

## Bankruptcy Court Requires Ad Hoc Committee Members to Disclose Information Regarding Acquisition Costs and Amount of Securities Held

On February 26, 2007 and March 9, 2007, the United States Bankruptcy Court for the Southern District of New York in the Northwest Airlines bankruptcy case entered orders requiring members of an ad hoc committee of equity holders to disclose the exact amounts of claims and interests held, as well as information related to their acquisition of securities, including the prices paid for the securities. The Court also denied the ad hoc committee's request to file the required information under seal so as not to be available to the public.

The Bankruptcy Court's orders were entered in response to a motion by the debtor, Northwest Airlines, to enforce Bankruptcy Rule 2019. Bankruptcy Rule 2019 has always required any committee (other than an Official Committee) to disclose (i) the names and addresses of committee members, (ii) the nature and amount of claims or interests acquired during the bankruptcy case or within one year before the bankruptcy case was filed, (iii) the names of the organizers of the committee and other pertinent facts and circumstances related to the organization of the committee, and (iv) the dates the claims or interests were acquired, the amounts paid for the securities, and information concerning any sales or other dispositions. Furthermore, committee members are required to update the disclosures when material changes occur. Although the Rule does not define "material changes," the addition of new members to an ad hoc committee, or the trading of claims or interests by committee members, may require an updated disclosure. While these requirements have always been included in Rule 2019, the Northwest Airlines court took the unusual step of enforcing these typically ignored requirements. It is possible, of course, that other courts will not follow the practice of the Northwest Airlines court, or will allow the disclosures to be filed under seal.

If other courts follow the lead of the Northwest Airlines court's decision, members of ad hoc committees engaged in litigation in a bankruptcy case should expect that they will be required to disclose proprietary information related to positions held, trading practices, and prices paid. This possibility may dampen the enthusiasm for service on ad hoc committees, and will likely be used as a sword by those seeking to undermine or intimidate ad hoc committees members. Note, of course, that service on official committees appointed by the United States Trustee, or participation in a bankruptcy case by creditors on an individual basis, does not implicate Bankruptcy Rule 2019, or compel these disclosures.

### Contact Information

**Mark Bane**

212-596-8808

[mark.bane@ropesgray.com](mailto:mark.bane@ropesgray.com)**Don DeAmicis**

617-951-7732

[don.deamicis@ropesgray.com](mailto:don.deamicis@ropesgray.com)**Steven Hoort**

617-951-7470

[steven.hoort@ropesgray.com](mailto:steven.hoort@ropesgray.com)**Ross Martin**

617-951-7266

[ross.martin@ropesgray.com](mailto:ross.martin@ropesgray.com)**Mark Somerstein**

212-596-8814

[mark.somerstein@ropesgray.com](mailto:mark.somerstein@ropesgray.com)**Keith Wofford**

212-841-8816

[keith.wofford@ropesgray.com](mailto:keith.wofford@ropesgray.com)