-out and require extensive judicial resources.

Meeting these challenges and appropriately administering the Chapter 11 cases filed with it, as the SDNY Bankruptcy Court has consistently done to date, lays a large claim on judicial resources and demands the utmost from the judges, clerks and other professionals at the Court. These cases require an extraordinary level of service in order to adequately protect the many varied and significant interests at stake: those of employees and retirees, landlords, vendors, customers, lenders and other creditors, shareholders and other stakeholders. All of these interests therefore demand that the SDNY Bankruptcy Court be provided with such resources as required to continue meeting the needs of the cases brought before it. As evidenced by Chief Judge Morris' memo, the Court believes it is very important to reinstate the judgeship previously held by the Hon. Arthur J. Gonzalez and to provide the Court with sufficient financial resources. The Committee agrees.

As regards the provision of sufficient resources to the SDNY Bankruptcy Court, the Committee feels particularly strongly about the potential impact on the Clerk's Office of the across-the-board cuts proposed pursuant to the Budget Control Act of 2011. From a practice perspective, the Committee believes that these cuts would be severely detrimental. They would hurt the interests of bankruptcy practitioners, their clients and the professionals at the Bankruptcy Court Clerk's Office alike. The Committee has serious concerns that the sequestration contemplated by the Budget Control Act of 2011 would impact the everyday services provided by the Clerk's Office, upon which bankruptcy practitioners rely on a daily basis, including after hours and on weekends as often dictated by the interests of stakeholders in the cases brought before the SDNY Bankruptcy Court. We are advised that the proposed budget cuts would result in delays and longer wait times generally, which may cause key constituencies in a bankruptcy case, such as lenders, vendors, customers and employees, to lose confidence in a corporate debtor, further weakening an already troubled company. Decreased availability of the Clerk's

Office because of required headcount reductions could have damning consequences in those many instances in which time is of the essence in order to save distressed companies and the jobs they provide or otherwise prevent the unnecessary loss of estate value. In such cases, it is imperative to be able to have orders entered and effective promptly, to be able to secure hearings quickly, and to have cases and other pleadings docketed and routed efficiently.

Ready access to the Clerk's Office is at least as important to pro se individuals as it is to businesses. A tremendous number of such individuals file for personal bankruptcy in the SDNY Bankruptcy Court. The demands of individual filers on Clerk's Office resources is especially pronounced, as individuals often require a great deal of personal attention and assistance with aspects of bankruptcy unfamiliar to them, including electronic case filing (ECF), publicly available dockets (PACER), and other computerized tools. The SDNY Bankruptcy Court and the Committee each spend a great deal of time and effort assisting such individuals and trying to help address their concerns. Any additional reductions in court personnel as a result of the proposed sequestration and budget cuts would decrease the resources available to assist individual debtors seeking a "fresh start" during an extremely stressful period of their lives and would therefore probably hurt such persons most.

The Committee believes that the SDNY Bankruptcy Court operates at peak efficiency. Over the years, the Court has been at the forefront of streamlining its Clerk's Office, in particular through the use of ECF, PACER, and the maintenance of extraordinarily useful websites. These tools have already enabled the Court to reduce its manpower levels to the bare minimum. Any further decrease in court resources would inevitably lead not only to a detrimental decrease in the quality and level of service provided to both corporate and individual debtors and their creditors, but also to even greater stress being put upon the professional staff at the SDNY Bankruptcy Court, including the Clerk's Office. We fear the resulting delays would have severe economic impacts on individuals and businesses. It is the Committee's sincere hope that the sequestration currently contemplated by the Budget Control Act of 2011 will be avoided, such that bankruptcy practitioners and all those parties-in-interest they represent can continue to rely upon the vital services provided by the Bankruptcy Court Clerk's Office in the normal course of their practice.

Thank you for your time in reviewing this letter. If it would be useful to you, I would be delighted to speak further on these subjects at your convenience.

Respectfully submitted,



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Damian S. Schaible, Chair  
Committee on Bankruptcy and Corporate Reorganization  
Association of the Bar of the City of New York

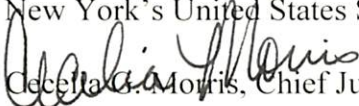


UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
ONE BOWLING GREEN  
NEW YORK, NEW YORK 10004-1408  
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CECELIA G. MORRIS  
CHIEF BANKRUPTCY JUDGE

355 MAIN STREET  
POUGHKEEPSIE, NEW YORK 12601  
(845) 452-4200

To: New York's United States Senators and Representatives

From:  Cecelia G. Morris, Chief Judge, Southern District of New York Bankruptcy Court

Re: Support for Reinstating Judgeship and Resources in the Southern District of New York Bankruptcy Court

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**Introduction**

The United States Bankruptcy Court for the Southern District of New York is experiencing a crisis of staffing, having lost a temporary judgeship upon the retirement of the Hon. Arthur Gonzalez and 10% of its administrative staff due to budget cuts in fiscal year 2012. The complexity of administering a “mega” chapter 11 case imposes duties on judges and the Clerk’s Office in this district that are unknown in other courts. In addition, many people will have their first and only exposure to the federal courts as individual creditors in one of the “mega” and “ultra-mega” bankruptcy cases filed in the Southern District of New York Bankruptcy Court. The diligence and excellence required for a federal body on the scale found in the three divisions of this Court can only be achieved by the work of committed judges and their meticulous staff.

The United States Bankruptcy Court for the Southern District of New York appreciates this opportunity to provide a discussion of the critical functions provided by the bankruptcy judges and the Clerk of Court in connection with the administration and oversight of cases under Title 11 of the United States Code (the “Bankruptcy Code”). The Court submits this paper in support of (i) reinstating the position held by the recently retired Chief Judge Gonzalez and (ii) establishing adequate resources to allow the Court, including the office of the Clerk of Court, to function effectively.

**Description of the Court and Its Employees**

The Southern District of New York Bankruptcy Court is one of the most active bankruptcy courts in the world. Due in part to the Second Circuit’s binding rulings on several controversial questions of bankruptcy law,<sup>1</sup> and the quality of the judges and administrators in the bankruptcy

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<sup>1</sup> See *Dish Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79, 97-101 (2d Cir. 2010) (finding “gifting” by secured creditors to prior shareholders violates absolute priority rule); *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 464 (2d Cir. 2007) (discussing

and district courts, the Southern District attracts sizable and complex chapter 11 cases because it offers stability and predictability of reorganization that may be unavailable in other bankruptcy courts. The volume of cases is staggering, with many well-recognized corporations filing here, not to mention thousands of consumer cases pending in the Court's three locations.<sup>2</sup> The United States' bankruptcy laws are among the most sophisticated and comprehensive in the world, and the Court regularly hosts foreign insolvency judges, including jurists from China, Russia and Australia, just to name a few. In response to the unprecedented demands of the housing crisis, the Court introduced a first-of-its-kind court-annexed loss mitigation program in 2009, which has been emulated by bankruptcy courts in Rhode Island, New Jersey, the Eastern District of New York and others.

Chapter 11 of the Bankruptcy Code sets forth a framework for reorganizing troubled companies and maximizing value for their stakeholders. Many of the largest chapter 11 cases affecting international commerce are filed in the Southern District of New York Bankruptcy Court, including well-recognized companies such as Chrysler, General Motors Corporation, American Airlines, Lehman Brothers, MF Global, Madoff, Hostess Brands, Hawker Beechcraft, Eastman Kodak, Delta Air Lines and Borders Group.<sup>3</sup> Chapter 11 cases commenced in this Court regularly involve the restructuring of billions of dollars of liabilities (including bank and bond debt, vendor and contractual liabilities, and employee and pension liabilities).<sup>4</sup> Often these cases directly affect thousands of current and former employees, as well as domestic and international vendors, suppliers, and customers. In addition, debtors with underlying businesses that have significant international operations often turn to this Court for adjudication.<sup>5</sup> Judges in these

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standard for approval of settlements and disagreeing with Fifth Circuit's ruling on priorities in *United States v. AWECO, Inc.* (*In re AWECO, Inc.*), 725 F.2d 293 (5th Cir. 1984)); *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 142 (2d Cir. 2005) (setting standard for third-party releases in plans).

<sup>2</sup> As of June 26, 2012, there were 5497 open chapter 7 cases in the Court's three branches, 2368 open chapter 11 cases, and 5251 open chapter 13 cases. These numbers are different than the total number of cases and adversary proceedings filed every year in the Court, because many chapter 7 cases and adversary proceedings are administered and closed over a period of months, while chapter 11 and chapter 13 cases may remain open and active for years. In 2011, a total of 9848 chapter 7 cases were filed, 528 chapter 11 cases were filed, and 1699 chapter 13 cases were filed.

<sup>3</sup> Of the 40 largest public-company chapter 11 filings, half were filed in the Southern District of New York Bankruptcy Court. See UCLA-Lopucki Bankruptcy Research Database. David Arthur Skeel, Professor of Corporate Law at the University of Pennsylvania Law School, testified before the House Judiciary Committee on September 8, 2011, that "[the S.D.N.Y.] has developed the administrative capacity and expertise to handle the very largest cases, the cases that are seen as too big for Delaware or other districts."

<sup>4</sup> For example, chapter 11 filings in the past 18 months include MF Global with \$39 billion in liabilities, Residential Capital (GMAC Mortgage) with \$15.3 billion, American Airlines with \$8.7 billion, Eastman Kodak with \$6.2 billion, Dynegy Inc. with \$4.5 billion and Dynegy Holdings with \$6.1 billion, Houghton Mifflin Harcourt Publishing Co. with \$3.5 billion, Patriot Coal with \$3.1 billion, Arcapita Bank with \$2.3 billion, LightSquared with \$2.3 billion, Hawker Beechcraft with \$2.8 billion, Pinnacle Airlines with \$1.5 billion, and at least a half dozen other cases with more than a billion dollars in liabilities.

<sup>5</sup> For example, in the chapter 11 cases of Singer, the sewing machine company, the debtor had business operations in over 150 countries, with affiliates incorporated in Australia, Austria, the Bahamas, Bermuda, Brazil, the British

cases face intricate and novel issues of great importance to our nation and its economy, as well as foreign nations and their economies. Typically these cases require hundreds of hours of judicial resources each year and can last many years.<sup>6</sup>

### **Demands of Mega Chapter 11 Cases**

The primary goals of chapter 11 are preservation and maximization of the value of the bankrupt debtor through judicial oversight. While the Bankruptcy Code authorizes a debtor in chapter 11 to continue its operations “in the ordinary course of business,” *see, e.g.*, 11 U.S.C. § 363, many aspects of the administration of a chapter 11 case and operation of a debtor’s business require court review and approval.

As a result, a large chapter 11 case can require the filing, review and disposition of hundreds of motions per month at certain stages in the case. The types of relief typically sought by a chapter 11 debtor vary throughout the reorganization proceeding, and may include:

#### **Triage stage: Maintain the status quo while the debtor formulates a path to reorganization**

- Authorization to pay and continue benefits for employees, including payment of wages and health benefits;
- Authorization to continue receiving goods and services from vendors and service providers necessary to ongoing operations;

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Virgin Islands, Bulgaria, Chile, the Czech Republic, France, Germany, Guyana, Hong Kong (China), the Isle of Man, Italy, Japan, Mexico, the Netherlands, the Netherlands Antilles, Singapore, South Africa, Spain, Turkey, Vietnam and many more.

Similarly, as noted by the United States Attorney for the S.D.N.Y. on behalf of the United States Treasury, upon the General Motors chapter 11 filing, “GM’s bankruptcy is an extraordinary and momentous event, signifying that GM—an icon of American ingenuity, productivity and capitalism—has reached a crossroads. For more than a century, GM has pioneered the development and manufacture of American automobiles, provided employment to hundreds of thousands of people, indelibly marked the lives and communities that form the infrastructure of America’s automotive industry, and forged a vast network of global relationships and synergies.” (Case No. 09-50026, ECF No. 37.)

<sup>6</sup> Just a few examples: Adelphia Communications Corp. filed in 2002. In the first half of 2012, the sale of the debtor’s interest in its Brazilian cable operation was still pending the approval of the Brazilian regulatory authority; efforts to recover additional funds through monetization of the debtor’s interest in an insurance policy and the sale of certain assets including time shares and a cell tower were ongoing; and several claims remained to be resolved. *See* Case No. 02-41729, Twenty-First Post-Confirmation Status report, ECF No. 14,546.

Lehman Brothers Holdings Inc. took over three years to confirm a chapter 11 plan due to the complexity of the case. Over 150 lawsuits were filed in the case—some requiring weeks of trial. The Tronox case, filed in January 2009, is in the middle of a three-month trial. Johns-Manville Corp., filed in 1982, still has ongoing litigation, having been appealed to the United States Supreme Court multiple times, and is currently on appeal of an order entered by the Bankruptcy Court in January 2011.

- Authorization to continue insurance programs to provide critical ongoing coverage for post-bankruptcy operations;
- Authorization to continue use of preexisting cash management systems in order to avoid disruption of necessary expenditures and confusion among creditors; and
- Authorization to retain professionals to assist in the debtor's chapter 11 case and in the operation of its business.

**Confirmation stage: Utilize bankruptcy tools to broaden the pool of assets and build consensus among creditors**

- Authorization to enter into new contracts that fall outside of the ordinary course of the debtor's business operations or address the debtor's rights under its existing contracts;
- Authorization to sell assets, which can include (i) the disposition of assets unnecessary for the debtor's going-forward business operations or (ii) the sale of all or substantially all of the debtor's business as a going concern;
- Authorization to "reject," or dispose of, prepetition agreements that are unfavorable to the debtor;
- Authorization to borrow money or repay previously borrowed money; and
- Solicitation and confirmation of a plan that sets out the means of distributing assets for the benefit of creditors and describes the future of the reorganized debtor.

**Claim resolution / asset recovery stage: Employ judicial process to liquidate estate property for the benefit of creditors**

- Review, identification and expunction of duplicative, late and otherwise objectionable claims;
- Recovery of transfers of property that occurred before the commencement of the bankruptcy, as fraudulent transfers or transfers that improperly favored, or "preferred," some creditors above others;
- Pursuit of insiders for breaches of fiduciary duty and other harm to the debtor; and
- Litigation of challenges to plan implementation.



Often the relief requested from the bankruptcy court can mean the loss or gain of millions of dollars and thousands of jobs, or even the very ability of the debtor or other enterprises to survive. Therefore, debtors and other parties must have full and timely access to the bankruptcy court in order to seek and obtain the relief they need—frequently long after “normal business hours.”<sup>7</sup> The Southern District of New York Bankruptcy Court has always provided this level of service to companies in distress and their many critical stakeholders, from the powerful secured creditors to the faithful employees.

The chapter 11 process is complicated and business-driven; thus, it requires parties to seek consensus wherever possible. However, when agreement cannot be reached, litigation of complex and significant disputes is often required in the form of “contested matters” and adversary proceedings—often unique questions without legal precedent. A single large chapter 11 case often involves hundreds or, potentially, thousands, of individual commercial litigations.

The news media report that companies “emerge” from bankruptcy, but even after a plan is confirmed, the court’s work is far from over. In addition to ordinary litigation, chapter 11 cases require the filing and adjudication of creditors’ claims, in a process that may extend for years after confirmation of a plan of reorganization. Cases such as Lehman Brothers, Enron and General Motors Corporation involved the resolution of tens of thousands of proofs of claim, many of which were resolved through filed objections and trials. While the operational and financial restructuring of a debtor’s business may, in some circumstances, be accomplished in 18 to 24 months, the claims resolution process and other asset recovery litigation frequently begins in earnest only during the latter stages of a chapter 11 case, after a plan has been confirmed. In particularly large cases, the claims adjudication process and litigation to recover assets can last several more years.<sup>8</sup> For example, the WorldCom chapter 11 cases were

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<sup>7</sup> Almost always, emergency relief is needed on the first day a large chapter 11 case is filed. In order to give notice to creditors and other interested parties and to allow the judge to review the pleadings and complete her originally scheduled calendar, first-day hearings generally begin late in the afternoon and continue late into the evening. Recent examples include Eastman Kodak Co. (orders were docketed by the Clerk’s office at 9:41 p.m.; see Case No. 12-10202); American Airlines (orders were docketed at 8:41 p.m.; see Case No. 11-15463); Jobson Medical Information Holdings, LLC (orders were docketed at 7:43 p.m.; see Case No. 12-10434); Lyondell Chemical Company (orders were docketed at 8:56 p.m.; see Case No. 09-10023).

Subsequent to the initial filing of the chapter 11 case, there regularly remains a need for hearings to be held and orders to be docketed after normal court hours. *See, e.g.*, Lehman Brothers Holdings Inc., Case No. 08-13555, ECF Nos. 18197-18203, docketed between 8:30 p.m. and 11:31 p.m. on June 30, 2011; Saint Vincents Catholic Medical Centers of New York, Case No. 10-11963, ECF Nos. 1771-1776, docketed between 10:36 p.m. and 11:09 p.m. on July 1, 2011. For examples of orders docketed on Saturday, see ECF No. 88 in Inverness Distribution Limited, Case No. 11-15939 (order docketed on May 26, 2012) and ECF Nos. 23 and 24 in B+H Ocean Carriers, Case No. 12-12356 (orders docketed on June 9, 2012). Additionally, bankruptcy sales and funding are frequently negotiated up to the last minute, which may require the parties, judges and Court staff to review and evaluate filings and other information up to the moment of the hearing.

<sup>8</sup> For more examples, consider the Ames Department Stores case commenced in 2001. The Ames Trustee filed his 100th report in March 2012 showing 222 outstanding claims to be resolved. (Case No. 01-42217, ECF No. 3968.) Similarly, cleanup matters continue in 2012 in the Enron case commenced in 2001, where close to 32,000 documents were filed. (Case No. 01-16034, ECF No. 31,892 Thirtieth Post-Confirmation Report.)



commenced in 2002, and WorldCom emerged from bankruptcy in 2004. However, the reorganized debtors and the bankruptcy court are still involved in the claims adjudication process in mid-2012. The support provided by the office of the Clerk of Court and others is instrumental to the SDNY Bankruptcy Court's ability to effectively and efficiently move through the claims adjudication process, which is one of the main goals of any bankruptcy case. In addition, the claims adjudication process is for many people their first and only exposure to federal courts. The SDNY Bankruptcy Court takes great pride in being able to timely meet the needs of both debtors and claimants during this crucial process.

### **Special Challenges of Consumer Cases**

The Manhattan branch of the Southern District of New York Bankruptcy Court has the lion's share of chapter 11 cases, including General Motors, Lehman Brothers and Residential Capital, among many other mega cases.<sup>9</sup> The other two branches have their own large cases—which are managed by a single judge at each location—that require substantial attention. White Plains is the venue for Hostess Brands, Inc., The Great Atlantic & Pacific Tea Company, Inc. (“A&P”) and TBS Shipping Services, Inc., and Poughkeepsie hears Dynegy Inc., Dynegy Holdings, LLC, and Majestic Capital, Ltd.<sup>10</sup> These cases must be managed seamlessly with the consumer calendars and the smaller chapter 11 cases—which, while they may have a smaller dollar amount of claims, operate in the same statutory scheme as a mega case. A small or midsize chapter 11 case will still require solicitation of votes and approval of a plan, court approval of professionals and their fees, approval of settlements, and the same litigation that might be required in a mega case.<sup>11</sup>

The consumer caseload of the Southern District presents its own challenges to the Court and its staff, as substantial attention must be given to an individual's bankruptcy case. The Court reviews attorneys' fees for reasonableness, as consumer debtors usually do not have the bargaining power and sophistication other litigants might have with their counsel, and high-priority professional fees might consume the estate.<sup>12</sup> To illustrate, the Court allows debtors'

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In Adelphia Communications Corp. (Case No. 02-41729), commenced in 2002, the bankruptcy court conducted a trial in May 2012 regarding the recovery of \$145 million in assets.

<sup>9</sup> As of June 25, 2012, there were 1983 open chapter 11 cases in Manhattan, 339 open chapter 11 cases in White Plains, and 46 open chapter 11 cases in Poughkeepsie.

<sup>10</sup> As in the New York City mega cases, the litigation and claims allowance process in large chapter 11 cases filed in the other divisions of the Court can last for years. Coudert Brothers LLP (Case No. 06-12226), filed in 2006, and Refco Inc. (Case No. 05-60006), filed in 2005, have active adversary proceedings, and the claims allowance process in DPH Holdings Corp. (Case No. 05-44481) is ongoing. Likewise, the claims allowance process in Salander O'Reilly Galleries LLC (Case No. 07-30005) is continuing, through a mediation protocol established by court order and integrated in the confirmed plan, as well as pursuant to litigation.

<sup>11</sup> For example, in Spectrawatt, Inc. (Case No. 11-37366), a Poughkeepsie case with just \$38 million in scheduled undisputed claims, an order was entered setting an expedited hearing on a settlement that was necessary for confirmation, at 11:51 p.m. on January 20, 2012, a Friday night.

<sup>12</sup> Compare 11 U.S.C. § 329 (requiring disclosure of compensation for debtor's counsel) with § 330(a)(4)(B) (providing that court may allow reasonable compensation to attorney representing interests of chapter 13 debtor).

attorneys to charge a presumptively reasonable “flat fee” for core bankruptcy services, and requires the attorneys to file fee applications for work done on extraordinary bankruptcy matters, such as loss mitigation for the family home or removal of a creditor’s lien. Such a fee application will be reviewed for reasonableness, and the Court will check the application to ensure that work that was already covered by the flat fee was not billed as an extra charge on the fee application.<sup>13</sup> The Court employs the same legal principles in these questions that are applied in other districts; the difference is the addition of the chapter 11 case load. Additionally, because of the potentially devastating impact they may have on a homeowner’s case, motions for relief from the stay are scrutinized to be sure service was proper and that grounds for relief are met, even when the motion is unopposed. In a chapter 13 case, confirmation of a plan might be delayed for months while debtors struggling toward rehabilitation complete the financial reporting and review of claims that are required to achieve a plan. All these labors manifest in the form of court hearings, orders entered on the public docket, time spent reviewing papers, and conversations with attorneys and their employees concerning scheduling and case administration. Separately, the Court and Clerk’s Office conduct regular seminars, brown-bag lunches and one-on-one technology training with attorneys and their staff, to educate the bar on legal updates and sound practice.

The Court launched its Loss Mitigation Program Procedures in January 2009, and since then thousands of individual chapter 7, 11, and 13 debtors have requested loss mitigation in their efforts to prevent the loss of their homes to foreclosure. The program provides a forum for the debtor and creditor to appoint representatives and provide contact information, and to supply and review financial information to determine if something can be done to preserve the family home.<sup>14</sup> The program requires regular conferences at which debtor and creditor inform the Court of the progress of the parties’ communications. Sometimes, the Court must enforce the loss mitigation scheduling order with sanctions, which requires more judicial process, or legal issues may be uncovered that must be resolved in a formal adversary proceeding. These conferences, and the attendant status updates, scheduling orders and other filings, are a significant draw on the Court’s resources. For example, a recent loss mitigation calendar in Poughkeepsie had approximately 250 matters on it, which took about three hours on the bench to hear, and required the work of one bankruptcy judge assisted by two Clerk’s office personnel to prepare for and log the proceedings in Court records and on the public docket.<sup>15</sup> This work does not include the

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*See also Cohn v. U.S. Trustee (In re Ostas)*, 158 B.R. 312 (N.D.N.Y. 1993) (affirming the bankruptcy court’s punishment of a chapter 13 debtor’s lawyer who failed to disclose all compensation); *In re Wesseldine*, 434 B.R. 31 (Bankr. N.D.N.Y. 2010) (limiting fee of debtor’s counsel); *In re Piccinini*, 450 B.R. 677 (Bankr. E.D. Mich. 2011) (holding that bankruptcy court has sole jurisdiction to determine propriety of a debtor’s fee agreement with counsel).

<sup>13</sup> *See In re Eliapo*, 468 F.3d 592 (9th Cir. 2006) (discussing flat-fee billing); *In re Smith*, 331 B.R. 622 (M.D. Pa. 2005) (same).

<sup>14</sup> *See* General Order M-413, Adoption of Modified Loss Mitigation Program Procedures, General Order M-413, available at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). For a complete discussion of the history and legal basis of the program, see *The Loss Mitigation Program Procedures for the United States Bankruptcy Court for the Southern District of New York*, 19 AM. BANKR. INST. L. REV. 1 (2011).

<sup>15</sup> The courtroom deputy and a case administrator spent several hours preparing the calendar on June 27, 2012, in

motion for summary judgment that was decided before the loss mitigation calendar got under way, or the disciplinary hearing that followed it.

## **Conclusion**

The loss of the temporary judgeship has thrown the Southern District of New York Bankruptcy Court into dire circumstances. The Court regularly oversees and administers complex and difficult cases with the utmost professionalism and care.<sup>16</sup> The judges and employees regularly work extremely long hours under intense pressure.<sup>17</sup> The livelihoods of employees and retirees, as well as property and rights of creditors and other stakeholders of some of our nation's most important enterprises rely on the Court's ability to keep up with massive and difficult caseloads and administer justice in a timely and correct fashion.<sup>18</sup> The Court cannot give these cases the attention they deserve and require, unless the judgeship lost upon the retirement of Judge Gonzalez is restored, and the Court is given adequate financial resources to meet the needs of its heavy caseload and the extraordinarily complex cases it oversees.

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advance of the hearing, and the case administrator spent additional time entering the adjournments the following day.

<sup>16</sup> Importantly, in addition to overseeing major, multiyear complex chapter 11 cases, the Southern District of New York Bankruptcy Court regularly handles numerous smaller chapter 11 cases, as well as individual chapter 7 and chapter 13 bankruptcy cases. Each of these cases, whether important to the global economy or only to one individual's livelihood, are handled with professionalism and care by the S.D.N.Y. Bankruptcy Court.

<sup>17</sup> For example, the critical Lehman sale hearing during the first week of the case began Friday afternoon and ended after midnight on Saturday. The Clerk's Office docketed the sale order at 1:45 a.m. Saturday morning. (Case No. 08-13555, ECF No. 258). The ability of some companies to continue operating often requires the court to hold hearings, issue decisions and enter orders on holidays and weekends. The critical decision in General Motors was written by the judge over the July 4<sup>th</sup> weekend and entered by the Clerk's Office on Sunday, July 5, 2009. (Case No. 09-50026, ECF Nos. 2969, 2968, 2967.) The hotly contested sale in Boston Generating required the hearing to continue on a Sunday in order for the company to continue operating. (Case No. 10-14419, Transcript of Hearing Held on November 21, 2010, ECF No. 565.)

<sup>18</sup> In addition to saving jobs through successful reorganization and producing recoveries to creditors in the General Motors and Chrysler cases, other firms including WorldCom with \$107 billion in assets (Case No. 02-13533); CIT Group with \$71 billion in assets (Case No. 09-16565), Calpine Corporation with \$26 billion in assets (Case No. 05-60200); General Growth Properties (Case No. 09-11977), the second-largest mall owner in the country with \$29 billion in assets, successfully reorganized, saving jobs and producing recoveries to creditors. The Southern District of New York also deals with the most-complex financial and fraud cases, including Refco Inc. with \$48 billion in assets (Case No. 05-60006), Enron Corp. with \$24 billion in assets (Case No. 01-16034), Adelphia Communications Corp. with \$24 billion in assets (Case No. 02-41729) and the Madoff-related cases (*see* Case No. 08-02789).