Bankruptcy Court Requires Ad Hoc Equity Committee Members to Submit Detailed Information on Holdings Under Bankruptcy Rule 2019(a)

New York
March 13, 2007

On March 9, in the Chapter 11 case involving Northwest Airlines, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") issued the second of a pair of rulings that might significantly affect members of unofficial or ad hoc committees in Chapter 11 cases. Both rulings are attached at the end of this alert memo. Those rulings hold that it is a requirement of Rule 2019(a) of the Federal Rules of Bankruptcy Procedure ("Rule 2019(a)") that members of ad hoc committees and other entities acting as groups in Chapter 11 cases must file with the Bankruptcy Court a verified statement disclosing "the amounts of claims or interests owned by … the members of the committee... the times when acquired, the amounts paid therefore, and any sales or other dispositions thereof."

Rule 2019(a) requires that every entity or committee (other than official committees appointed pursuant to the Bankruptcy Code) representing more than one creditor or equity security holder file a verified statement setting forth (1) the name and address of the creditor or equity security holder, (2) the nature and amount of the claim or interest and the time of acquisition thereof (unless acquired more than one year before the bankruptcy filing), (3) a recital of the pertinent facts related to the employment of the entity and, in the case of a committee, the names of the entities who arranged such employment or organized the committee, and (4) "with reference to the time of … the organization or formation of the committee… the amounts of claims or interests owned by … the members of the committee… the times when acquired, the amounts paid therefore, and any sales or other disposition thereof." Fed. R. Bankr. Pr. 2019(a). Rule 2109(a) also requires that the verified statement be accompanied by a copy of the "instrument," if any, by which the entity or committee is empowered to act. Rule 2019(b) further sets forth the consequences for failure to comply with the disclosure provisions of Rule 2019(a), which consequences can include not permitting the entity or committee to be further heard in the case.

These rulings are significant as, in practice, such information had generally not been included in Rule 2019 statements. However, in the Northwest Airlines chapter 11 case, the Debtors and the Creditors' Committee recently objected to the Rule 2019 statement filed by the ad hoc committee of equity security holders (the "Ad Hoc Committee") and moved to require the Ad Hoc Committee to supplement its Rule 2019 statement to disclose "the amounts of claims or interests owned by the members of the committee, the times when acquired, the amounts paid therefore, and any sales or other disposition thereof."[1] On February 26, 2007, Bankruptcy Court Judge Allan L. Gropper issued a ruling granting the motion, finding that the plain terms of Rule 2019 required disclosure of the information, and requiring the Ad Hoc Committee to comply with Rule 2019 and file an amended Rule 2019 statement within three business days.[2] In his ruling, Judge Gropper contrasted the situation to that where a law firm represents a number of individual creditors or equity interest holders who are not acting as a group (citing In re CF Holding Corp., 145 B.R. 124 (Bankr. D. Conn. 1992)).

The Ad Hoc Committee subsequently sought and obtained a stay of Judge Gropper's February 26 ruling, pending the resolution of its motion seeking permission to file under seal the portion of the amended Rule 2019 statement that discloses the details of their purchases and sales of Northwest equity. The Ad Hoc Committee proposed disclosing this information only to the Court and the US Trustee, not the Debtors, the official Creditors' Committee or the public. On March 9, 2007, Judge Gropper denied that motion, noting that Rule 2019 was a disclosure rule that would be thwarted should the information not be disclosed to the remaining holders of Northwest equity interests (the "2019 Seal Order"). In the 2019 Seal Order, Judge Gropper also directed the Ad Hoc Committee to file its amended Rule 2019 statement within three business days.

1 Memorandum of Opinion and Order dated February 26, 2007 (the "Rule 2019 Order") at 2.

2 Rule 2019 Order at 5, 7.

On March 8, 2007, a motion was filed by certain members of the Ad Hoc Committee asking that the Bankruptcy Court reconsider its February 26 ruling. If that motion is not successful, there might be appeals filed with respect to one or both rulings.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	Chapter 11
NORTHWEST AIRLINES CORPORATION, et al.,	Case No. 05-17930 (ALG)
Debtors.	Jointly Administered

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MEMORANDUM OF OPINION AND ORDER

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ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

Debtors Northwest Airlines Corporation *et al*. ("Debtors") have moved to require an *ad hoc* committee of equity security holders (the "Committee") to supplement a statement pursuant to Bankruptcy Rule 2019 filed by counsel for the Committee. Debtors argue that the current 2019 statement is inadequate in that it fails to disclose "the amounts of claims or interests owned by the members of the committee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof," as required by Rule 2019. For the reasons set forth hereafter, Debtors' motion is granted.

The Committee

The Committee first appeared in the above-captioned proceedings by a notice of appearance dated January 11, 2007. The notice of appearance was filed by the law firm of Kasowitz, Benson, Torres & Friedman LLP ("KBT&F") on behalf of "the Ad Hoc Committee of Equity Security Holders," comprised of certain institutions holding common stock issued by Northwest Airlines Corp…." In a pleading dated January 16, 2007, KBT&F filed the "Verified Statement of Kasowitz, Benson, Torres & Friedman LLP Pursuant to Bankruptcy Rule 2019(a)." The statement contains the following information: KBT&F appears "on behalf of the Ad Hoc Committee of Equity Security Holders…;" it identifies the 11 members of the Committee; discloses that, "[t]he members of the Ad Hoc Equity Committee own, in the aggregate, 16,195,200 shares of common stock of Northwest and claims against the Debtors in the aggregate amount of $164.7 million" and that, "[s]ome of the shares of common stock and some of the claims were acquired by the members of the Ad Hoc Equity Committee after the commencement of the Cases;" states that KBT&F has been retained as "counsel to the Ad Hoc Equity

Committee in the Cases pursuant to an engagement letter in the form annexed as Exhibit B hereto;" and states that KBT&F does not own any claims against or interests in the Debtors and that the members of the Committee are responsible for the firm's fees "subject to their right to have the Debtors reimburse KBT&F's fees and disbursements and other expenses by order of the Court."

The engagement letter attached to the 2019 Statement confirms the agreement of the signatory "to become a member of the Ad-hoc Committee of Equity Holders in connection with the Northwest bankruptcy cases." It further states that in consideration of the firm's "provision of services to the Committee," the members of the Committee agree to pay the Firm, on a *pro rata* basis, for its services and that in addition thereto, "the Committee may, at the culmination of the matters for which the Firm has been engaged, pay to the Firm, at the Committee's sole discretion, a performance fee…." The *pro rata* obligation of each member of the Committee to pay fees is based on its individual holdings of Northwest common stock as of December 26, 2006, divided by the total holdings of the Committee, subject to periodic revision. By an amendment to the Rule 2019 statement, dated January 19, 2007, KBT&F disclosed that there were now 13 Committee members with an aggregate of "19,065,644 shares of common stock of Northwest and claims against the debtors in the aggregate amount of $264,287,500."

Bankruptcy Rule 2019

Rule 2019(a) provides, in relevant part:

> In a chapter 9 municipality or chapter 11 reorganization case, except with respect to a committee appointed pursuant to § 1102 or 1114 of the Code [an official committee], every entity or committee representing more than one creditor or equity security holder . . . shall file a verified statement setting forth
>
> (1) the name and address of the creditor or equity security holder;

(2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition;

(3) . . . in the case of a committee, the name or names of the entity or entities at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and

(4) with reference to the time of . . . the organization or formation of the committee . . . the amounts of claims or interests owned by . . . the members of the committee . . . the times when acquired, the amounts paid therefor, and any sales or other disposition thereof.

By its plain terms, the Rule requires disclosure of "the amounts of claims or interests owned by the members of the committee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof." The statement filed by KBT&F on behalf of the Committee fails to disclose this information and is insufficient on its face.

The Committee's only substantive argument in response is that Bankruptcy Rule 2019 applies, by virtue of its lead-in clause, only to "every entity or committee representing more than one creditor or equity security holder." KBT&F contends that no member of the Committee represents any party other than itself, that only KBT&F as counsel represents "more than one creditor or equity security holder," and that KBT&F does not have any claims or interests in the Debtors or anything to disclose. However, the Rule cannot be so blithely avoided. KBT&F's clients appeared in these Chapter 11 cases as a "Committee." Their notice of appearance was as a committee, and it is the "Ad Hoc Committee" that has moved for the appointment of an official shareholders' committee and has been actively litigating discovery issues in numerous hearings and conferences before the Court. Counsel was retained by the "Committee" and is compensated by the "Committee" on the basis of work performed for the Committee (and not each individual member). The law firm does not purport to represent the separate

interests of any Committee member; it takes its instructions from the Committee as a whole and represents one entity for purposes of the Rule.

There may be cases where a law firm represents several individual clients and is the only entity required to file a Rule 2019 statement, on its own behalf. That appears to have been the case in *In re CF Holding Corp.*, 145 B.R. 124 (Bankr. D. Conn. 1992), relied on by the Committee. There, a firm represented multiple creditors, and the Court distinguished the case before it from the situation where a group had been formed. It quoted from *Wilson v. Valley Electric Membership Corp.*, 141 B.R., 309, 314 (E.D.La. 1992), where Judge Sear, chairman of the Advisory Committee at the time the Bankruptcy Rules were amended in 1986, commented in *dicta*, "Rule 2019 more appropriately seems to apply to the formal organization of a group of creditors holding similar claims, who have elected to consolidate their collection efforts…." That is exactly the situation in this case, except that here there are shareholders rather than creditors. Where an *ad hoc* committee has appeared as such, the committee is required to provide the information plainly required by Rule 2019 on behalf of each of its members.

Ad hoc or unofficial committees play an important role in reorganization cases. By appearing as a "committee" of shareholders, the members purport to speak for a group and implicitly ask the court and other parties to give their positions a degree of credibility appropriate to a unified group with large holdings. Moreover, the Bankruptcy Code specifically provides for the possibility of the grant of compensation to "a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title [an official committee], in making a substantial contribution in a case under chapter 9 or 11 of this title." 11 U.S.C. § 503(b)(3)(D). A committee purporting to speak for a group obviously has a better chance of meeting the "substantial

contribution" test than an individual, as a single creditor or shareholder is often met with the argument that it was merely acting in its own self-interest and was not making a "substantial contribution" for purposes of § 503(b)(3). *See In re Richton Int'l Corp.*, 15 B.R. 854, 855-56 (Bankr. S.D.N.Y. 1981) ("Those services which are provided solely for the client-as-creditor . . . are not compensable.")[1]

Unofficial committees have long been active in reorganization cases, and the influential study in the 1930's by Professor (later Justice) William O. Douglas for the Securities and Exchange Commission centered on perceived abuses by unofficial committees in equity receiverships and other corporate reorganizations. *See* Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees (1937). The four-volume SEC report led directly to the adoption of Chapter X and Rule 10-211 thereunder, which provided for disclosure of the "personnel and activities of those acting in a representative capacity" in order to help foster fair and equitable plans free from deception and overreaching. 13A King *et al.*, *Collier on Bankruptcy*, ¶ 10-211.04 (14th ed. 1976). Although they made many other changes to the law and rules relating to reorganizations, the drafters of the 1978 Bankruptcy Code and the rules thereunder retained the substance of former Rule 10-211 in Bankruptcy Rule 2019 as "a comprehensive regulation of representation in chapter 9 and chapter 11 reorganization cases." Advisory Committee Note to Bankruptcy Rule 2019; *see also* Report of the Commission on Bankruptcy Laws of the United States, H.R.Doc. No. 137, 93d Cong., 1st Sess. 242-43 (1973). The Rule is long-standing, and there is no basis for failure to apply it as written. Although the Committee argues that the

[1] Counsel for an unofficial committee is also entitled to seek reimbursement. 11 U.S.C. § 503(b)(4). It is this section on which KBT&F was presumably relying when it reserved its rights, in its retention letter, to have the Debtors reimburse its fees.

Rule has been frequently ignored or watered down, there is no shortage of cases applying it. *See In re Okla. P.A.C. First Ltd. P'ship*, 122 B.R. 387, 391 (Bankr. D. Ariz. 1990), quoting *Collier on Bankruptcy*: "The Code contemplates that there will be unofficial committees. Any such unofficial committee must comply with Rule 2019 by its terms…."; *see also Baron & Budd P.C. v. Unsecured Asbestos Claimants Comm.*, 321 B.R. 147, 166 (D. N.J. 2005); *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 852 (Bankr. S.D.N.Y. 1989); *In re Keene*, 205 B.R. 690 (Bankr. S.D.N.Y. 1997); *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 558 (D. Del. 2005).

Based on the issue before the Court, the Debtors' motion is granted. The Committee is required to comply with Bankruptcy Rule 2019 and file an amended statement within three business days.

IT IS SO ORDERED.

Dated: New York, New York
February 26, 2007

/s/ Allan L. Gropper
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
NORTHWEST AIRLINES CORPORATION, et al.,	Case No. 05-17930 (ALG)
Debtors.	Jointly Administered

MEMORANDUM OF OPINION AND ORDER

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ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

By order entered February 26, 2007, the Court, on motion of debtors Northwest Airlines Corporation *et al*. (the "Debtors"), required an *ad hoc* committee of equity security holders that had appeared in these chapter 11 cases (the "Committee") to comply with the plain requirements of Bankruptcy Rule 2019 and file an amended Rule 2019 statement. The Committee has moved for an order that would permit the amended statement to be filed under seal, to be available only to the Court and the U.S. Trustee. The Committee proposes to seal that part of the information required by Rule 2019 that discloses the specifics of the purchases and sales of the Debtors' securities made by Committee members. The motion is opposed by the Debtors, by the official creditors' committee, and by Bloomberg News ("Bloomberg"), which moved to intervene.[1]

The Committee's motion is based on §107(b) of the Bankruptcy Code, which provides:

[1] Bloomberg states that its motion is "an effort to ensure that the public has a full and accurate understanding of the events occurring in this Chapter 11 proceeding, including the motivations and interests of the players who seek to control an important public company." (Memorandum of Law, p. 1) The parties have consented to the intervention.

> On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –
>
> (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information….[2]

In *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994), the debtor sought to seal confidential commercial information consisting of the terms of a promotional agreement between the debtor and a major customer that the Court found would give competitors, who sought to make the information public, a direct competitive advantage. The Second Circuit held that under §107(b) protection is available if an interested party could show "that the information it sought to seal was 'confidential' and 'commercial' in nature." *Id.*

The Second Circuit nevertheless recognized in *Orion* that §107(b) creates an exception to the general principle that "[i]n most cases, a judge must carefully and skeptically review sealing requests to insure that there really is an extraordinary circumstance or compelling need." *Id.* Moreover, as provided in §107(a) of the Bankruptcy Code, it is a basic tenet of our jurisprudence that court records are public and "open to examination by an entity at reasonable times without charge." 11 U.S.C. §107(a); *see, e.g.*, *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006) (discussing Constitutional and common law rights of access to documents filed in court.)[3] Moreover, the Circuit Court in *Orion* narrowly defined the term "commercial" as used in §107(b) as "information which would cause 'an unfair advantage to competitors by

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[2] Bankruptcy Rule 9018 similarly provides that "the court may make an order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information …."

[3] Indeed, it has been held that the policy interest in favor of public access "is at its zenith where issues concerning the integrity and transparency of bankruptcy proceedings are involved." *In re Food Mgmt. Group, LLC*, 2007 WL 458022, at *6 (Bankr. S.D.N.Y. Feb. 13, 2007); *see also Gitto v. Worcester Telegram & Gazette Corp. (In re Gitto Global Corp.)*, 422 F.3d 1, 7 (1st Cir. 2005), quoting *Ferm v. United States Trustee (In re Crawford)*, 194 F.3d 954, 960 (9th Cir. 1999) (unrestricted access to bankruptcy records "fosters confidence among creditors regarding the fairness of the bankruptcy system.").

providing them information as to the commercial operations of the debtor.'" 21 F.3d at 27, quoting *Ad Hoc Protective Comm. for 10-1/2% Debenture Holders v. Itel Corp. (In re Itel Corp.)*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982).[4]

In its initial papers, the Committee tried to bring itself within the construction of "commercial" in *Orion* by contending that the information it seeks to seal would allow competitors of the funds that make up the Committee to discern the members' "investment strategies." This improbable contention was unsupported by the affidavits filed on behalf of the Committee by three of its members, and counsel at oral argument conceded that the "trading strategies" of his clients are not at issue. There is thus no basis for the contention that §107(b), as construed in *Orion*, mandates that the information required by Rule 2019 be sealed on request. The issue is not, as the Committee would have it, that §107(b) as a statute trumps the requirements of Bankruptcy Rule 2019. The Court's duty instead is to enforce Bankruptcy Rule 2019 in a manner consistent with protecting the legitimate rights of the parties and the public interest, keeping in mind that §107(b) provides a broader mandate in favor of sealing documents than applies in non-bankruptcy cases.[5]

In deciding the instant motion with due concern for the above interests, we start with the fact that Bankruptcy Rule 2019 is a disclosure rule. As discussed in the Court's

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[4] In *Itel*, the Court rejected the proposition that information was "commercial" within the meaning of §107(b) merely because it related to business affairs. This is consistent with the holdings of other courts in bankruptcy and non-bankruptcy contexts. *See, e.g., In re Handy Andy Home Improvement Centers, Inc.*, 199 B.R. 376, 382 (Bankr. N.D. Ill. 1996) ("A document does not contain commercial information merely because it is used in a commercial industry. Commercial information is information which would give a competitor an unfair advantage."); *Diamond State Ins. Co. v. Rebel Oil Co., Inc.*, 157 F.R.D. 691, 697 (D. Nev. 1994) (motion to quash a subpoena under F.R. Civ. P. 45(c)(3)(B)(i)) ("Confidential commercial information is information which, if disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained.")

[5] Even if there were a conflict between §107(b) and Rule 2019, the Court's duty would be to reconcile them, if possible. *See In re Henderson*, 197 B.R. 147, 155 (Bankr. N.D. Ala. 1996) ("Rules and statutes, however, should be interpreted, if possible, to be in harmony.") (internal citations omitted); *see also Pittsburgh & Lake Erie R.R. Co. v. Ry. Labor Executives' Ass'n*, 491 U.S. 490, 510 (1989).

memorandum of February 26, 2007, it requires unofficial committees that play a significant public role in reorganization proceedings and enjoy a level of credibility and influence consonant with group status to file a statement containing certain information. The direct antecedent of Rule 2019 was Rule 10-211 under former Chapter X of the Bankruptcy Act, which was adopted following an exhaustive SEC Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees (1937) (hereafter, the "SEC Report"). Among other things, the SEC Report warned of possible conflicts of interest by outside as well as inside financial interests, finding that "these conflicts permeate the entire protective committee system. Their elimination is as essential towards making the outside groups effective and responsible as it is towards eliminating the abuses of the insiders." *SEC Report*, Part I at 880.[6] As one step toward this end the Commission recommended that persons who represent more than 12 creditors or stockholders (including committees) be required to file with the court a sworn statement containing the information now required by Rule 2019.[7] The Report also recommended that "[a]ttorneys who appear in the proceedings should be required to furnish similar information respecting their clients." The SEC specifically found that the foregoing information "will provide a routine method of advising the court *and all parties in interest* of the actual economic interest of all persons participating in the proceedings." Recommendation 9, *SEC Report*, Part I at 902 (emphasis added.) The SEC Report thus contemplated public dissemination of the

[6] The Report further found that "the conflicts which do exist" in the outside groups "are in fact made the more obnoxious if these groups operate under the guise of independent committees, for security holders are induced more readily to believe that in the hands of these self-styled independents their cause will be honestly and rigorously served." *SEC Report* at 880. For a thorough discussion of the SEC study, as well as the view that conditions might not have been as bad as the SEC Report suggested, see David A. Skeel, Jr., *Debt's Dominion: A History of Bankruptcy Law in America*, ch. 4 (2001).

[7] The Rule as actually adopted and as now formulated is not limited to groups of 12 or more.

information, and there is no reason to assume that the drafters believed that the goals of the Rule could be achieved if the required information were filed secretly.

Much has changed in reorganization practice since the 1930's, but the disclosure required by what is now Bankruptcy Rule 2019 is substantially the same. The facts of this case illustrate why public disclosure is still needed.

As noted above, there is no support in the record for the Committee's initial contention that it has sought to protect its members' "investment strategies." The affidavits filed on this motion by representatives of three of the Committee members disclose why they want to keep the data confidential. There, the Committee representatives identify the damage that would allegedly result from public disclosure of the information required by Bankruptcy Rule 2019 as follows:

> Obviously the circumstances could and do vary greatly, but it clearly would damage our bargaining position and give our counterparties an unfair advantage if they were to know our basis or acquisition cost of the assets we were trying to sell. Just as car dealers do not disclose to customers their actual acquisition cost of their cars, and builders do not disclose to potential home buyers their actual cost to build homes, we do not disclose to potential counterparties our basis in our investments . . . *See. e.g.*, Decl. of Daniel Krueger, p. 3.

The Committee members do not advance their position when they compare themselves to car or real estate salesmen. It bears recalling that this Committee purports to control 27 percent of the outstanding stock of the Debtors and that it has repeatedly asked the Court to give credibility to its claims that the Debtors' equity has substantial value, that the Debtors' management has wrongfully undervalued the equity, and that it intends to mount a contest as to the valuation of these Debtors. By acting as a group, the members of this shareholders' Committee subordinated to the requirements of Rule 2019 their interest in keeping private the prices at which they individually purchased or sold

the Debtors' securities. This is not unfair because their negotiating decisions as a Committee should be based on the interests of the entire shareholders' group, not their individual financial advantage. Their counsel admitted at oral argument of this motion that in negotiations between a committee and other parties in interest, the question is whether a tranche is being treated fairly, not the price at which individual members might be induced to sell. If that is so, and it should be, it cannot harm the legitimate interests of members of an *ad hoc* committee to put pricing information on the table.[8]

In any event, any interest that individual Committee members may have in keeping this information confidential is overridden by the interests that Rule 2019 seeks to protect. Rule 2019 protects other members of the group – here, the shareholders – and informs them where a committee is coming from by requiring full disclosure of the securities held by members of the committee and the respective purchases and sales. This Committee contends that it did not take on any fiduciary responsibility to the shareholders as a group when it appeared in these cases. Assuming, *arguendo*, for purposes of this motion that the Committee does not act as a fiduciary, Rule 2019 is based on the premise that the other shareholders have a right to information as to Committee member purchases and sales so that they make an informed decision whether this Committee will represent their interests or whether they should consider forming a more broadly-based committee of their own. It also gives all parties a better ability to

[8] It has also been held (in a different context) that preserving leverage is not usually an interest that would justify sealing court records. *See Geltzer v. Andersen Worldwide, S.C.*, 2007 WL 273526 (S.D.N.Y. Jan. 30, 2007) ("There is no discernable public interest, or interest of the bankruptcy estates, in preserving [the defendant's] 'leverage' as against other parties . . . ."); *In re Alterra Healthcare Corp.*, 353 B.R. 66, 76 (Bankr. D. Del. 2006) (an order that sealed certain information was vacated; the Court, in response to the contention that disclosure would help litigants against the debtor said, "[a]n unfair advantage to a tort claimant of a debtor, however, does not create an unfair advantage to its market competitors.")

gauge the credibility of an important group that has chosen to appear in a bankruptcy case and play a major role.

The utility to other shareholders of information as to the purchases and sales made by members of this Committee is underscored by two facts of record. First, it has been disclosed that Committee members own a very significant amount of debt, as well as stock. Rule 2019 is based on the premise that other shareholders have a right to know whether the debt purchases were made at the same time as the purchases of stock, a fact that might raise questions as to divided loyalties. Second, each of the three representative Committee members admits in his declaration that he might decide to sell out at any time. *See, e.g.*, the declaration of Daniel Krueger, where it is stated, "[a]lso, we or other members of the Ad Hoc Equity Committee may desire to sell our respective claims to third parties at some point, or make some other similar deal with someone who currently is not an interest holder in this case. Disclosure of our acquisition cost likewise will prejudice our ability to sell or negotiate such a deal with third parties." (¶ 7) The possibility that members of an *ad hoc* committee will sell and leave a group without a representative is exactly why there are disclosures required under Rule 2019. Rule 2019 gives other members of the class the right to know where their champions are coming from. Granting the motion to seal would scuttle the Rule.

The motion to seal is denied. An amended Rule 2019 Statement as required by this Court's order of February 26, 2007, should be filed on the Court's docket as soon as feasible and in any event within three business days from the date of this order.

IT IS SO ORDERED.

Dated: New York, New York
March 9, 2007

/s/ Allan L. Gropper
UNITED STATES BANKRUPTCY JUDGE