



AMERICAN  
BANKRUPTCY  
INSTITUTE

## 2017 Delaware Views from the Bench

# Potpourri: Mediation, Opportunities for Young Lawyers, and the Role of Delaware Counsel

### **Mark Minuti, Moderator**

*Saul Ewing LLP; Wilmington*

### **Hon. Brendan L. Shannon**

*U.S. Bankruptcy Court (D. Del.); Wilmington*

### **Hon. Kevin J. Carey**

*U.S. Bankruptcy Court (D. Del.); Wilmington*

### **Hon. Kevin Gross**

*U.S. Bankruptcy Court (D. Del.); Wilmington*

### **Hon. Laurie Selber Silverstein**

*U.S. Bankruptcy Court (D. Del.); Wilmington*

### **Hon. Christopher S. Sontchi**

*U.S. Bankruptcy Court (D. Del.); Wilmington*

### **Hon. Mary F. Walrath**

*U.S. Bankruptcy Court (D. Del.); Wilmington*

Potpourri: Mediation, Encouraging Participation by Younger Lawyers  
and the Role of Delaware Counsel

Materials Prepared by Mark Minuti and Monique Bair DiSabatino

I. Mediation

A. Key Provisions of Del. Bankr. L. R. 9019-3 and 9019-5

**Stipulation of Parties.** Notwithstanding any provision of law to the contrary, the Court may refer a dispute pending before it to mediation and, upon consent of the parties, to arbitration. During a mediation, the parties may stipulate to allow the mediator, if qualified as an arbitrator, to hear and arbitrate the dispute. Del. Bankr. L. R. 9019-3(a).

**Types of Matters Subject to Mediation.** The Court may assign to mediation any dispute arising in an adversary proceeding, contested matter or otherwise in a bankruptcy case. Except as may be otherwise ordered by the Court, all adversary proceedings filed in a chapter 11 case and, in all other cases, all adversaries that include a claim for relief to avoid a preferential transfer (11 U.S.C. § 547 and, if applicable, § 550) shall be referred to mandatory mediation. Parties to an adversary proceeding or contested matter may also stipulate to mediation, subject to Court approval. Del. Bankr. L. R. 9019-5(a).

**Persons Required to Attend.** Generally, the following persons must attend a mediation conference personally:

- Each party that is a natural person;
- If the party is not a natural person, including a governmental entity, **a representative who is not the party's attorney of record and who has full authority to negotiate and settle the matter on behalf of the party;**
- If the party is a governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend a settlement to the elected official or legislative body;
- The attorney who has primary responsibility for each party's case; and
- Other interested parties, such as insurers or indemnitors or one or more of their representatives, whose presence is necessary for a full resolution of the matter assigned to mediation.

Del. Bankr. L. R. 9019-5(c)(iii).

**Confidentiality of Mediation Proceedings.**

Protection of Information Disclosed at Mediation. The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation.

No person may rely on or introduce as evidence in any arbitral, judicial or other proceeding, evidence pertaining to any aspect of the mediation effort, including but not limited to: (A) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (B) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (C) proposals made or views expressed by the mediator; (D) statements or admissions made by a party in the course of the mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the mediation.

Discovery from Mediator. The mediator shall not:

- be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications or other documents received or made by the mediator while serving in such capacity;
- testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial or other proceeding; or
- be a necessary party in any proceedings relating to the mediation.

Del. Bankr. L. R. 9019-5(d).

**Termination of Mediation.** Upon the filing of a mediator's Certificate of Completion under Local Rule 9019-5(f)(ii) or the entry of an order withdrawing a matter from mediation under Local Rule 9019-5(g), the mediation will be deemed terminated and the mediator excused and relieved from further responsibilities in the matter without further order of the Court. If the mediation conference does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing under the Court's scheduling order.

Del. Bankr. L. R. 9019-5(h).

**B. Mediation-Related Resources on Bankruptcy Court's Website**

(1) Application for Admission to Mediation Register (Exhibit A): This is an application to serve as a mediator. The application requires an explanation of any prior mediation (or other relevant) experience.

(2) General Order (and Amendment to General Order) Regarding Procedures in Adversary Cases (Exhibit B):

- This order applies to adversary proceedings involving preferential transfers implicating section 547 and any other proceedings as the court may designate by order.
- No later than one hundred twenty (120) days after an answer or other responsive pleading is filed, the parties shall file a Stipulation Regarding Appointment of Mediator unless prior to that date the parties have submitted a motion for order of dismissal or a stipulated judgment.
  - If the parties fail to file a Stipulation Regarding Appointment of Mediator not later than ten (10) days after the deadline, the court will enter an order, without further notice or hearing, selecting and appointing a mediator for the adversary proceeding.
- Note: This general order may be modified by Chambers Procedures.

(3) Register of Mediators (Exhibit C): This is a list of Court-approved mediators and their contact information.

(4) Mediator Forms (Exhibit D): Status Report and Certificate of Completion forms are provided.

**C. Discussion of Mediation in Delaware Cases**

**(i) Protection of Information Disclosed at Mediation**

In Tribune, a party sought documents and communications containing discussions relating to the merits of certain causes of action. The request was challenged on grounds that, *inter alia*, certain of the requested documents were protected by a mediation order, Local Rule 9019-5(d) and Federal Rule of Evidence 408. In re Tribune Co., No. 08-13141 (KJC), 2011 WL 386827, at \*3 (Bankr. D. Del. Feb. 3, 2011).

The Court ultimately approved a compromise pursuant to which the protections afforded by the mediation order and Local Rule were partially waived. For example, the Court held that it would protect those “‘written or oral communications between or among Mediation Parties concerning the Mediation to the extent such communications were exchanged on any Mediation Day,’ but only if the communications [were] between Mediation Parties who were present at the Mediation or were participating in the Mediation off-site.” Id. at \*8.

In so holding, the Court explained that “[t]here is a strong policy in promoting full and frank discussions during a mediation,” and that “[c]ourts have recognized that confidentiality is essential to the mediation process:”

Absent the mediation privilege, parties and their counsel would be reluctant to lay their cards on the table so that a neutral assessment of the relative strengths and weaknesses of their opposing positions could be made. Assuming they would even agree to participate in

the mediation process absent confidentiality, participants would necessarily “feel constrained to conduct themselves in a cautious, tight-lipped, non-committal manner more suitable to poker players in a high-stakes game than to adversaries attempting to arrive at a just resolution of a civil dispute.” The effectiveness of mediation would be destroyed, thereby threatening the well established public needs of encouraging settlement and reducing court dockets.

Id. (citing Sheldone v. Pa. Turnpike Comm’n, 104 F.Supp. 2d 511, 514 (W.D. Pa. 2000)).

Another Delaware bankruptcy court has made clear that “Local Rule 9019–5 provides no basis for the Court to grant a protective order related to the mediation, nor does it protect any documents from discovery. The rule merely prohibits any party from using as evidence any documents prepared for the purpose of mediation.” In re AE Liquidation, Inc., No. 08-13031 (MFW), 2012 WL 6139950, at \*2 (Bankr. D. Del. Dec. 11, 2012).

(ii) **Quality of Mediation**

In Tribune, parties seeking approval of a plan that was premised on a settlement reached through mediation “invite[d] the Court to accord special consideration to the fact that the mediation was conducted by . . . Judge Gross, whose skills as a mediator are highly respected and much sought after.” In re Tribune Co., 464 B.R. 126, 157 n.44 (Bankr. D. Del. 2011). The Court (Judge Carey) rejected this effort to attribute weight to the settlement based on the alleged caliber of the mediation and mediator, explaining:

Mediations are confidential by custom and under local rule. (See Del. Bankr. L.R. 9019–5(d)). Later assessment of the quality of the mediation, by whomever conducted—absent some identifiable impropriety (and the record here reflects none)—is antithetical to the purpose and atmosphere intended to be created to enable parties to engage in such discussions. Parties, subject to the rules of mediation and the mediator, must be positioned to participate in settlement discussions uninhibited by the possibility that evidentiary consequences may ensue, whether mediation is wholly or partially successful, or fails to result in any settlement. In other words, the proposed settlement must stand or fall on its own merits and is not dependent upon the identity of the Mediator.

Id.

(iii) **Good Faith Participation**

Del. Bankr. L. R. 9019-5(c)(iii)(B) provides that the “[w]illful failure to attend any mediation conference, and any other material violation of this Local Rule, shall be reported to the Court by the mediator and may result in the imposition of sanctions by the Court.”

Delaware courts have not opined on the question of what constitutes a “willful failure” to attend mediation.

The New York bankruptcy court, however, has explained that “good faith” participation in mediation “generally requires that parties attend conferences, provide any requested memoranda, and produce representatives with settlement authority.” In re Bambi, 492 B.R. 183, 188 (Bankr. S.D.N.Y. 2013).

The United States District Court for the Southern District of New York has further held that “confidentiality considerations preclude a court from inquiring into the level of a party’s participation in mandatory court-ordered mediation, i.e., the extent to which a party discusses the issues, listens to opposing viewpoints and analyzes its liability.” In re A.T. Reynolds & Sons, Inc., 452 B.R. 374, 383-84 (S.D.N.Y. 2011).

**II. Mentorship/Encouraging Participation by Younger Lawyers**

Importance of Mentoring: “Productive mentoring relationships play an important role in ensuring that attorneys do not find themselves without the support, community and skills that they need to be successful in their organizations.” Tricia A. Widdoss, *May the Force (of Mentoring) Be with You*, Del. Law., (Summer 2015), at 14, 15.

United States District Court for the District of Delaware Chambers Procedures Concerning New Lawyers (Exhibit E): Included among the Chambers Procedures for Magistrate Judge Christopher J. Burke of the U.S. District Court in Delaware is the “New Standing Order Regarding Courtroom Opportunities for Newer Attorneys” (the “New Standing Order”).

The New Standing Order provides that:

- The Court is cognizant of a growing trend in which fewer cases go to trial, and in which there are generally fewer opportunities in court for speaking or “stand-up” engagements. This is especially true for newer attorneys, that is, attorneys practicing **for less than seven years** (“newer attorney(s)”).
- The Court adopts the following procedures regarding oral argument as to pending motions:
  - (1) After a motion is fully briefed, either as a part of a Request for Oral Argument, or in a separate Notice filed thereafter, a party may alert the Court that,

if argument is granted, it intends to have a newer attorney argue the motion (or a portion of the motion).

(2) If such notice is provided, the Court will:

A. Grant the request for oral argument on the motion, if it is at all practicable to do so.

B. Strongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated, were a newer attorney not arguing the motion.

C. Permit other more experienced counsel of record the ability to provide some assistance to the newer attorney who is arguing the motion, where appropriate during oral argument.

Del. Bankr. L. R. 9010-3 Appearance by Supervised Law Students: This local rule permits Supervised Law Students to appear as counsel in Court and to sign motions, petitions, etc. under certain circumstances and conditions.

### III. The Role of Delaware Counsel

“In Delaware the judiciary places a high value on professionalism, including not only lawyers’ and judges’ faithful adherence to ethical rules and canons, but also the expectation that these professionals and officers of the court will conduct themselves at all times with civility and respect for others.” Former Chief Justice E. Norman Veasey, *Justice Joseph Walsh: Scholar, Quintessential Professional, and Champion of Justice for All*, 39 Del. J. Corp. L. 363, 365 (2014).

#### A. Del. Bankr. L. R. 9010

Admission Pro Hac Vice. Attorneys admitted, practicing, and in good standing in another jurisdiction, who are not admitted to practice by the Supreme Court of the State of Delaware and the District Court, may be admitted pro hac vice in the discretion of the Court, such admission to be **at the pleasure of the Court**. (Del. Bankr. L. R. 9010-1(b)).

Any Judge of the Court may revoke, **upon hearing after notice and for good cause**, a pro hac vice admission in a case or proceeding before a judge.

The form for admission pro hac vice, which may be amended by the Court, is Local Form 105 and is located on the Court's website.

Association with Delaware Counsel Required. Unless otherwise ordered, an attorney not admitted to practice by the District Court and the Supreme Court of the State of Delaware may not be admitted pro hac vice unless associated with an attorney who is a

member of the Bar of the District Court and who maintains an office in the District of Delaware for the regular transaction of business (“Delaware counsel”).

- Consistent with CM/ECF Procedures, Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (See ECF Administrative Procedures)
- Unless otherwise ordered, Delaware counsel shall attend proceedings before the Court.

**B. Principles of Professionalism**

- Effective November 1, 2013, the Delaware State Bar Association and Delaware Supreme Court adopted the Principles of Professionalism for Delaware Lawyers (**Exhibit F**).
- These principles address, among other things, the integrity, compassion and civility that is expected from members of the profession.
- The Principles do not address the role of Delaware attorney as local counsel other than to provide that “[b]efore moving the admission of a lawyer from another jurisdiction, a Delaware lawyer should make such inquiry as required to determine that the lawyer to be admitted is reputable and competent **and should furnish the candidate for admission with a copy of these Principles.**”

**C. Commentary from the Court of Chancery**

(i) Guidelines to Help Lawyers Practicing in the Court of Chancery

The Court of Chancery has published *Guidelines to Help Lawyers Practicing in the Court of Chancery* (**Exhibit G**), which make clear that the concept of “local counsel” does not exist in Delaware as a role with less than full responsibility. Among other things, these guidelines provide that:

- a. The concept of “local counsel” whose role is limited to administrative or ministerial matters has no place in the Court of Chancery. The Delaware lawyers who appear in a case are responsible to the Court for the case and its presentation.
- b. If a Delaware lawyer signs a pleading, submits a brief, or signs a discovery request or response, it is the Delaware lawyer who is taking the positions set forth therein and making the representations to the Court. It does not matter whether the paper was initially or substantially drafted by a firm serving as “Of Counsel.”

(ii) Letter to Counsel from Vice Chancellor Laster:



## 2017 DELAWARE VIEWS FROM THE BENCH

By a letter to counsel dated December 2, 2009 in *State Line Ventures, LLC, et al. v. RBS Citizens, N.A.*, C. A. No. 4706-VCL (Del. Ch.) (**Exhibit H**), Vice-Chancellor J. Travis Laster of the Delaware Chancery Court clarified the Court's view regarding the term "local counsel." The court explained:

[I] believe it important to make clear that the Court of Chancery does not recognize the role [of local counsel]. I am certainly familiar with the term, and I know well that it is often used colloquially as if it were synonymous with "Delaware counsel." It is not. Our rules make clear that the Delaware lawyer who appears in an action always remains responsible to the Court for the case and its presentation. See Ct. Ch. R. 170(b) ("The admission of an attorney pro hac vice shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court."). So do the Principles of Professionalism for Delaware Lawyers . . . **A Delaware lawyer always appears as an officer of the Court and is responsible for the positions taken, the presentation of the case, and the conduct of the litigation.**

## **Exhibit A**

398472.1 08/09/2017

## 2017 DELAWARE VIEWS FROM THE BENCH

### UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

#### APPLICATION FOR ADMISSION TO MEDIATION OR VOLUNTARY ARBITRATION REGISTER

I, the undersigned, hereby apply for inclusion on the Register of Mediators for the United States Bankruptcy Court for the District of Delaware. In making this application, I certify under penalty of perjury that all of the following information is true and correct.

1. I will fully comply with the relevant provisions of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure and this Court's relevant Local Rules and General Orders.

2.1 I have been licensed or accredited under the laws of the United States, Delaware, or any other state, in the professions or specialties listed below (e.g., attorney, accountant, real estate broker, appraiser, engineer, etc.) since the date indicated:

<u>Profession</u>	<u>Accrediting Agency or Jurisdiction</u>	<u>Date of Admission</u>
-------------------	---	--------------------------

2.2 I am, or have been, a member in good standing of the professional organizations listed below which apply to my aforementioned professions:

<u>Organization</u>	<u>Date of Admission</u>	<u>Active/Inactive</u>
---------------------	--------------------------	------------------------

## AMERICAN BANKRUPTCY INSTITUTE

2.3 A general explanation of my experience in each of my aforementioned professions or specialties is listed below:

3.1 The following is a general statement concerning pertinent mediation experience that I have:

3.2 I have/have not participated in a mediation training program. The programs in which I have participated are described below (including course, program sponsor and hours):

4. The following is a brief explanation of my pertinent bankruptcy experience:

5. The following is a general explanation of any other pertinent experience, such as relevant business or legal activities, that I have:

6. I have:

- (a) never been suspended, disbarred or had any professional license revoked;
- (b) no pending adverse actions against any of my professional licenses;
- (c) never been convicted of a felony; and
- (d) never been sanctioned or reprimanded by any tribunal for unethical or unprofessional conduct, including a violation of Rule 11 or Rule 9011.

(Should any of the above apply, please describe the circumstances on an attached page.)

Form 110A Revised 11/12/04

## 2017 DELAWARE VIEWS FROM THE BENCH

7. I will not accept appointment as a mediator in any proceeding or matter unless at the time of appointment I would qualify as a "Disinterested person" as defined by 11 U.S.C. §101; I would not be disqualified pursuant to 28 U.S.C. §455 if I were a justice, judge, or magistrate; or I know of no other reason that would disqualify me as a mediator. In accordance with the Court's amended general order M-143, each person certified as a mediator should take the oath or affirmation prescribed by 28 U.S.C. §453 before serving as a mediator. Administration of the oath will be attested by affixing your signature to the attached copy titled Exhibit "A." After acceptance of appointment as a mediator, I will immediately contact the Court to resign upon learning that I am no longer qualified to serve.

Dated: \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Print or Type Name and last four digits of SS#

\_\_\_\_\_  
Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Telephone Number:

E-mail Address:

\*I understand that if I am certified I may be asked to file this information in an electronic database. If asked I understand that I must comply with the request to be included in the register.

**Mail Completed Application to:**

*Una O'Boyle, Clerk of Court*

*ADR Program Administrator*

*U.S. Bankruptcy Court, District of Delaware*

*824 Market Street, 3<sup>rd</sup> Floor*

*Wilmington, DE 19801*

**AMERICAN BANKRUPTCY INSTITUTE**

EXHIBIT A

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as mediator under the Constitution and laws of the United States. So help me God.

\_\_\_\_\_

Form 110A Revised 11/12/04

## **Exhibit B**

398472.1 08/09/2017

# AMERICAN BANKRUPTCY INSTITUTE

## U. S. BANKRUPTCY COURT DISTRICT OF DELAWARE

### GENERAL ORDER

### RE: PROCEDURES IN ADVERSARY PROCEEDINGS

The court currently has pending over 15,000 adversary proceedings and expects another 10,000 adversary proceedings to be filed this year. The purpose of this general order is to modify certain adversary proceeding procedures in order to reduce the delay in disposition of adversary proceedings. Now therefore,

IT IS ORDERED that the following provisions shall apply to all adversary proceedings filed on or after May 1, 2004 that include a claim for relief to avoid a preferential transfer (11 U.S.C. § 547 and, if applicable, § 550) and such other adversary proceedings as the court may designate by order.

1. Responsive Pleading. Any extension of time to file a responsive pleading is not effective unless approved by order of the court. Any motion for extension of time to file a responsive pleading or stipulated order for such an extension must be filed with the court no later than ten (10) days before the initial pretrial conference in the adversary proceeding.]

### 2. Disclosures and Discovery Planning.

(a) The discovery planning conference described in Fed. R. Civ. P. 26(f), made applicable by Fed. R. Bankr. P. 7026, shall occur no later than thirty (30) days after the first answer is filed, or sixty (60) days after the adversary proceeding is commenced, whichever is earlier. Without limiting the responsibility of all attorneys of record and all unrepresented parties to arrange and complete the conference, it shall be the responsibility of counsel for plaintiff to propose a date, time and place for the conference within fourteen (14) days after being advised of the identity of counsel for the defendant(s) or that the defendant(s) is unrepresented. The discovery planning conference may be telephonic.

(b) Parties shall provide the initial disclosures under Fed. R. Civ. P. 26(a)(1) no later than fourteen (14) days after the initial discovery planning conference. Any extension of the deadline to provide initial disclosures must be by order of the court, and will only be granted for cause.

### 3. Mediation.

(a) No later than ninety (90) days after an answer or other responsive pleading is filed the parties shall file a Stipulation Regarding Appointment of Mediator unless prior to that date the parties have submitted a motion for order of dismissal or a stipulated judgment. If the parties fail to file a Stipulation Regarding Appointment of Mediator no later than ten (10) days after the deadline, the court will enter an order, without further notice or



## 2017 DELAWARE VIEWS FROM THE BENCH

hearing, selecting and appointing a mediator for the adversary proceeding. The mediator shall be selected from the Register of Mediators and Arbitrators Pursuant to Local Rule 9019-4 for the United States Bankruptcy Court, District of Delaware.

(b) The bankruptcy estate, or if there is no bankruptcy estate the plaintiff in the adversary proceeding, shall pay the fees and costs of the mediator.

(c) The mediation shall be conducted, and be subject to, the provisions of Local Rule 9019-3 for the United States Bankruptcy Court, District of Delaware

#### 4. Post-Mediation Procedures and Trial Date.

(a) Within sixty (60) days after entry of the Order Assigning Adversary to Mediation the mediator shall either (a) file the mediator's certificate of completion, or, (b) if the mediation is not concluded, file a status report that provides the projected schedule for completion of the mediation.

(b) Adversary proceedings will be set for trial ninety (90) days after entry of the Order Assigning Adversary Proceeding to Mediation, or as soon thereafter as the court's calendar permits.

Dated: April 7, 2004  
(rev. July 14, 2004)

/s/ Mary F. Walrath  
Chief Judge

**AMERICAN BANKRUPTCY INSTITUTE**

**U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

**AMENDMENT TO GENERAL ORDER**

**RE: PROCEDURES IN ADVERSARY PROCEEDINGS**

**AND NOW**, this 11th day of April, 2005, the General Order signed on April 7, 2004, establishing procedures for all adversary proceedings under 11 U.S.C. §547 is hereby **Amended** as follows:

3. Mediation.

(a) No later than **one hundred twenty (120)** days after an answer or other responsive pleading is filed the parties shall file a Stipulation Regarding Appointment of Mediator unless prior to that date the parties have submitted a motion for order of dismissal or a stipulated judgment. If the parties fail to file a Stipulation Regarding Appointment of Mediator not later than ten (10) days after the deadline, the court will enter an order, without further notice or hearing, selecting and appointing a mediator for the adversary proceeding. The mediator shall be selected from the Register of Mediators and Arbitrators Pursuant to Local Rule 9019-4 for the United States Bankruptcy Court, District of Delaware.

This Amendment to the General Order shall be effective for all adversaries filed 11 U.S.C. §547 on or after **April 11, 2005**.

  
Chief Judge

## **Exhibit C**

398472.1 08/09/2017

# AMERICAN BANKRUPTCY INSTITUTE

## REGISTER OF MEDIATORS AND ARBITRATORS PURSUANT TO LOCAL RULE 9019-4 FOR THE UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

Kenneth E. Aaron, Esq.  
The Widener Building, Suite 500  
1339 Chestnut Street  
Philadelphia, PA 19107  
Tel. (215) 241-7727

Derek C. Abbott, Esq.  
Morris, Nichols, Arsht & Tunnell LLP  
1201 North Market Street  
Wilmington, DE 19801  
Tel. (302) 351-9357

Gregory Abrams Esq.  
ASK Financial  
17401 Ventura Boulevard, 2<sup>nd</sup> Fl.  
Encino (Los Angeles), California 91316  
Tel. (818) 462-0401  
Cell (818) 943-1806  
gabrams@askfinancial.com

Justin R. Alberto, Esq.  
222 Delaware Avenue, Suite 900  
Wilmington, DE 19801

John R. Ashmead, Esq.  
Seward & Kissel LLP  
One Battery Park Plaza  
New York, NY 10004

Daniel K. Astin, Esq.  
Franklin Mediation LLC  
1204 N. King Street  
Wilmington, DE 19801  
Tel. (302) 734-1100, Ext. 100  
Fax: (302) 658-1300  
Email: dastin@franklinmediation.com

Susan F. Balaschak, Esq.  
Akerman LLP  
666 Fifth Avenue, 20th Floor  
New York, NY 10103  
Tel: (212) 880-3800

David M. Banker, Esq.  
Lowenstein Sandler LLP  
1251 Avenue of the Americas, 18<sup>th</sup> Floor  
New York, NY 10020

Ronald S. Barliant, Esq.  
Goldberg, Kohn, Bell, Black,  
Rosenbloom & Moritz, Ltd.  
55 E. Monroe St., Suite 3700  
Chicago, IL 60603  
Tel. (312) 201-3880

Joseph Barry, Esq.  
Young Conaway Stargatt & Taylor LLP  
1000 West St. 17th Floor  
Wilmington, Delaware 19801  
Lawrence Bass Esq.

547 Ulster Way  
Denver, Colorado 80230  
Tel: (303) 946-9444  
Larrybass50@gmail.com

Christopher J. Battaglia, Esq.  
Halperin Battaglia Benzija, LLP  
40 Wall Street, 37<sup>th</sup> Floor  
New York, NY 10005

Steven N. Berger, Esq.  
C/O Engelman Berger, PC  
3636 North Central Avenue, Suite 700  
Phoenix, Arizona 85012  
Tel. (602) 222-4976

Leslie A. Berkoff, Esq.  
Moritt Hock & Hamroff LLP  
400 Garden City Plaza  
Garden City, NY 11530

Geoffrey L. Berman  
President of American Bankruptcy Institute  
Development Specialists, Inc.  
333 South Grand Avenue, Ste. 2010  
Los Angeles, CA 90071-1524  
Tel. (213) 617-2717

Ian Connor Bifferato, Esq.  
The Bifferato Firm  
1007 N. Orange St., 4th Floor  
Wilmington, DE 19801  
P.O. Box 645  
Wilmington, DE 19899-0645  
Tel: 302.255.7600  
Email: cbifferato@tbf.legal

Thomas E. Biron, Esq.  
Blank Rome LLP  
One Logan Square  
18<sup>th</sup> & Cherry Streets  
Philadelphia, PA 19103

Peter L. Borowitz, Esq.  
C/O Debevoise & Plimpton  
919 Third Avenue  
New York, NY 10022  
Cell: (914) 720-1217  
Fax: (212) 521-7525  
plborowitz@debevoise.com

William P. Bowden, Esq.  
Ashby & Geddes  
500 Delaware Avenue, 8th Floor  
Wilmington, DE 19801  
Tel. (302) 654-1888  
Fax: (302) 654-2067  
Email: wbowden@ashby-geddes.com

Robert S. Brady, Esq.  
Young Conaway Stargatt & Taylor LLP  
Rodney Square  
1000 N. King Street  
Wilmington, DE 19801  
Tel. (302) 571-6690  
Email: rbrady@ycst.com

Erin K. Brignola, Esq.  
Cooper Levenson, Attorneys at Law  
Fox Run Shopping Center  
30 Fox Hunt Drive  
Bear, Delaware 19701  
Tel: (302) 838-2600

Charles J. Brown, III, Esq.  
Gellert Scali Busenkell & Brown LLC  
913 Market Street, 10<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Tel: (302) 425-5813  
Email: cbrown@gsblaw.com

Michael G. Busenkell, Esq.  
Gellert Scali Busenkell & Brown, LLC  
913 North Market Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801  
Tel. (302) 425-5812  
Cell: (610) 864-7083

Andrew Caine, Esq.  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, California 90067-4003  
Tel. (310) 277-6910

Patrick W. Carothers, Esq.  
Leech Fishman Fuscaldolo & Lampl LLC  
525 William Penn Place, 30<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Francis L. Carter, Esq.  
Katz Barron Squitero Faust  
2699 South Bayshore Drive  
Seventh Floor  
Miami, FL 33133  
Tel: (305) 856-2444

Leif M. Clark  
Mediator/Arbitrator/Consultant  
P.O. Box 2676  
San Antonio, TX 78299  
Tel. (210) 663-5183  
www.leifmclark.com

Lisa L. Coggins, Esq.  
Ferry, Joseph & Pearce, P.A.  
824 Market Street, Suite 1000  
Wilmington, DE 19801  
Tel: (302) 575-1555

Jeffrey L. Cohen, Esq.  
Cooley LLP  
1114 Avenue of the Americas, 47<sup>th</sup> Floor  
New York, NY 10036

Neal D. Colton, Esq.  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103-3508  
Tel. (215) 665-2060  
Cell: (215) 291-5075  
Fax: (215) 701-2060  
Email: ncolton@cozen.com

Bernard G. Conaway, Esq.  
Cohen Segalias Pallas Greenhall & Furman, PC  
Nemours Building  
1007 North Orange Street, Suite 1103  
Wilmington, DE 19801

Mark B. Conlan, Esq.  
Gibbons P.C.  
One Gateway Center  
Newark, New Jersey 07102

Francis G. Conrad, Esq.  
(Former Bankruptcy Judge)  
MWI  
4 Faneuil Hall, Fourth Floor  
Boston, MA 02109  
Tel. (800) 894-8323  
Fax: (617) 973-9532  
Email: fconrad@mwil.org

Keith N. Costa, Esq.  
Schiff Hardin LLP  
666 Fifth Avenue, 17<sup>th</sup> Floor  
New York, NY 10103  
Tel. (212) 745-0827  
Fax: (212) 753-5044  
Email: kcosta@schiffhardin.com

Curtis J. Crowther, Esq.  
Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 N. King Street  
Wilmington, DE 19801  
Tel. (302) 571-6755  
Email: ccrowther@ycst.com

Melanie L. Cyganowski, Esq.  
Otterbourg, Steindler, Houston & Rosen, PC  
230 Park Avenue  
New York, NY 10169

Daniel J. DeFranceschi, Esq.  
Richards, Layton & Finger, P.A.  
One Rodney Square  
P. O. Box 551  
Wilmington, DE 19899  
Tel. (302) 651-7816  
Email: defranceschi@rlf.com

## AMERICAN BANKRUPTCY INSTITUTE

C. Edward Dobbs, Esq.  
Parker, Hudson, Rainer & Dobbs, LLP  
303 Peachtree Street, NE, Suite 3600  
Atlanta, Georgia 30308  
Tel: (404) 420-5529  
Email: [ced@phrd.com](mailto:ced@phrd.com)

John T. Dorsey, Esq.  
Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 N. King Street  
Wilmington, DE 19801  
Tel: (302) 571-6712  
Fax: (302) 576-3401  
Email: [jdorsey@ycst.com](mailto:jdorsey@ycst.com)

Thomas F. Driscoll III  
Tarabicos Grosso, LLP  
One Corporate Commons  
100 West Commons Boulevard, Suite 415  
New Castle, DE 19720  
Direct Dial: 302-757-7817  
Email: [tom@tarabicosgrosso.com](mailto:tom@tarabicosgrosso.com)

John H. Drucker, Esq.  
Cole, Schotz, Meisel, Forman & Leonard, P.A.  
900 Third Avenue, 16th Floor  
New York, NY 10022  
Tel: (646) 563-8923  
Fax: (646) 563-7923  
Email: [jdrucker@coleshotz.com](mailto:jdrucker@coleshotz.com)

Thomas E. DuVoisin  
4165 Caminito Cassis  
San Diego, CA 92122  
Tel: (858) 455-5365

Mark C. Ellenberg, Esq.  
Cadwalader, Wickersham & Taft, LLP  
700 6th Street, NW  
Washington, DC 20001

Judith Elkin, Esq.  
23 Malysana Lane  
New Rochelle, NY 10805  
[elkinj@mac.com](mailto:elkinj@mac.com)  
Tel: (212) 659-4968

Richard L. Epling, Esq.  
108 East 86th Street, apt. 9S  
New York, NY 10028

Jack Esher, Esq.  
Mediation Works Incorporated  
4 Faneuil Hall, Fourth Floor  
Boston, MA 02109  
Tel: (617) 947-3273  
Fax: (617) 449-9511  
Case manager: (800) 894-8323 Ex. 25  
[jesh@mw.org](mailto:jesh@mw.org)

Morton A. Faller, Esq.  
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.  
12505 Park Potomac Avenue, 6th Floor  
Potomac, MD 20854  
Tel: (301) 231-0928  
Fax: (301) 230-2891  
Email: [mort@shulmanrogers.com](mailto:mort@shulmanrogers.com)

Brett D. Fallon, Esq.  
Morris James LLP  
500 Delaware Avenue, Ste. 1500  
P. O. Box 2306  
Wilmington, DE 19899-2306  
Tel: (302) 888-6888  
Email: [bfallon@morrisjames.com](mailto:bfallon@morrisjames.com)

Benjamin D. Feder Esq.  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, NY 10178

Richard S. Gebelein, Esq.  
800 North King Street  
Wilmington, Delaware 19801

Bonnie Glantz Fatell, Esq.  
Blank Rome LLP  
1201 Market Street, Suite 800  
Wilmington, DE 19801  
Tel: (302) 425-6423  
[fatell@blankrome.com](mailto:fatell@blankrome.com)

Mark E. Felger, Esq.  
Cozen O'Connor  
Chase Manhattan Centre, Ste 1400  
1201 Market Street  
Wilmington, DE 19801-1147  
Tel: (302) 295-2087

Lisa Hill Fenning  
(Former U.S. Bankruptcy Judge)  
Arnold & Porter LLP  
777 South Figueroa Street, 44th Floor  
Los Angeles, CA 90017-5844  
Tel: (213) 243-4019  
Email: [lisa.fenning@aporter.com](mailto:lisa.fenning@aporter.com)

Charles J. Filardi, Jr., Esq.  
Filardi Law Offices LLC  
65 Trumbull Street, Second Floor  
New Haven, CT 06510  
Tel: (203) 562-8388  
Fax: (866) 849-2040  
Email: [charles@filardi-law.com](mailto:charles@filardi-law.com)

Robert M. Fishman, Esq.  
Shaw Fishman Glantz & Towbin LLC  
321 North Clark Street, Suite 800  
Chicago, Illinois 60654  
Tel: (312) 541-0151

Judith K. Fitzgerald, Esq.  
Tucker|Arensberg  
1500 One PPG Place  
Pittsburgh, PA 15222  
Phone: 412.594.3933  
[jfitzgerald@tuckerlaw.com](mailto:jfitzgerald@tuckerlaw.com)

Edmond J. Ford, Esq.  
Ford & Weaver, P.A.  
10 Pleasant Street, Ste. 400  
Portsmouth, NH 03801  
Tel: (603) 433-2002  
Fax: (603) 433-2122  
Email: eford@fordandweaver.com

Michael E. Foreman, Esq.  
Foreman Law PLLC  
11 Martine Avenue, 12th Floor  
White Plains, NY 10606  
Tel: (914) 684-1600

and

1745 Broadway, 17<sup>th</sup> Floor  
New York, NY 10019  
Tel: (212) 519-9870

David M. Fournier, Esq.  
Pepper Hamilton LLP  
Hercules Plaza, Suite 5100  
1313 Market Street  
P. O. Box 1709  
Wilmington, DE 19899-1709  
Tel: (302) 777-6565  
Fax: (302) 421-8390  
fournierd@pepperlaw.com

Barry V. Freeman, Esq.  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067-4308  
Tel: (310) 785-5367  
Email: bvf@jmbm.com

James Gadsden, Esq.  
Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, NY 10005  
Tel: (212) 238-8607  
Fax: (212) 732-3232  
gadsden@clm.com

Terri L. Gardner, Esq.  
(May, 2012 to present living in Delaware)  
Nelson Mullins Riley & Scarborough LLP  
4140 Parklake Avenue  
GlenLake One, Suite 200  
Raleigh, North Carolina 27612  
Tel: (919) 329-3882 (North Carolina)  
Tel: (302) 235-2401 (Delaware)  
Fax: (919) 329-3799  
Email: Terri.gardner@nelsonmullins.com

Barry S. Gold, Esq.  
Attorney at Law  
Murphy & McGonigle  
1185 Avenue of the Americas, 21st Fl.  
New York, NY 10036  
(212) 880-3978 Direct  
(212) 880-3998 Fax  
Barry.Gold@mmlawus.com

Marc Stuart Goldberg  
Attorney-at-Law and Mediator  
Marc Stuart Goldberg, LLC  
81 Main Street, Suite 205  
White Plains, New York 10601  
Tel: (914) 949-5400  
Fax: (914) 683-1279

Jerry D. Goldstein, Esq.  
Goldstein, Vespi & Vazquez, LLC  
264 Union Boulevard  
Totowa, New Jersey 07512  
Tel: (973) 595-5727  
Cell: (973) 595-5522  
Email: jgoldstein@gvvlaw.com

James A. Goodman, Esq. (Retired)  
(Former Bankruptcy Judge)  
Boca Raton, FL  
Tel: (207) 415-9200  
Fax: (561) 634-2830  
Email: jim@judgegoodman.com

Howard N. Gorney, Esq.  
MWI  
4 Faneuil Hall, Fourth Floor  
Boston, MA 02109  
Tel: (800) 894-8323  
Fax: (617) 973-9532  
Email: hgorney@mwi.org

David Gould, Esq.  
Gould & Gould LLP  
23975 Park Sorrento, Ste. 200  
Calabasas, CA 91302-4011  
Tel: (818) 222-8092  
Fax: (818) 449-4803  
Cell: (310) 600-9600  
Email: dgould@davidgouldlaw.com

Hon. Jane C. Greenspan (Ret.)  
JAMS  
The Bell Atlantic Tower  
1717 Arch Street, Suite 4010  
Philadelphia, PA 10103  
Tel: (215) 246-9494  
Fax (215) 246-0949  
Email: jgreenspan@jamsadr.com

Joseph Grey, Esq.  
Cross & Simon LLC  
1105 North Market Street, Suite 901  
Wilmington, DE 19801

Alan C. Grossman, P.E., Esq.  
TAWS-1530 Locust Street  
P.O. Box 181  
Philadelphia, PA 19102  
Tel: (609) 932-9219  
Fax: (815) 366-7568  
Email: grossmana@earthlink.net

## AMERICAN BANKRUPTCY INSTITUTE

Harry M. Gutfleish, Esq.  
Forman Holt Eliades Ravin & Youngman LLC  
80 Route 4 East, Suite 290  
Paramus, NJ 07652  
Tel: (201) 845-1000 Ext. 350  
hgutfleish@formanlaw.com

Eric J. Haber, Esq.  
Cooley LLP  
1114 Avenue of the Americas  
New York, NY 10036-7798  
Tel: (212) 479-6144  
Fax: (212) 479-6275

Edwin J. Harron, Esq.  
Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 N. King Street  
Wilmington, DE 19801  
Tel: (302) 571-6703  
Email: eharron@ycst.com

William A. Hazeltine, Esq.  
Sullivan Hazeltine Allinson LLC  
901 North Market Street, Suite 1300  
Wilmington, Delaware 19801  
Tel: (302) 428-8191

Joel M. Helmrich, Esq.  
Dinsmore & Shohl LLP • Legal Counsel  
One Oxford Centre, 301 Grant Street  
Suite 2800  
Pittsburgh, PA 15219  
Tel (412) 288-5880 • Fax (412) 281-5055  
Email: joel.helmrich@dinsmore.com

Adam Hiller, Esq.  
Hiller & Arban LLC  
1500 North French Street, 2nd Floor  
Wilmington, DE 19801  
Tel: (302) 442-7677  
Fax: (301) 442-7045  
Email: ahiller@hillerarban.com

Marc Hirschfield, Esq.  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, NY 10111  
Tel. (212) 589-4610  
Email: mhirschfield@bakerlaw.com

Suzanne H. Holly, Esq.  
Berger Harris LLP  
1105 North Market Street, 11th Floor  
Wilmington, DE 19801  
Tel: (302) 655-1140  
Fax: (302) 655-1131

Joseph H. Huston, Jr., Esq.  
Stevens & Lee  
919 North Market Street, Ste 1300  
Wilmington, DE 19801  
Tel. (302) 425-3310

Reginald W. Jackson, Esq.  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
P. O. Box 1008  
Columbus, Ohio 43216-1008  
Tel. (614) 464-6400

William D. Johnston, Partner  
Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Tel. (302) 571-6679  
Fax: (302) 576-3304

James H. Joseph, Esq.  
Joseph Law Offices, P.C.  
6030 Bunkerhill Street  
Pittsburgh, PA 15206-1156  
Tel. (412) 661-4000  
Email: jhoseph@joseph.law.pro

James Helton Joseph, Esq.  
Spilman Thomas & Battle, PLLC  
One Oxford Centre, Suite 3440  
Pittsburgh, PA 15219  
Tel. (412) 325-3304  
Email: JJoseph@spilmanlaw.com

Michael B. Joseph, Esq.  
824 Market Street  
Wilmington, DE 19801  
Tel. (302) 656-0123  
Email: mjoseph@ferryjoseph.com

Margaret Juliano, Esq.  
Obermayer Rebmann Maxwell & Hippel LLP  
1000 N. West Street, Suite 1200  
Wilmington, Delaware 19801  
Email: [margaret.juliano@obermayer.com](mailto:margaret.juliano@obermayer.com)

David A. Kasen, Esquire  
Kasen & Kasen  
Society Hill Office Park, Suite 3  
1874 E. Marlton Pike  
Cherry Hill, NJ 08003  
Tel. (856) 424-4144  
Fax: (856) 424-7565

Erwin I. Katz, Esq.  
(Former Bankruptcy Judge)  
2839 W. Morse Avenue  
Chicago, IL 60645  
Tel. (773) 841-6219

William M. Kelleher, Esq.  
Gordon, Fournaris, Mammarella, P.A.  
1925 Lovering Avenue  
Wilmington, DE 19806  
Tel: (302) 652-2900  
Fax: (302) 652-1142  
Email: bkelleher@gfmlaw.com



## 2017 DELAWARE VIEWS FROM THE BENCH

Robin E. Keller, Esq.  
c/o Hogan Lovells US LLP  
875 Third Avenue  
New York, NY 10022  
Tel. (212) 918-3000

John Adam Kems, Jr., Esq.  
187 Brittney Lane  
Hartley, DE 19953-2278-87  
Tel. (302) 492-3445 Fax (302) 492-3446  
Cell (302) 423-9985  
Email - neutraljohn@comcast.net  
Hourly Rate: \$400.00

Norman N. Kinel  
Partner  
Squire Patton Boggs (US) LLP  
30 Rockefeller Plaza, 23rd Floor  
New York, New York 10112  
T +1.212.407.0130  
O +1.212.872.9800  
F +1.212.872.9815  
norman.kinel@squirepb.com

Shelley A. Kinsella, Esq.  
Elliott Greenleaf  
1105 N. Market Street  
17<sup>th</sup> Floor  
P. O. Box 2327  
Wilmington, DE 19899  
Tel. (302) 384-9400

Howard B. Kleinberg, Esq.  
Meyer, Suozzi, English & Klein, PC  
990 Stewart Avenue, Suite 300  
Garden City, New York 11530  
Tel. (516) 592-5718

Alan Kolod, Esq.  
Moses & Singer LLP  
The Chrysler Building  
405 Lexington Avenue, 12<sup>th</sup> Floor  
New York, NY 10174  
Tel. (212) 554-7866  
Tel. (212) 554-7800  
Fax: (212) 554-7700

Louis H. Kornreich, Esq.  
Bernstein, Shur, Sawyer & Nelson, P.A.  
100 Middle Street  
P. O. Box 9729  
Portland, ME 04104-5029  
Tel: (207) 228-7142

Steven K. Kortanek, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
222 Delaware Avenue, Suite 1501  
Wilmington, DE 19801  
Tel. (302) 252-4363  
Fax: (302) 661-7728  
Email: skortanek@wcsr.com

Mr. Justin Kuczmarski, MBA, CPA, CVA, CIRA, ABV,  
CFF  
Crowe Horwath LLP  
488 Madison Avenue-Floor 3  
New York, NY 10022  
Tel. (212) 572-5526  
Email: Justin.Kuczmarski@CroweHorwath.com

Jonathan M. Landers  
Scarola Malone & Zubatov LLP  
1700 Broadway  
41st Floor  
New York, NY 10019  
Tel. (646) 412-3205  
Fax: (212) 757-0469

Michael R. Lastowski  
Partner  
Duane Morris LLP  
222 Delaware Avenue, Suite 1600  
Wilmington, DE 19801-1659  
Tel. (302) 657 4942  
Fax: (302) 397 2138

Kimberly E. C. Lawson, Esq.  
Reed Smith LLP  
1201 Market Street, Suite 1500  
Wilmington, DE 19801  
(302) 778-7500  
klawson@reedsmith.com

B. Christopher Lee, Esq.  
Jacoby Donner, PC  
1700 Market Street  
Suite 3100  
Philadelphia, PA 19103  
Tel. (215) 563-2400  
Fax: (215) 563-2870  
Chris.lee@jacobydonner.com

Raymond H. Lemisch, Esq.  
Benesch, Friedlander, Coplan & Aronoff, LLP  
222 Delaware Ave., Suite 801  
Wilmington, DE 19801  
Tel. (302) 442-7010  
Tel. (302) 442-7012  
Email: rlemisch@bfca.com

James P. S. Leshaw, Esq.  
Leshaw Law, P.A.  
240 Crandon Boulevard, Suite 248  
Key Biscayne, Florida 33149  
also  
1395 Brickell Avenue, Suite 800  
Miami, FL 33131  
Tel: (305) 477-1758  
Fax: (305) 248-2677  
E-mail: jim@leshawlaw.com

Lester J. Levy, Esq.  
Judicial Arbitration and Mediation Services, Inc.  
(JAMS)  
Two Embarcadero Center, Suite 1100  
San Francisco, CA 94111  
Tel. (415) 774-2618  
Email: [llevy@jamsadr.com](mailto:llevy@jamsadr.com)

Christopher D. Loizides, Esq.  
Loizides & Associates  
Legal Arts Building, Ste. 800  
1225 King Street  
Wilmington, DE 19801  
Tel. (302) 654-0248  
Fax: (302) 654-0728  
[loizides@loizides.com](mailto:loizides@loizides.com)

Gerald P. Lorentz, Esq.  
JAMS  
555 13<sup>th</sup> Street, NW, Ste. 400 West  
Washington, DC 20004  
Tel. (202) 533-2019  
Fax: (202) 942-9186

Frederick M. Luper, Esq.  
Luper Neidenthal & Logan, LPA  
50 W. Broad Street, Ste. 1200  
Columbus, OH 43215  
Tel. (614) 229-4409  
Fax: (614) 464-2425  
Email: [fluper@lnlattorneys.com](mailto:fluper@lnlattorneys.com)

James B. Luric, CPA/ABV, ASA, CBA, CVA, BVAL  
Managing Member  
CapVal-American Business Appraisers, LLC  
326 Donahey Ave., NE  
New Philadelphia, OH 44663  
Tel. (330) 343-7907  
Email: [JLuric@CapVal-LLC.com](mailto:JLuric@CapVal-LLC.com)

Raymond T. Lyons, Esq.  
(former Bankruptcy Judge)  
Counsel  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
Tel. (609) 844-3031

Thomas G. Macauley, Esq.  
Maccauley LLC  
300 Delaware Avenue, Suite 760  
Wilmington, DE 19801  
Tel. (302) 656-0100  
[tm@macdelaw.com](mailto:tm@macdelaw.com)

Jerry M. Markowitz, Esq.  
9130 So. Dadeland Blvd., #1800  
Miami, FL 33156  
Tel. (305) 670-5000

Sylvia Mayer, Esq.  
S. Mayer Law PLLC  
P. O. Box 6542  
Houston, TX 77265  
Tel. (703) 893-0339

Michael D. McDowell, Esq.  
Arbitrator and Mediator  
P. O. Box 15054  
Pittsburgh, PA 15237  
Tel. (412) 260-5151

Brian J. McLaughlin, Esq.  
1201 N. Orange Street, Suite 400  
Wilmington, DE 19801  
Tel. (302) 656-8162  
Fax: (302) 656-2769

John D. McLaughlin, Jr., Esq.  
Franklin Mediation, LLC  
1204 N. King Street  
Wilmington, DE 19801  
Tel. (855) 734-1100 Ext. 102  
Fax: (302) 658-1300  
Email: [jmclaughlin@franklinmediation.com](mailto:jmclaughlin@franklinmediation.com)

David W. Meadows, Esq.  
Law Offices of David W. Meadows  
1801 Century Park East, Suite 1235  
Los Angeles, CA 90067  
Tel: (310) 557-8490  
Fax: (310) 557-8493  
Email: [david@davidwmeadowslaw.com](mailto:david@davidwmeadowslaw.com)

Mr. Massoud Messkoub  
Masters Degree in Economics  
Retired Director: Risk Management, Insurance,  
and Claims  
15 Turtle Road  
Morristown, New Jersey 07960-6151

Judith Meyer, Esq.  
J. P. Meyer Commercial Dispute Solutions  
150 Rose Lane  
Haverford, PA 19041-1618  
Tel. (215) 563-1480  
Cell: (610) 212-9877  
Email: [Judith@JudithMyer.com](mailto:Judith@JudithMyer.com)

Michael P. Migliore, Esq.  
City Solicitor  
City Law Department  
800 N. French Street, 9th Floor  
City/County Building  
Wilmington, DE 19801

Richard E. Mikels, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC  
One Financial Center  
Boston, Massachusetts 02111

Kathleen M. Miller  
Smith, Katzenstein & Furlow LLP  
800 Delaware Avenue, 10<sup>th</sup> Floor  
P. O. Box 410  
Wilmington, DE 19899  
Tel. (302) 652 8400

Stephen M. Miller, Esq.  
Morris James LLP  
500 Delaware Avenue, Ste. 1500  
P. O. Box 2306  
Wilmington, DE 19899-2306  
Tel. (302) 888-6853  
Email: smiller@morrisjames.com

Mark Minuti, Esq.  
Saul Ewing  
222 Delaware Avenue, Suite 1200  
P. O. Box 1266  
Wilmington, DE 19899  
Tel. (302) 421-6840  
Email: mminuti@saul.com

Joseph T. Moldovan, Esq.  
Chair, Bankruptcy Restructuring Practice  
Morrison Cohen LLP  
909 Third Avenue  
New York, NY 10022-4371  
Tel. (212) 735-8603

Francis A. Monaco, Jr., Esq.  
Womble Carlyle Sandridge & Rice LLP  
222 Delaware Avenue, Suite 1501  
Wilmington, DE 19801  
Tel. (302) 252-4340  
Fax: (302) 661-7730  
Email: fmonaco@wcsr.com

Hon Randall J. Newsome (Ret)  
JAMS  
2 Embarcadero Center, Suite 1500  
San Francisco, California 94111  
Tel. (415) 774-2629  
Fax (415) 982-5287  
Email: rnewsome@jamsadr.com  
ebutler@jamsadr.com

James O'Neill, Esq.  
Pachulski Stang Ziehl & Jones LLP  
919 North Market Street, 17th Floor  
Wilmington, DE 19899-8705  
Tel. (302) 652-4100  
Email: joneill@pszjlaw.com

Mark N. Parry, Esq.  
Moses & Singer LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174  
Tel. (212) 554-7876  
Email: mparry@mosessinger.com

James L. Patton, Jr., Esq.  
Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 N. King Street  
Wilmington, DE 19801  
Tel. (302) 571-6684

Marc J. Phillips, Esq.  
Manion Gaynor & Manning LLP  
1007 North Orange Street, 10th Floor  
Wilmington, DE 19801  
Tel. (302) 504-6803

Steven D. Pohl, Esq.  
Brown Rudnick Berlack Israels LLP  
One Financial Center  
Boston, MA 02111  
Tel. (617) 856-8594

Vincent J. Poppiti, Esq.  
(Former Judge of the Superior Court and former Chief  
Judge of Family Court for the State of Delaware)  
Fox Rothschild LLP  
Citizens Bank Center  
919 North Market Street, Suite 1300  
Wilmington, DE 19899-2323  
Tel. (302) 654-7444  
Fax: (302) 656-8920  
Email: vpoppiti@foxrothschild.com

Jason C. Powell, Esq.  
Ferry, Joseph & Pearce, P.A.  
824 N. Market Street, Suite 1000  
P. O. Box 1351  
Wilmington, DE 19801  
Tel. (302) 575-1555  
Fax: (302) 575-1714  
Email: jpowell@ferryjoseph.com

William C. Price, Esq.  
Clark Hill PLC  
One Oxford Centre  
301 Grant Street, 14<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15219  
Tel. (412) 394-7776  
Cell: (412) 463-5079  
wprice@clarkhill.com

Robert D. Raicht, Esq.  
Halperin Battaglia Raicht, LLP  
40 Wall Street, 37<sup>th</sup> Floor  
New York, NY 10005  
Tel. (212) 765-9100

Marcos A. Ramos, Esq.  
Richards, Layton & Finger, P.A.  
One Rodney Square  
Wilmington, DE 19801  
Tel. (302) 651-7566  
Fax: (302) 498-7566  
Email: ramos@rlf.com

Donald M. Ransom, Esq.  
Casarino, Christman Shalk Ransom & Doss, PA  
405 North King Street, Ste. 300  
P. O. Box 1276  
Wilmington, DE 19899  
Tel. (302) 594-4500  
Fax (302) 594-4509  
dransom@casarino.com

Ira A. Reid, Esq.  
Partner  
Baker & McKenzie LLP  
452 Fifth Avenue  
New York, NY 10018  
Tel: +1 212 891 3976  
Fax: +1 212 310 1600  
ira.reid@bakermckenzie.com

Patrick J. Reilley, Esq.  
Cole Schotz P.C.  
500 Delaware Avenue, Suite 1400  
Wilmington, DE 19801  
Tel: (302) 651-2004

Adam L. Rosen, Esq.  
Silverman Acampora LLP  
100 Jericho Quadrangle, Suite 300  
Jericho, NY 11753  
Tel. (516) 479-6370  
a.rosen@silvermanacampora.com

Kenneth A. Rosen, Esq.  
Lowenstein Sandler PC  
65 Livingston Avenue  
Roseland, NJ 07068  
Tel. (973) 597-2548  
Fax: (973) 597-2549  
Email: krosen@lowenstein.com

Robert J. Rosenberg, Esq.  
Latham & Watkins LLP  
885 Third Avenue  
New York, NY 10022

Frederick B. Rosner, Esq.  
The Rosner Law Group LLC  
824 Market Street, Ste. 810  
Wilmington, DE 19801  
Tel. (302) 319-6300  
Main: (302) 777-1111  
Email: rosner@teamrosner.com

Stanley P. Roth  
North American Capital Corp.  
510 Broad Hollow Road  
Melville, NY 11747  
Tel. (631) 752-9600  
Fax (631) 752-9618

Paul A. Rubin, Esq.  
Rubin LLC  
345 Seventh Avenue, 21<sup>st</sup> Floor  
New York, New York 10001  
Tel. (212) 390-8054  
Fax: (212) 390-8064  
prubin@rubinlawllc.com

Anthony M. Saccullo, Esq.  
A.M. Saccullo Legal, LLC  
27 Crimson King Drive  
Bear, DE 19701  
Tel. (302) 836-8877  
ams@saccullegal.com

Bradford J. Sandler, Esq.  
Pachulski Stang Ziehl & Jones LLP  
919 North Market Street, 17<sup>th</sup> Floor  
Wilmington, DE 19801  
Email: bsandler@pszjlaw.com  
Tel. (302) 778-6424  
Fax: (302) 652-4400  
Main: (302) 652-4100

Denise L. Savage, Esq.  
Savage Law Group  
A Professional Limited Liability Corporation  
Counselors at Law  
50 Main Street, Suite 1000  
White Plains, NY 10606  
Tel. (914) 271-5150 Ext. 1301  
Fax: (914) 271-5255  
Email: dsavage@savagelitigation.com

Maria Aprile Sawczuk, Esq.  
Goldstein & McClintock LLLP  
1201 N. Orange Street, Suite 7380  
Wilmington, Delaware 19801  
Tel. (302) 444-6710  
Fax: (302) 444-6709  
marias@restructuringshop.com

Robert A. Schatzman, Esq.  
Shareholder  
GrayRobinson, P.A.  
1221 Brickell Avenue, Suite 1600  
Miami, FL 33131  
Main: (305) 416-6880  
Direct: (305) 913-0380  
Robert.Schatzman@Gray-Robinson.com

Jeffrey M. Schlerf, Esq.  
Fox Rothschild LLP  
919 N. Market Street, Suite 1600  
Wilmington, DE 19801  
Tel. (302) 622-4212  
Email: jschlerf@foxrothschild.com

Edward L. Schnitzer, Esq.  
Hahn & Hessen  
488 Madison Avenue  
New York, NY 10022  
Tel. (212) 478-7200

Gary F. Seitz, Esq.  
Rawle & Henderson LLP  
300 Delaware Avenue, Ste 1015  
P. O. Box 588  
Wilmington, DE 19899-0588  
Tel. (302) 778-1200  
Fax: (302) 778-1400  
Email: gseitz@rawle.com

M. Melvin Shralow, Esq.  
ShralowADR, LLC  
930 Montgomery Avenue, Apt. 101  
Bryn Mawr, PA 19010-3037  
Tel. (610) 527-1006

Kenneth P. Silverman, Esq.  
SilvermanAcampora LLP  
100 Jericho Quadrangle, Suite 300  
Jericho, NY 11753  
Tel: (516) 479-6300  
Fax: (516) 479-6301  
Email: KSilverman@SilvermanAcampora.com

## 2017 DELAWARE VIEWS FROM THE BENCH

Mark D. Silverschotz, Esq.  
531 Main Street, Apt. 1901  
Roosevelt Island, NY 10044  
Tel. (212) 205-6086  
Mark.silverschotz@gmail.com

Joseph R. Slights, III, Esq.  
500 Delaware Avenue, Ste. 1500  
Wilmington, DE 19801

Christopher P. Simon, Esq., Member  
Cross & Simon, LLC  
913 North Market Street, 11th Floor  
Wilmington, Delaware 19801  
Tel. (302) 777-4200  
Email: csimon@crosslaw.com

Adam Singer, Esq.  
Cooch and Taylor, P.A.  
The Brandywine Building  
1000 West Street, 10th Floor  
Wilmington DE 19801  
(302) 984-3830  
Email: asinger@coochtaylor.com

Thomas R. Slome, Esq.  
Meyer, Suozzi, English & Klein, P.C.  
990 Stewart Avenue, Ste. 300  
P.O. Box 9194  
Garden City, NY 11530-9194  
Tel. (516) 592-5772  
Fax: (516) 741-6706  
Email: tslome@msek.com

Arthur J. Spector, Esq.  
(Former Bankruptcy Judge)  
Berger Singerman, P.A.  
350 E. Las Olas Blvd., 10th Floor  
Fort Lauderdale, FL 33301  
Tel. (954) 525-9900  
Email: ASpector@bergersingerman.com

Stephen W. Spence, Esq.  
Phillips, Goldman & Spence P.A.  
1200 N. Broom Street  
Wilmington, DE 19806  
Tel: (302) 655-4200  
Fax: (302) 655-4210  
Email: sws@pgslaw.com

Douglas S. Stanger, Esq.  
Flaster/Greenberg PC  
646 Ocean Heights Avenue  
Linwood, NJ 08221  
Tel: (609) 645-1881

Charles A. Stanziale, Jr., Esq.  
Four Gateway Center  
100 Mulberry Street  
P. O. Box 652  
Newark, NJ 07102  
Tel. (973) 639-7908  
Email: cstanziale@mccarter.com

Stephen Z. Starr, Esq.  
Starr & Starr PLLC  
260 Madison Avenue  
17th Floor  
New York, NY 10016-2401  
Tel. (212) 867-8165  
Fax: (212) 867-8139  
Email: info@starrandstarr.com

Arthur Steinberg, Esq.  
1185 Avenue of the Americas  
New York, New York 10036

Richard Stern, Esq.  
Luskin, Stern & Eisler LLP  
Eleven Times Square – Suite 16F  
New York, New York 10036  
Phone: (212) 597-8210  
Email: stern@lsellp.com

David B. Stratton, Esq.  
Pepper Hamilton LLP  
Hercules Plaza, Suite 5100  
1313 Market Street  
P. O. Box 1709  
Wilmington, DE 19899-1709  
Tel. (302) 777-6500

Scott Y. Stuart, Esq.  
Donlin, Recano & Company  
419 Park Avenue South  
New York, NY 10016

William H. Sudell, Jr., Esq. of Counsel  
Morris, Nichols, Arshat & Tunnel LLP  
1201 N. Market Street, 18th Floor  
P. O. Box 1347  
Wilmington, DE 19899-1347  
Tel: (302) 658-9200  
Fax: (302) 658-3989  
Email: wsudell@mnat.com

Brian A. Sullivan, Esq.  
Werb & Sullivan  
300 Delaware Avenue, 13th Floor  
P. O. Box 25046  
Wilmington, DE 19899  
Tel. (302) 652-1100  
Email: bsullivan@werbsullivan.com

Edna Sussman, Esq.  
Arbitrator & Mediator  
Sussman ADR LLC, FCI Arb  
Distinguished ADR Practitioner in Residence, Fordham  
Law School  
20 Oak Lane  
Scarsdale, NY 10583  
Or  
10 East 40th Street  
35th Floor  
New York, NY 10016

Tel: 914-472-9406  
212-213-2173  
Cell: 914-261-6816  
Fax: 914-472-8975  
E-mail: ednasussman@sussmanADR.com

Mark D. Taylor, Esq.  
Kilpatrick Townsend & Stockton LLP  
Suite 900  
607 14th Street, NW  
Washington, DC 20005-2018  
Tel. (202) 508 5867

William F. Taylor, Jr., Esq., Partner  
McCarter & English, LLP  
Renaissance Center  
405 N. King Street, 8<sup>th</sup> Floor  
P. O. Box 111  
Wilmington, DE 19801  
Tel. (302) 984-6313  
Cell: (302) 743-5972  
Fax: (302) 984-2496  
wtaylor@mccarter.com

Jay F. Theise, Esq.  
Jay F. Theise and Associates, LLC  
58 Batterymarch Street, #124  
Boston, MA 02110  
Tel. (617) 482-8300

Judy D. Thompson  
JD Thompson Law  
Post Office Box 33127  
Charlotte, NC 28233  
jdt@jdtthompsonlaw.com  
Tel: (828) 749-1865

Charles H. Toliver, IV, Esq.  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
Wilmington, Delaware 19801

Edward C. Toole, Jr., Esq.  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799  
Tel. (215) 981-4594  
Email: toolee@pepperlaw.com

Gary D. Underdahl, Esq.  
ASK LLP  
2600 Eagan Woods Drive, Ste 400  
St. Paul, MN 55121

Diane E. Vuocolo, Esq.  
Greenberg Traurig, LLP  
2700 Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103  
Tel: (215) 988-7803  
General: (215) 988-7800  
Fax: (215) 717-5230  
Email: vuocolo@gtlaw.com

Joel M. Walker Esq.  
Duane Morris LLP  
600 Grant Street, Suite 5010  
Pittsburgh, PA 15219

Christopher A. Ward  
Managing Shareholder - Delaware Office  
Polsinelli Shughart PC  
222 Delaware Avenue, Suite 1101  
Wilmington, Delaware 19801  
Tel. (302) 252-0922 (Direct)  
Fax: (302) 252-0921  
Cell: (302) 507-3910  
Email: cward@polsinelli.com

Richard L. Wasserman, Esq.  
Venable LLP  
750 East Pratt Street, Suite 900  
Baltimore, MD 21202  
Tel. (410) 244-7505

Martin J. Weis, Esq.  
Dilworth Paxson, LLP  
One Customs House -- Suite 500  
704 King Street  
P. O. Box 1031  
Wilmington, DE 19899-1031  
Tel: (302) 571-9800

Roger M. Whelan, Esq.  
(Former Bankruptcy Judge)  
17908 Ednor View Terrace  
Ashton, MD 20861  
Tel. (301) 260-7707  
Email: mwwhelan@verizon.net

Professor James J. White  
The University of Michigan Law School  
625 S. State Street  
Ann Arbor, MI 48109-1215  
Tel. (734) 764-9325  
jwhite@umich.edu

Robert D. Wilcox, Esq.  
7971 Hunters Grow Road  
Jacksonville, FL 32256  
Tel. (904) 998-9994  
Tel. (302) 652-1100

John J. Wilson, Esq.  
(Former Bankruptcy Judge)  
507 Calle Amigo  
San Clemente, CA 92673-3000  
Tel. (949) 498-4403

Jeffrey C. Wisler  
Connolly Gallagher LLP  
1000 West Street, Suite 1400  
Wilmington, DE 19801  
Phone: (302) 888-6258  
Fax: (302) 658-0380  
Email: jwisler@connollygallagher.com

William J. Woodward, Jr.  
Senior Fellow, Santa Clara University  
Professor Emeritus, Temple University  
500 El Camino Real  
Santa Clara, CA 95050  
Tel: (408) 554-4757  
Cell: (267) 257-5014  
Email: wwoodward@scu.edu

## 2017 DELAWARE VIEWS FROM THE BENCH

Mr. Jeffrey D. Wright  
27 Findail Drive  
Newark, DE 19711  
Tel: (302) 275-0657



Una O'Boyle, Clerk of Court  
ADR Program Administrator

Menachem O. Zelmanovitz  
Zelmanovitz & Associates PLLC  
1211 Avenue of the Americas, 40<sup>th</sup> Floor  
New York, NY 10036  
Tel: (646) 898-1575  
Fax: (212) 753-0396  
Email: mendy@zelmlaw.com

Dated: April 25, 2017

## **Exhibit D**



**2017 DELAWARE VIEWS FROM THE BENCH**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re )  
 ) Case No. \_\_\_\_\_  
 )  
 Debtor(s) ) Adv. Proc. No. \_\_\_\_\_  
 )  
 )  
 ) MEDIATION STATUS REPORT  
 Plaintiff(s) )  
 )  
 v. )  
 )  
 Defendant(s) )

In accordance with this Court's Order Assigning Adversary Proceeding to Mediation, dated \_\_\_\_\_, the undersigned mediator reports that the mediation has not been completed and hereby provides a projected schedule for completion.

The undersigned mediator expects that the mediation will be concluded no later than \_\_\_\_\_ (insert date) for the following reason(s):

\_\_\_\_\_ A mediation session is scheduled to occur on \_\_\_\_\_.

\_\_\_\_\_ A mediation session needs to be scheduled, but the mediator has been unable to arrange a date and time.

\_\_\_\_\_ OTHER:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Mediator

\_\_\_\_\_  
Name of Mediator

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone No.

cc: Counsel of Record  
Pro Se Parties

(9-24-04)

AMERICAN BANKRUPTCY INSTITUTE

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re )  
 ) Case No. \_\_\_\_\_  
 )  
 Debtor(s) ) Adv. Proc. No. \_\_\_\_\_  
 )  
 )  
 Plaintiff(s) ) MEDIATOR'S CERTIFICATE OF COMPLETION  
 )  
 )  
 v. )  
 )  
 Defendant(s) )

In accordance with this Court's Order Assigning Adversary Proceeding to Mediation, dated \_\_\_\_\_, the undersigned mediator reports that the mediation was completed on \_\_\_\_\_ and resolved in the following manner (*complete applicable provisions*):

(a) The following individuals were present:

(1) Parties (name and capacity) -

(2) Counsel (name and party representing) -

(b) The following parties failed to appear and/or participate as ordered:

(c) The outcome of the mediation conference was:

\_\_\_\_\_ The matter has been completely resolved and counsel (or parties) have been instructed to file an appropriate stipulation and proposed order within twenty (20) days of the conference.

\_\_\_\_\_ The matter has been partially resolved and counsel (or parties) have been instructed to file an appropriate stipulation and proposed order regarding those claims or issues which have been resolved within twenty (20) days.

**2017 DELAWARE VIEWS FROM THE BENCH**

\_\_\_\_\_ The following issues remain for this court to resolve:

\_\_\_\_\_ The matter has not been resolved and should proceed to trial.

\_\_\_\_\_ OTHER:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Mediator

\_\_\_\_\_  
Name of Mediator

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone No.

cc: Counsel of Record  
Pro Se Parties

(9-24-04)

## Exhibit E

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

STANDING ORDER REGARDING  
COURTROOM OPPORTUNITIES  
FOR NEWER ATTORNEYS

)  
)  
)  
)  
)

**ORDER**

The Court is cognizant of a growing trend in which fewer cases go to trial, and in which there are generally fewer opportunities in court for speaking or “stand-up” engagements. This is especially true for newer attorneys, that is, attorneys practicing for less than seven years (“newer attorney(s)”).

Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned Judge encourages the participation of newer attorneys in proceedings in my courtroom—particularly as to oral argument on motions where the newer attorney drafted or contributed significantly to the briefing for the motion.

To that end, the Court adopts the following procedures regarding oral argument as to pending motions:

- (1) After a motion is fully briefed, either as part of a Request for Oral Argument, or in a separate Notice filed thereafter, a party may alert the Court that, if argument is granted, it intends to have a newer attorney argue the motion (or a portion of the motion).
- (2) If such notice is provided, the Court will:
  - (A) Grant the request for oral argument on the motion, if it is at all practicable to do so.
  - (B) Strongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated, were a newer attorney not arguing the motion.

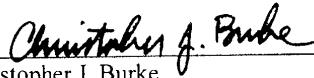
(C) Permit other more experienced counsel of record the ability to provide some assistance to the newer attorney who is arguing the motion, where appropriate during oral argument.

All attorneys, including newer attorneys, will be held to the highest professional standards. Relatedly, all attorneys appearing in court are expected to be adequately prepared and thoroughly familiar with the factual record and the applicable law, and to have a degree of authority commensurate with the proceeding.

The Court also recognizes that there may be many different circumstances in which it is not appropriate for a newer attorney to argue a motion. Thus, the Court emphasizes that it draws no inference from a party's decision not to have a newer attorney argue any particular motion before the Court.

Additionally, the Court will draw no inference about the importance of a particular motion, or the merits of a party's argument regarding the motion, from the party's decision to have (or not to have) a newer attorney argue the motion.

Dated: January 23, 2017

  
\_\_\_\_\_  
Christopher J. Burke  
UNITED STATES MAGISTRATE JUDGE

## **Exhibit F**

398472.1 08/09/2017

## PRINCIPLES OF PROFESSIONALISM FOR DELAWARE LAWYERS

The Delaware State Bar Association and the Delaware Supreme Court have jointly adopted the Principles of Professionalism for Delaware Lawyers for the guidance of Delaware lawyers, effective November 1, 2003. These Principles replace and supercede the Statement of Principles of Lawyer Conduct adopted by the Delaware State Bar Association on November 15, 1991. They are not intended, nor should they be construed, as establishing any minimum standards of professional care or competence, or as altering a lawyer's responsibilities under the Delaware Lawyers' Rules of Professional Conduct. These Principles shall not be used as a basis for litigation, lawyer discipline or sanctions. The purpose of adopting the Principles is to promote and foster the ideals of professional courtesy, conduct and cooperation. These Principles are fundamental to the functioning of our system of justice and public confidence in that system.

### **Principles.**

A. *In general.* A lawyer should develop and maintain the qualities of integrity, compassion, learning, civility, diligence and public service that mark the most admired members of our profession. A lawyer should provide an example to the community in these qualities and should not be satisfied with minimal compliance with the mandatory rules governing professional conduct. These qualities apply both to office practice and to litigation. A lawyer should be mindful of the need to protect the standing of the legal profession in the view of the public and should bring these Principles to the attention of other lawyers when appropriate.

1. *Integrity.* Personal integrity is the most important quality in a lawyer. A lawyer's integrity requires personal conduct that does not impair the rendering of professional service of the highest skill and ability; acting with candor; preserving confidences; treating others with respect; and acting with conviction and courage in advocating a lawful cause. Candor requires both the expression of the truth and the refusal to mislead others in speech and demeanor.



2. *Compassion.* Compassion requires respect for the personal dignity of all persons. In that connection, a lawyer should treat all persons, including adverse lawyers and parties, fairly and equitably and refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

3. *Learning.* A lawyer's commitment to learning involves academic study in the law followed by continual individual research and investigation in those fields in which the lawyer offers legal services to the public.

4. *Civility.* Professional civility is conduct that shows respect not only for the courts and colleagues, but also for all people encountered in practice. Respect requires promptness in meeting appointments, consideration of the schedules and commitments of others, adherence to commitments whether made orally or in writing, promptness in returning telephone calls and responding to communications, and avoidance of verbal intemperance and personal attacks. A lawyer should not communicate with a Court\* concerning pending or prospective litigation without reasonable notice whenever possible to all affected parties. Respect for the Court requires careful preparation of matters to be presented; clear, succinct, and candid oral and written communications; acceptance of rulings of the Court, subject to appropriate review; emotional self-control; the absence of scorn and superiority in words or demeanor; observance of local practice and custom as to the manner of addressing the Court; and appropriate dress in all Court proceedings. A lawyer should represent a client with vigor, dedication and commitment. Such representation, however, does not justify conduct that unnecessarily delays matters, or is abusive, rude or disrespectful. A lawyer should recognize that such conduct may be detrimental to a client's interests and contrary to the administration of justice.

5. *Diligence.* A lawyer should expend the time, effort, and energy required to master the facts and law presented by each professional task.

6. *Public service.* A lawyer should assist and substantially participate in civic, educational and charitable organizations. A lawyer should render substantial professional services on a charitable, or pro bono publico, basis on behalf of those persons who cannot afford adequate legal assistance.

B. *Conduct of litigation.* In dealing with opposing counsel, adverse parties, judges, court personnel and other participants in the legal process, a lawyer

should strive to make our system of justice work fairly and efficiently. A lawyer should avoid conduct that undermines the judicial system or the public's confidence in it, as a truth seeking process for resolving disputes in a rational, amicable and efficient way.

1. *Responsible choice of forum.* Before choosing a forum, a lawyer should review with the client all alternatives, including alternate methods of dispute resolution. A lawyer should not file or defend a suit or an administrative proceeding without as thorough a review of the facts and the law as is required to form a conviction that the complaint or response has merit.

2. *Pre-trial proceedings.* A lawyer should use pre-trial procedures, including discovery, solely to develop a case for settlement or trial and not to harass an opponent or delay a case. Whenever possible, stipulations and agreements should be made between counsel to reduce both the cost and the use of judicial time. Interrogatories and requests for documents should be carefully crafted to demand only relevant matter, and responses should be timely, candid and not evasive. Good faith efforts should be made to resolve by agreement objections to matters contained in pleadings, discovery requests and objections.

A lawyer should endeavor to schedule pre-trial procedures so as to accommodate the schedules of all parties and attorneys involved. Agreements for reasonable extensions of time should not be withheld arbitrarily.

Only those depositions necessary to develop or preserve the facts should be taken. Questions and objections at deposition should be restricted to conduct appropriate in the presence of a judge.

3. *Communications with the Court or tribunal.* A lawyer should speak and write respectfully in all communications with the Court. All papers filed in a proceeding should be as succinct as the complexity of the matter will allow. A lawyer should avoid ex parte communications with the Court on pending matters, except when permitted by law. Unless specifically authorized by law, a lawyer should not submit papers to the Court without serving copies of all papers upon opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the Court.

4. *Settlement.* A lawyer should constantly evaluate the strength of a client's legal position and keep the client advised. A lawyer should seek to settle any

matter at any time that such course of action is determined to be consistent with the client's best interest after considering the anticipated cost of continuing the proceeding and the lawyer's good faith evaluation of the likely result.

5. *Appeal*. A lawyer should take an appeal only if the lawyer believes in good faith that the Court has committed error, or an appeal is otherwise required.

C. *Out of state associate counsel*. Before moving the admission of a lawyer from another jurisdiction, a Delaware lawyer should make such inquiry as required to determine that the lawyer to be admitted is reputable and competent and should furnish the candidate for admission with a copy these Principles.

---

**Footnote:**

\* As used in these Principles, "Court" includes not only state and federal courts, but also other tribunals performing an adjudicatory function including administrative hearing panels and boards as well as arbitration tribunals.

---

## Exhibit G

**GUIDELINES TO HELP LAWYERS PRACTICING IN  
THE COURT OF CHANCERY**

**TABLE OF CONTENTS**

- I. GUIDELINES FOR PRACTITIONERS FOR IN-COURT HEARINGS AND TRIALS IN THE COURT OF CHANCERY**
  - 1. Hearing Protocols
  - 2. Respect for the Court and Court Staff
  - 3. Respect for the Courthouse Facility
  - 4. PDAs, Cell Phones, and Other Devices
  - 5. Laptops for Trial or Hearing Use Only
  - 6. Consult About Technology Needs the Week Before
  - 7. Proper Attire
- II. GUIDELINES ON BEST PRACTICES FOR LITIGATING CASES BEFORE THE COURT OF CHANCERY**
  - 1. Role of Delaware Counsel
  - 2. Courtesy Copies
  - 3. Contacting Chambers
    - a. Calls to Court: The Big Picture Issue
    - b. Calls to Court: Specific Guidance
    - c. Letters
  - 4. Scheduling Guidelines
    - a. The Court's expectation that counsel work together to manage the case
    - b. The Court's expectation regarding briefing schedules
    - c. Good-faith efforts to work out schedule by Delaware counsel
    - d. Guidance for scheduling in non-expedited cases

- e. Guidance for scheduling in expedited cases
  - f. Guidance for scheduling in summary proceedings
  - g. Scheduling stipulations
    - i. Case scheduling stipulations
    - ii. Minor modifications to a briefing schedule or scheduling order
    - iii. Sample scheduling stipulations:
      - (a) Exhibit 1 – Rule 12(b)(6) motion
      - (b) Exhibit 2 – Cross-motions on summary judgment
      - (c) Exhibit 3 – A summary proceeding
      - (d) Exhibit 4 – A preliminary injunction
      - (e) Exhibit 5 – A plenary action
  - h. Recurring scheduling issues
    - i. Identification of witnesses
    - ii. Expert reports
    - iii. The temporal relation of dispositive motions to the trial
5. Pleadings
- a. Answers
  - b. Amendments to pleadings
6. Motions
- a. Speaking motions v. submissions longer than 15 pages
  - b. 12(b)(6) or 12(c) Motions
  - c. Motions to expedite
  - d. *Pro Hac Vice* Motions
  - e. Motions for Commission
  - f. Substantive cross-motions

7. Discovery
  - a. Preservation of Electronically Stored Information
  - b. Collection and Review of Documents in Discovery
  - c. Expedited Discovery in Advance of a Preliminary Injunction Hearing
  - d. Discovery Disputes
  - e. Confidentiality Stipulations and Orders
8. Compendia and Appendices
9. Trial Procedure
  - a. Pre-trial orders
  - b. Trial exhibits
    - i. Exhibit binders should be clearly marked including a label on the spine of each binder at a minimum.
  - c. Trial procedure
10. Forms of Order
11. Representative Actions

**GUIDELINES TO HELP LAWYERS PRACTICING IN  
THE COURT OF CHANCERY**

The vast majority of attorneys who litigate in and appear before the Court conduct themselves in accordance with the highest traditions of Chancery practice. These Guidelines are intended to ensure that all attorneys are aware of the expectations of the Court and to provide helpful guidance in practicing in our Court. These Guidelines are not binding Court Rules, they are intended as a practice aid that will allow our excellent Bar to handle cases even more smoothly and to minimize disputes over process, rather than the substantive merits. These Guidelines do not establish a “standard of conduct” or a “standard of care” by which the performance of attorneys in a given case can or should be measured. The Guidelines are not intended to be used as a sword to wound adversaries. To the contrary, they are intended to reduce conflicts among counsel and parties over non-merits issues, and allow them to more efficiently and less contentiously handle their disputes in this Court. Accordingly, the Court does not intend that these Guidelines, or the sample forms attached hereto, be cited as authority in the context of any dispute before the Court.

These guidelines reflect some suggested best practices for moving cases forward to completion in the Court of Chancery. They have been developed jointly by the Court and its Rules Committee to provide help to practitioners. The members of the Court and its Rules Committee recognize that a particular situation may call for the parties to proceed in a different manner. Likewise, a member of the Court may prefer in the context of a given case that the parties proceed in a different manner.

The guidelines are subject to change. Please check the Court of Chancery website to make sure you have the most recent version. The Court maintains a separate set of guidelines regarding best practices for e-Filing, which are also available on the Court’s website.

**I. GUIDELINES FOR PRACTITIONERS FOR IN-COURT HEARINGS AND  
TRIALS IN THE COURT OF CHANCERY**

**I. Hearing Protocols**

The Court of Chancery is a court of equity and the proceedings here are important to the parties. The judges of this Court and all of its staff take their duties seriously. A court proceeding is a dignified and important one. Please act accordingly and with the respect that our system of justice deserves.

Side conversations, reactive facial expressions or outbursts, or other disturbances will not be tolerated.

If you have to exit for any reason while court is in session, please do so quietly and discreetly.



## 2017 DELAWARE VIEWS FROM THE BENCH

Attorneys should be mindful of their obligation to stand whenever they address the Court. Similarly, any person who is in attendance should stand when being introduced to the Court. And of course, everyone should stand whenever the judge enters or leaves the courtroom.

Arrive early. The Court strives to start on time. You need time to set up. Before the hearing, the court clerks and reporters need to obtain information from counsel.

### 2. Respect for the Court and Court Staff

Throughout the litigation process, you will deal regularly with our court clerks and reporters. The Court expects them to treat you with courtesy and respect, and to make the process as easy for you as possible while complying with the Court's rules and schedule. Please show them the same courtesy as you show the judges of the Court. Please realize that when you do not, the judges usually hear about it.

Clerks of the Court of Chancery have a key role in helping ensure that hearings and trials run smoothly and in a dignified fashion. Part of their job is to review with you some of the judges' basic expectations for how the case will proceed. If you believe that any of the expectations are unfair or inappropriate, you should make a motion to the judge. Until your motion is granted, you are expected to comply.

### 3. Respect for the Courthouse Facility

When you leave the courtroom, clean up and straighten your area. Remove or throw away your trash. Replace any chairs that were moved and slide them under the tables.

For the convenience of the bar and their clients, each side has access to a small conference room just outside the courtroom. This room can be used during breaks and before and after trial. The Court asks that you not have conversations in the rooms during trial, because the noise can be heard in the courtroom.

You are permitted to have food and refreshments delivered to the conference room so that you can eat lunch there while preparing for the next part of the hearing.

You also may rent the large conference room at the north end of the 12th Floor or a conference room on another floor of the Courthouse. Arrangements can be made with the Administrative Office of the Courts. Additional information and a copy of the application for reserving a room can be found online at <http://courts.Delaware.gov/AOC/RoomRequest.stm>.

Use of the conference rooms is a privilege. When your use is completed, remove or throw away all trash and straighten up the room. The room should look as neat at the end of the day as at the beginning.

The courtroom staff has been instructed to inform the judges about any litigation teams or lawyers that fail to clean up their area.

4. PDAs, Cell Phones, and Other Devices

The Court prohibits the possession of hand-held electronic devices of any kind in the courtroom itself. That includes blackberries, cell phones, smartphones, and PDAs of any kind, aircards and wireless or “Bluetooth” adapters or connectors, and any recording device. There are several important reasons for this. First, their use in court is disruptive, demeaning to the dignity of the proceeding, and unfair to those actually concentrating on the proceeding. Second, the signals from these devices can interfere with the courtroom reporting systems. Therefore, these devices must be put in the “off position” and left in your side’s conference room in the vestibule of the courtroom.

If you fail to comply and it becomes apparent that you have a device in your possession—typically because you have failed to put it in the off position—do not expect a kind reaction. The device may be confiscated or you may be sanctioned. If you fail to comply twice, the possible consequences will be even more unpleasant, and, at a minimum, you should not expect to participate in the remainder of the proceeding.

The Court recognizes that many attorneys use their handheld device as a calendar. If it becomes necessary to discuss scheduling, please advise the Court that you need your handheld device. The Court likely will permit you to retrieve your device for purposes of the scheduling discussion.

5. Laptops for Trial or Hearing Use Only

The Court permits attorneys to bring laptops into court with the expectation that they will be used for purposes related to the trial or hearing. If they create noise, cause interference, or become a distraction, you may be asked to remove them.

If you intend to use your laptop to obtain a live transcript of the proceedings, your laptop must be preloaded with software to decode the Realtime feed from the court reporter. Examples of such software include Live Note and Summation Blaze. You should have a working knowledge of the features of your software and the options that must be enabled in order to obtain the feed. Laptops also must come equipped with either a 9 pin COM port (serial) adapter or a USB to COM port (serial) adapter, and any additional software drivers necessary to utilize such ports. Questions should be addressed to the Court of Chancery court reporters before arrival at the courthouse.

6. Consult About Technology Needs the Week Before

Too often attorneys plan to use technology in a trial or hearing, only to discover it does not work. Other times the attorneys ask to delay the start of a proceeding while they try to straighten out their technology.

If you plan to use technology, contact the Register in Chancery and the Court of Chancery court reporters approximately one week before to make arrangements to set up and check your equipment.

Do not ask to have technology resources made available if you do not intend to use them. The courthouse has a limited number of portable technology carts. If you have reserved it and then do not use it, you are wasting the Court's resources and potentially preventing someone else from using the equipment.

7. Proper Attire

Counsel should wear a formal business suit or dress with a formal business shirt or blouse. Counsel is not restricted to, nor does the Court have any preference for, any particular color.

**II. GUIDELINES ON BEST PRACTICES FOR LITIGATING CASES BEFORE THE COURT OF CHANCERY**

Sample forms are attached as exhibits. Downloadable and editable rich-text-file versions are available on the Court of Chancery website.

1. Role of Delaware Counsel

- a. The concept of "local counsel" whose role is limited to administrative or ministerial matters has no place in the Court of Chancery. The Delaware lawyers who appear in a case are responsible to the Court for the case and its presentation.
- b. If a Delaware lawyer signs a pleading, submits a brief, or signs a discovery request or response, it is the Delaware lawyer who is taking the positions set forth therein and making the representations to the Court. It does not matter whether the paper was initially or substantially drafted by a firm serving as "Of Counsel."
- c. The members of the Court recognize that Delaware counsel and forwarding counsel frequently allocate responsibility for work and that, in some cases, the allocation will be heavily weighted to forwarding counsel. The members of the Court recognize that forwarding counsel may have primary responsibility for a matter from the client's perspective. This does not alter the Delaware lawyer's responsibility for the positions taken and the presentation of the case.
- d. Non-Delaware counsel shall not directly make filings or initiate contact with the Court, absent extraordinary circumstances. Such contact must be conducted by Delaware counsel.
- e. It is not acceptable for a Delaware lawyer to submit a letter from forwarding counsel under a cover letter saying, in substance, "Here is a letter from my forwarding counsel."

2. Courtesy Copies

- a. Counsel should provide Chambers with two courtesy copies of any filing that they want the judge to read or that otherwise requires judicial action, such as letters, motions, and briefs. Counsel need not provide copies of routine filings, such as short motions that do not contain argument (because a supporting brief will be filed separately), motions for admission *pro hac vice*, motions for commission, or Rule 4(dc) certifications. As discussed below, moving counsel should promptly determine and advise the Court as to whether or not a motion for admission *pro hac vice* or for commission is opposed.
- b. Courtesy copies of motions and briefs should be submitted with a transmittal letter devoid of argument. In addition to listing what is being transmitted, the transmittal letter should (i) recite the briefing schedule if the parties have agreed on one, or otherwise state that no agreement on scheduling has been reached, and (ii) note the date and time at which a hearing has been scheduled, or otherwise that no argument date has yet been set. Once that information has been provided in a letter, subsequent transmittal letters need not recite the information unless it has changed.
- c. In expedited matters, it may be necessary to deliver papers to a judge's home. Please deliver only one copy and do not serve compendia of unreported cases unless requested. Two Chambers copies of all papers, including compendia and appendices, should still be delivered to the courthouse immediately when it next opens.

3. Contacting Chambers

- a. Calls to Court: The Big Picture Issue
  - i. Counsel who calls Chambers and asks one of the judges' judicial assistants to schedule a matter has a special responsibility to the Court and to his adversaries. The Court expects that counsel who seeks a date is doing so on behalf of all parties and with their authority, absent an explicit indication to the contrary. Absent extraordinary circumstances, counsel should seek dates from the Court with all counsel on the line or only after obtaining authority from all parties to seek a list of available dates from the Court. Regrettably, the Court has experienced situations when counsel for the moving party has sought a date, not told the Court that he had not spoken to his adversaries, and then implied that the Court had insisted on the date by its own desire, rather than in response to a request by moving counsel. That puts the Court, its judicial assistants, and all the parties in an awkward and inappropriate situation. In those instances when the Court itself gives dates for argument on a motion where briefing is completed or soon to be completed, the judicial assistant will often attempt to get all parties on the line. In some situations, that is not practical and the moving party's counsel is given the dates and expected to share them

with all relevant parties, and the parties, through some chosen mechanism of their own, are expected to confirm that the dates are acceptable to all concerned. There have been instances that create concern about whether dates have been shared fairly.

- b. Calls to Court: Specific Guidance
  - i. When counsel calls Chambers, absent extraordinary circumstances counsel for all parties should be on the call.
  - ii. If counsel for all parties are not on the call, then the lawyer(s) making the call must have made all reasonable efforts to contact the other parties before calling Chambers to both: (i) confer regarding scheduling; and (ii) inform them that the call is going to be made and invite them to participate.
  - iii. If counsel calls without other parties on the line, make clear to the judicial assistant that not all parties are on the line and be clear as to why and who knows what.
  - iv. When a judicial assistant gives a lawyer possible dates for a hearing, the lawyer must share all such dates with all relevant counsel and be fair in finding a date acceptable to all concerned. Unless a judicial assistant has expressly indicated that the Court prefers a specific date, do not give other counsel the impression that the Court has a preference.
  - v. The judicial assistants work hard to be fair to all concerned and to accommodate the needs of counsel. Please do what you can to make their lives easier by being fair to your adversaries in the scheduling process. Disputes between counsel involving scheduling should be presented directly to the Court for resolution, not to judicial assistants.
- c. Letters:
  - i. Scheduling requests should be raised initially by letter or by a call to Chambers. Except for motions to expedite, a formal motion generally is not necessary to address scheduling issues.
  - ii. Forms of order should be submitted by letter.
  - iii. Letters should be short, even if they contain background. If the letter would exceed five double-spaced pages, consider whether a motion would be a more appropriate vehicle.
  - iv. The members of the Court do not want ongoing exchanges of letters. After a letter response and perhaps a letter reply, if warranted, it is time to schedule a conference. It even may be prudent to forego the response and reply and go straight to the conference.

- v. Font size and spacing: judges and lawyers must read huge amounts of text. Therefore, it is helpful if letters use a font of 12 point size or above and are double-spaced. The easier it is for a judge to read your request, the easier it is for the judge to understand it.
- 4. Scheduling Guidelines
  - a. The members of the Court expect counsel to work together to manage the case and prepare it in an appropriate fashion for the Court's consideration. In carrying out this task, counsel have a dual role both as officers of the Court and as client representatives.
  - b. The members of the Court expect counsel to work together to reach agreement on a fair briefing schedule given the scheduling requirements of the case. The Court of Chancery Rules do not have a default briefing schedule because counsel are expected to work together responsibly to craft a fair briefing schedule.
  - c. Before a scheduling dispute is brought to the Court, a good-faith direct effort—in-person or telephonic conversation—to work out the schedule by the senior Delaware lawyers is expected.
  - d. Guidance for scheduling in non-expedited cases:
    - i. In a non-expedited case, the general expectation for briefing a merits-related motion, such as under Rule 12(b), Rule 12(c), or Rule 56, is for the opening brief to be due 30 days after the motion is filed, the answering brief to be due 30 days later, and the reply 15 days after that.
    - ii. In a non-expedited case, the general expectation for briefing a discovery motion or non-case-dispositive procedural motion is for the motion to be a speaking motion. If, instead, the motion is to be briefed, the opening brief should be filed with the motion. The opposition would generally be due two weeks after the motion is filed and the reply one week after that.
    - iii. When negotiating schedules in non-expedited cases, counsel should be considerate and respectful of each other's legitimate professional and personal commitments. There may be good cause for a schedule that departs from these guidelines.
  - e. Guidance for scheduling in expedited cases:
    - i. Expedited cases are unique. The Court gives them priority. Counsel should give them similar priority.
    - ii. Briefing schedules should reflect the priority given to expedited cases. For non-case-dispositive motions, the time for responses and replies should generally be measured in days.

- iii. Parties in expedited proceedings should attempt to facilitate third-party discovery involving their non-party agents, such as investment banks.
- f. Guidance for scheduling in summary proceedings:
  - i. Summary proceedings generally can be completed in 45-60 days. A faster or slower schedule may be warranted based on external events or the complexity of the case. Director information cases and stock list cases will move faster.
  - ii. Because summary proceedings are by statute, “summary,” dispositive motion practice is often wasteful and delays final resolution. The Court will therefore typically enter a schedule culminating in a prompt trial at which all arguments, factual and legal, can be presented summarily. When discussing scheduling, parties should keep this in mind.
  - iii. As a general rule, parties should allocate approximately one third of the total calendar time allotted for a summary proceeding to closing the pleadings and engaging in written discovery, one third for depositions and (if necessary) expert discovery, and one third for pre-trial preparation and trial, including briefing and the pre-trial order.
  - iv. Because many summary proceedings can be decided on a short, largely undisputed record, parties should consider ways to present summary proceedings on a paper record, such as by a trial with oral argument on a stipulated paper record.
- g. Scheduling stipulations:
  - i. Case scheduling stipulations are helpful because they inform the Court that a case or motion is being addressed.
  - ii. Minor modifications to a briefing schedule or scheduling order that do not affect the date of the last brief or the hearing date do not require a stipulation. Counsel may agree in a letter or email, which will have the same import as a formal stipulation.
  - iii. The following exhibits provide sample scheduling stipulations:
    - (a) Exhibit 1 – A sample scheduling stipulation for a Rule 12(b)(6) motion.
    - (b) Exhibit 2 – A sample scheduling stipulation for cross-motions on summary judgment.
    - (c) Exhibit 3 – A sample case scheduling stipulation for a summary proceeding.

- (d) Exhibit 4 – A sample scheduling stipulation for a preliminary injunction.
  - (e) Exhibit 5 – A sample case scheduling stipulation for a plenary action.
- h. Recurring scheduling issues:
  - i. Identification of witnesses so they can be deposed during the period for discovery: Parties should generally use their reasonable best efforts to ensure that all witnesses who will testify at trial are deposed before trial. But parties sometimes fail to ask the standard interrogatory asking the other side to identify prospective trial witnesses. Then, they complain of unfairness if their adversary identifies a trial witness who was not deposed. This problem, which is one of the complaining party's own making, is avoided by using the standard interrogatory. One way to avoid disputes about this is to pose an interrogatory early in the case asking the other side to identify prospective trial witnesses. The party responding to that type of interrogatory should also facilitate efficient case processing by making a good faith effort to identify those persons under serious consideration to be trial witnesses, update the answer when required, and communicate in good faith with opposing counsel so that unnecessary deposition practice does not occur, but necessary depositions do. Because parties can avoid the problem of having discovery-style examination at trial by using the standard interrogatory, parties who fail to do so run the risk of not being able to depose a witness before trial.
  - ii. Expert reports:
    - (a) In general, more confusion than efficiency arises when parties do not build in rebuttal reports, or even reports when necessary. It is usually more efficient and less controversial in terms of generating disputes for the parties to have their experts exchange all of their reports, and only then be deposed. Although there are a variety of ways to achieve the objective, the goal is that all experts should have completed their reports and analysis before they are deposed and before trial. Absent extraordinary circumstances, no new expert analysis should be presented at trial. Rather, all expert analysis should be subject to fair testing through the pre-trial rebuttal or reply process and at deposition, so that parties and the Court have a reliable record on which to try the case.
    - (b) In general, the Court prefers that parties stipulate to limit expert written discovery to the final report and materials relied on or considered by the expert. Counsel should be aware that the Court understands the degree of involvement counsel typically has in preparing expert reports. Cross-examination based on changes in



drafts is usually an uninformative exercise.

(c) Scheduling orders generally should contain a provision:

- (i) Requiring the parties to identify any expert witnesses and the topics the expert(s) will offer testimony on; and
- (ii) Specifying a schedule for the submission of expert reports.

(d) A sample expert discovery stipulation can be found at [Exhibit 6](#).

iii. The temporal relation of dispositive motions to the trial:

- (a) Parties often provide for summary judgment motions to be filed at the end of discovery with briefing to be completed on the motions very shortly before the pre-trial briefs and the pre-trial stipulation are due, and trial is to commence. This creates inefficiency and a false exigency in non-expedited cases. If the parties genuinely believe that a set of *undisputed* facts may exist on which a dispositive legal ruling may be made, then they should build time in for the Court to resolve the motion on a non-emergency basis.
- (b) Litigants should consider whether summary judgment is an efficient or appropriate vehicle if the “undisputed” facts arrive in boxes from each side containing hundreds of exhibits with briefs arguing different versions of events. Likewise, if only a subset of issues is susceptible of resolution on summary judgment, the parties should consider whether the delay in trial is worth the cost, as opposed to including all the legal and factual arguments in the trial briefs.

5. Pleadings

a. Answers:

- i. An answer should repeat the allegations of the complaint and then set forth the response below each allegation. Otherwise the Court has to look back and forth from answer to complaint to see what is being denied.
- ii. Parties should take seriously the provisions of Rule 8(b) and not aggressively deny basic facts without a good faith basis for doing so.
- iii. It should go without saying that parties must have a Rule 11 basis for affirmative defenses. Parties should not rotely recite a laundry list of affirmative defenses, without carefully considering the applicability of each defense to the facts of the case.
- iv. The same principles apply to replies to counterclaims.

- b. Amendments to pleadings:
  - i. If a party intends to oppose an amended pleading because the amendment would be futile, the Court prefers for the parties to stipulate to the amendment while reserving the right to challenge the sufficiency of the amended pleading at the time a response is due or through an appropriate motion. Although it is not improper to oppose a motion to amend because the amendment would be futile, it is cumbersome because it results in briefing that is to some extent duplicative of a motion to dismiss, but with the party who would normally bear the burden on such a motion filing only one brief.
  - ii. An amended pleading should be filed as a separate docket entry. Do not simply refer back to the version that was attached to the motion to amend. That version is hard to find. It is also often unsigned and unverified and therefore does not comply with Rules 2(aa) and 11.

6. Motions

- a. A submission of 15 pages or less may be submitted appropriately as a speaking motion with numbered paragraphs. A submission longer than 15 pages should be submitted as a motion with a supporting brief so that the Court has the benefit of the structure established by Rule 171, including a table of contents and table of authorities.
- b. 12(b)(6) or 12(c) Motions:
  - i. A Bound Copy of the Complaint and its Exhibits: Please submit two properly bound copies of the operative complaint and its exhibits when dismissal briefing is proceeding, as these are the key documents.
  - ii. Motions That Are Not 12(b)(6) or 12(c) Motions: It is a jarring experience for new law clerks to be given a box containing huge appendices that support a 12(b)(6) or 12(c) motion. For the judges of the Court of Chancery, that experience is also eyebrow raising as a challenge to a complaint must accept the well-pled facts as true and rely in addition only on the unambiguous terms of certain discrete kinds of documents (e.g., the contract in a contract case). Given the settled procedural standard, counsel should consider whether a 12(b)(6) or 12(c) motion is really appropriate if a large appendix is required. More typically, the need for an appendix signals a desire to argue a different set of facts, implicating at best Rule 56 and usually opening the door to at least some discovery before the motion can be considered. As such, counsel should think before filing a 12(b)(6) or 12(c) motion about conferring with the other side about an approach to discovery that would facilitate an early summary judgment motion instead.
- c. Motions to expedite:

- i. Although a motion to expedite historically has sometimes been viewed as superfluous for a summary proceeding, a short motion can provide the Court with helpful context. The motion to expedite in a summary proceeding need not justify the need for expedition. Rather, it can simply make reference to the statutory authority for summary treatment, then address the desired schedule, including any external events that would make a particular schedule appropriate.
- ii. The response to a motion to expedite should be in the form of an opposition to a motion. By statute, summary proceedings must be held promptly. Your opposition should therefore focus on what is a reasonable schedule given the circumstances facing the parties.
- iii. Parties should outline their respective preferred schedules in the motion to expedite and opposition. The Court should not be left in the dark until the teleconference. To the extent parties can agree on all or a portion of an expedited schedule, they should do so.
- iv. For initial case scheduling issues, if a plaintiff has sought expedited treatment or filed a summary proceeding, and if the plaintiff has made a good-faith effort to provide copies of the papers to the defendant(s) or their counsel and to speak directly to them if possible, then the plaintiff can and should contact Chambers to obtain a scheduling conference.
  - (a) The fact that the default date to respond to the complaint has not passed will not affect the Court's willingness to entertain the scheduling conference.
  - (b) The need for a defendant to obtain Delaware counsel will not affect the Court's willingness to entertain the scheduling conference. The Court generally will permit non-Delaware counsel, including in-house counsel, to appear for purposes of the initial scheduling conference. Regardless, there is a sufficient pool of quality Delaware lawyers available that a delay in securing Delaware counsel should be rare.
- d. *Pro Hac Vice* Motions: Opposing counsel should contact Chambers promptly with any objection to a *pro hac vice* motion. Otherwise, the motion will be deemed unopposed.
- e. Motions for Commission: Moving counsel should advise Chambers whether a motion is opposed or unopposed. Opposing counsel should respond by a single copy of a short letter promptly when asked by moving counsel if a motion for commission is opposed.
- f. Substantive cross-motions:
  - i. If substantive cross-motions are contemplated, such as for judgment on the

pleadings or for summary judgment, the parties shall work to reduce the number of briefs. A four-brief sequence rather than a six-brief sequence is preferred.

- ii. If there are multiple parties, the parties should consider the commonality of issues and attempt to come up with a logical sequence and coordination that reduces the number of briefs. In cases with large numbers of parties who each intend to file motions, the parties should consider filing briefs with colored covers like those used in the Supreme Court to help all concerned collate and use the briefs efficiently.
- iii. Take note of the caution, set forth above, regarding the scheduling of dispositive cross-motions close to trial.

7. Discovery

a. Preservation of Electronically Stored Information

- i. All counsel (including Delaware counsel) appearing in any case before this Court are reminded of their common law duty to their clients and the Court with respect to the preservation of electronically stored information ("ESI") in litigation. A party to litigation must take reasonable steps to preserve information, including ESI, that is potentially relevant to the litigation and that is within the party's possession, custody or control. ESI takes many forms and may be lost or deleted absent affirmative steps to preserve it. As set forth below, at the very minimum that means that parties and their counsel must develop and oversee a preservation process. Such a process should include the dissemination of a litigation hold notice to custodians of potentially relevant ESI.
- ii. Counsel oversight of identification and preservation processes is very important and the adequacy of each process will be evaluated on a case-by-case basis. Once litigation has commenced, if a litigation hold notice has not already been disseminated, counsel should instruct their clients to take reasonable steps to act in good faith and with a sense of urgency to avoid the loss, corruption or deletion of potentially relevant ESI. Failing to take reasonable steps to preserve ESI may result in serious consequences for a party or its counsel.
- iii. What steps will be considered to be reasonable will vary from litigation to litigation. In most cases, however, a party and its counsel (in-house and outside) should:
  - (a) Take a collaborative approach to the identification, location and preservation of potentially relevant ESI by specifically including in the discussion regarding the preservation processes an appropriate representative from the party's information technology function (if applicable);

- (b) Develop written instructions for the preservation of ESI and distribute those instructions (as well as any updated, amended or modified instructions) in the form of a litigation hold notice to the custodians of potentially relevant ESI; and
    - (c) Document the steps taken to prevent the destruction of potentially relevant ESI.
  - iv. Experience has shown that some of the potential problem areas regarding preservation of ESI include business laptop computers, home computers (desktops, laptops, tablets and mobile devices), external or portable storage devices such as USB flash drives (also known as “thumb drives or key drives”) and personal email accounts. While this list is not exhaustive, it is meant to be a starting point for parties and their counsel in considering how and where their clients and their employees might store or retain potentially relevant ESI. Counsel and their clients should discuss the need to identify how custodians store their information, including document retention policies and procedures as well as the processes administrative or other personnel might use to create, edit, send, receive, store and destroy information for the custodians. Counsel also should take reasonable steps to verify information they receive about how ESI is created, modified, stored or destroyed.
  - v. While the development and implementation of a preservation process after litigation has commenced may not be sufficient by itself to avoid the imposition of sanctions by the Court if potentially relevant ESI is lost or destroyed, the Court will consider the good-faith preservation efforts of a party and its counsel. Counsel are reminded, however, that the duty to preserve potentially relevant ESI is triggered when litigation is commenced or when litigation is “reasonably anticipated,” which could occur before litigation is filed.
  - vi. Parties and their counsel can agree with opposing parties and their counsel to limit or forego the discovery of ESI. Whether or not parties enter into such an agreement, however, it is beneficial for parties and their counsel to confer regarding the preservation of ESI early in the litigation. It is also recommended that after preservation has been addressed, counsel for all parties confer about the scope and timing of discovery of ESI. Some of those issues are addressed in further detail below.
- b. Collection and Review of Documents in Discovery
- i. Practitioners are reminded about the importance of the careful collection and review of documents (which, for the purposes of these Guidelines, includes electronically stored information) in proceedings before the Court of Chancery. The Court has been, and remains, reluctant to adopt a “one-size-fits-all” approach to the collection and review of documents,

especially given the variety of cases that come before the Court, where the issues, complexity, timing, relief sought and resources of the parties may differ dramatically. The Court also is mindful of the considerable burdens of collecting documents for review and production, and the potential leverage that these obligations can create in litigation. Thus, it seeks to remain flexible, reasonable and efficient in resolving discovery disputes. To help practitioners, a few observations and problem areas are discussed below.

- ii. The Court encourages counsel to meet and confer promptly after the start of discovery to develop a discovery plan that includes electronic discovery. Transparency to the other parties regarding the process and parameters used to collect documents (*e.g.*, the custodians, electronic search terms, cutoff dates used, and steps taken) is essential to (i) identify potential areas of disagreement early in the process, and (ii) provide some protection to parties if problems later arise. To the extent that the collection process and parameters are disclosed to the other parties and those parties do not object, that fact may be relevant to the Court when addressing later discovery disputes.
- iii. When interested persons are responsible for the collection or review of their own documents for purposes of production, the reliability of the process is more likely to be questioned. Accordingly, experienced outside counsel should be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that reasonable, good faith efforts are undertaken to ensure that responsive, non-privileged documents are timely produced. In addition, as a general matter, the Court prefers that, whenever practicable, outside counsel or professionals acting under their direction will conduct document collection and review. As with many discovery issues, a goose and gander discussion often helps parties reach a reasonable balance fitting to the particular case.
- iv. Among other things, the procedures used to collect and review documents generally should include interviews of custodians who may possess responsive documents to identify how the custodians maintain their documents and the potential locations of responsive documents, including the files and computers of administrative or other personnel who prepare, send, receive or store documents on behalf of the custodians.
- v. Unlike paper documents, electronically stored information is susceptible to modification or deletion during collection. Therefore, counsel should exercise care in developing appropriate collection procedures. In that regard, counsel should be mindful of the obligation to take reasonable steps to preserve information, including electronically stored information, which is potentially relevant to the litigation. Counsel also should consider issues of burden and expense, taking into account the needs of

the case, the amount in controversy, limitations on the parties' resources, and the relative importance of the various issues at stake in the litigation.

The Court is aware that in order for litigation to produce justice, the costs of the litigation must be proportionate to what is at stake. That awareness applies with special force to the subject of electronic discovery. Precisely because the extent of electronic discovery that is appropriate depends on case-specific factors, the Court has been reluctant to adopt mandatory requirements that may be unjust because they require expenditures that are unduly costly given the subject of a particular case. But because the Court has eschewed a mandatory approach, it is essential and not optional that the parties discuss this subject directly and try to reach a case-specific accord based on a candid appraisal of the information base each side has, the costs of employing various electronic discovery techniques, and the stakes at issue in the case. Through this process of good faith information sharing and give and take, plus application of the goose and gander rule, counsel should usually be able to fashion an effective, if necessarily imperfect approach. Given the reality of how most business is conducted and even how most of us generate information in our personal lives, it is unlikely that the subject of electronic discovery can be avoided in any class of cases altogether. Most relevant evidence will have been created electronically in the first instance and in the case of e-mails often never printed out in paper form. But the extent to which the parties will go to retrieve information electronically is a subject for good faith, case-specific consideration and counsel are expected to apply common sense judgment. And that especially applies when one party in a case has virtually no discovery burden. That advantaged position does not license the party to expect the other party that will have substantial production burdens to use means of electronic discovery that are disproportionate to the economics of the matter.

- vi. The Court expects Delaware counsel to play an active role in the discovery process, including in the collection, review and production of documents, and in the assertion of privilege. If Delaware counsel does not directly participate in the collection, review and production of documents, Delaware counsel should, at a minimum, discuss with co-counsel the Court's expectations. In addition, Delaware counsel should be involved in making important decisions about the collection and review of documents and should receive regular updates, preferably in writing, regarding the decisions that are made on key issues, such as the selection of custodians and search terms. The Court expects Delaware counsel to be able to answer questions regarding the manner in which the document collection and review was conducted. It is therefore recommended that Delaware counsel and co-counsel collectively maintain a written description of the discovery process, including detailed information regarding efforts to preserve documents, custodians identified, search terms used, and what files were searched. A document can be found at [Exhibit 10](#) that is

intended to assist counsel in developing a sound document collection process. Exhibit 10 is not intended to mandate issues to consider in every case, nor is it intended to be an exhaustive list of all issues that should be considered in any particular case.

- vii. One of the most difficult parts of the discovery process involves reviewing documents for privilege, determining under the time pressure of discovery deadlines whether a document is privileged, and preparing the resulting privilege log. In the first instance, more junior lawyers typically are required to make the initial judgment calls about which documents might be subject to a claim of privilege. Understandably, lawyers are concerned about making a mistake and producing a privileged document. This often leads to a tendency to overdesignate documents as privileged, including by designating as privileged every document received or sent by anyone who is an attorney or any document that refers to an attorney, even though the attorney may not have been acting as an attorney and the communication may not have been for the purpose of facilitating the provision of legal advice. Likewise, preparing a privilege log is a professionally difficult task, because it requires the lawyer to describe the basis for the application of the privilege sufficiently so that the party seeking disclosure can understand the basis of the privilege assertion, but without disclosing the very information the privilege legitimately protects.
  - (a) Precisely because of these difficulties, and because disputes about the improper assertion of privilege are common, the senior lawyers in the case, especially senior Delaware lawyers, must provide guidance about how the privilege assertion process should unfold. That includes guidance about: 1) the Delaware standards for asserting any privileges the client wishes to assert; 2) protocols for identifying the initial cut of documents that warrant a closer review for privilege; 3) protocols for ensuring that the Delaware standards are applied with fidelity when determining that specific documents are exempt from production on privilege grounds; and 4) the Delaware requirements for setting forth on a privilege log sufficient information about the document to enable the opposing party and the court fairly to assess whether privilege properly has been asserted. Senior lawyers, including senior Delaware lawyers, should make the final decisions on difficult privilege questions. As important, senior lawyers, including senior Delaware lawyers, must ensure that the guidance provided was actually put into practice and followed. Although this does not mean that senior lawyers must personally conduct the privilege review or prepare the privilege log, they must take reasonable steps to ensure that privilege only has been asserted in accordance with a good faith reading of Delaware law, that there has not been systematic overdesignation, and that the privilege log contains sufficient descriptions of the documents in question. One possible approach



to fulfilling this duty would be for a senior Delaware lawyer to review a representative sample of the entries on the privilege log and associated documents in order to assess compliance with Delaware law and practice. By this or other means, the senior Delaware lawyers must personally assure themselves that the privilege assertion process has been conducted with integrity. What does this mean in practice? It means that when there is a hearing in the Court, a senior Delaware lawyer must be able to take the podium, explain the basis for the assertion of a disputed claim of privilege, and be knowledgeable about the privilege assertion process.

- (b) Even more so than with other areas of discovery, it is essential to communicate with clarity about the assertion of privilege with your friends on the other side of the “v.” Through the process of give-and-take, the parties often can minimize some of the burdens and the common misunderstandings in the privilege assertion process that lead to motion practice. Here are some suggestions:
  - i. The Court generally does not expect parties to log post-litigation communications. Although there may be exceptions, particularly in an injunction proceeding in a still-developing situation, frequently parties should be able to use the date on which suit was filed as a cutoff for privilege review.
  - ii. It may be possible for parties to agree to log certain types of documents by category instead of on a document-by-document basis. Categories of documents that might warrant such treatment include internal communications between lawyer and client regarding drafts of an agreement, or internal communications solely among in-house counsel about a transaction at issue. These kinds of documents are often privileged and, in many cases, logging them on a document-by-document basis is unlikely to be beneficial.
  - iii. There are different approaches to logging email chains and email attachments. Some lawyers typically log only the top email in the chain. Others log every email in the chain. Some lawyers describe the attachment separately. Others allow the logging of the e-mail to suffice. Parties should attempt to agree on the procedures that both sides will use.
  - iv. Different cases may warrant different approaches to redactions. Often redacted copies are produced and a redaction log provided. Depending on what is at stake and

is cost-effective, the parties may agree that each side will withhold the entirety of a document if any part of the document is subject to a bona fide claim of privilege. Parties also may agree to dispense with a log for partially redacted emails or other communications where the face of the document provides the factual information that otherwise would appear on a log.

- (c) When logging documents on a document-by-document basis, parties should bear in mind that a privilege log must describe the document being withheld in such a way that, without revealing information that is itself privileged or protected, the opposing party and the Court can assess the propriety of the asserted basis for withholding the document. It is the exceedingly rare, perhaps apocryphal, description that actually reveals the substance of underlying legal advice. The guiding principle for privilege logs is to provide opposing parties with sufficient information to allow them to challenge decisions to withhold documents for privilege. It is therefore inconsistent with that principle, and with the spirit of these guidelines, for parties who receive a proper privilege log to use it as the basis for a claim that the generation of the privilege log waived privilege in any way. The Court discourages use of a short list of repetitive descriptions. Descriptions should be document-specific, and should provide context so that the reader can understand the basis for the claim of privilege. Therefore, if the privilege in question is the attorney-client privilege, the log should explain the basis for the assertion of privilege and provide a brief identification of the issue involved. Whether the information provided in a privilege log is sufficient may depend on the nature of the claims in the litigation. Rote repetition of “Communication for the purpose of providing legal advice” is not adequate. “Communication for the purpose of providing legal advice regarding securities laws,” on the other hand, might be adequate. Similarly, in a case challenging a merger, where both legal and business issues are in play, “Communication for the purpose of providing legal advice regarding merger” is not adequate. But “Communication for the purpose of providing legal advice regarding terms of draft merger agreement” might be adequate. If the individuals drafting and reviewing the log have difficulty describing the role of the lawyer or why the issue is primarily a legal one on which legal advice was sought or given, that may be an indication that the communication is not privileged. It may instead be a general business discussion on which a lawyer was included, a factual update, a cover email attaching documents, or an effort to schedule a conference call or a meeting. The requirement of a meaningful description thus not only provides necessary information to the other side, but also serves as a check

on over-designation.

- (d) The parties should provide information about the individuals identified on the log, including whether they are attorneys, their titles, and their affiliations. The members of the Court have seen too many logs containing names without any identifying information about who is a lawyer and who works for whom. If third parties are recipients or authors of a document, the privilege assertion should address how their relationship with the client or counsel justifies maintaining the privilege (*e.g.*, is there a common interest exception or is the third-party a qualified advisor whose access to privileged communications is permissible). Additional detail and context will be necessary in certain other situations, such as, if someone is acting both as a business person and lawyer. In many situations where lawyers have mixed roles, counsel will have to segregate the privileged portions of communications from those that are non-privileged.
  - (e) To prepare a privilege log with integrity requires the involvement of senior lawyers who know the applicable standards, understand the precise roles played by the client representatives, and have the relationship and stature with the client to discuss documents frankly and make principled assertions of privilege. This is particularly true of the *many* common situations when a document is only partially subject to a claim of privilege (such as a portion of corporate minutes) and where the bulk of the document should be produced if responsive.
- viii. The goose and gander rule is typically a good starting point for constructive discovery solutions. Through good faith discussion, the parties will better understand the basis for each other's production of privileged documents, reduce disputes based on misunderstandings, and foster a more efficient production process.
- c. Expedited Discovery in Advance of a Preliminary Injunction Hearing
  - i. The Court routinely handles cases in which a preliminary injunction is requested on an expedited basis. The time constraints inherent in expedited litigation necessarily limit both the scope and timing of discovery and can impose considerable burdens on the parties. Accordingly, the Court expects the parties to work together in good faith to facilitate the timely completion of the discovery necessary for a fair presentation of the preliminary injunction application to the Court. The following guidelines set forth typical practice as to the conduct of expedited discovery in advance of a preliminary injunction hearing in high stakes commercial and corporate litigation. The Court encourages the parties and counsel to consider the practices described below, while

recognizing that it may be appropriate for the parties to proceed in a different manner in a particular situation, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

- ii. **Written Discovery.** Although all types of written discovery may be used in the appropriate circumstances, in expedited cases seeking a preliminary injunction, written discovery typically is limited to document requests, as well as narrowly-tailored interrogatories intended primarily to identify persons with relevant knowledge. The parties' initial written discovery requests should be focused on the key issues relevant to the resolution of the matters presented in the application for a preliminary injunction. If further proceedings are necessary after the application is heard, there will be the opportunity for additional, non-duplicative discovery. To facilitate prompt responses to written discovery requests and the production of documents (which, for purposes of these Guidelines, includes electronically stored information), the plaintiff should serve its initial written discovery requests with the complaint or a motion to expedite (or if not feasible, as soon as possible thereafter), and the defendant should propound any requests it may have promptly.

The parties should agree upon a schedule so that initial written discovery and document production is completed before the start of depositions. Due to the nature of expedition, such a schedule usually will require the parties to respond to written discovery in a shorter time period than the default period set forth in the Court of Chancery Rules. In some cases, the parties may decide to forego formal responses in favor of informal communications regarding document production. To avoid misunderstandings or delays, the responses and objections to document requests, whether formal or informal, should make clear what categories of documents will be produced. The parties should meet and confer promptly to attempt to resolve any disputes regarding the scope of document production, with the understanding that time constraints necessarily limit the scope of discovery, including the ability to search and review documents extensively. In addition, the Court encourages documents to be produced on a "rolling basis" and for the parties to agree that certain significant documents (as discussed more below in "Document Collection") will be produced as soon as feasible after the start of discovery (typically subject to an agreement that they will be treated as "attorneys eyes only" until a confidentiality order is entered).

- iii. **Document Collection.** When responding to written discovery requests, the parties are obligated to conduct a reasonable search for relevant and responsive documents. The expedited nature of preliminary injunction applications necessarily affects what is deemed to be "reasonable" by the Court. Although each party ultimately is responsible for its own document collection and production, the Court expects the parties to discuss

limitations on expedited discovery. In connection with the foregoing, the Court expects the parties to freely exchange information concerning the scope of their respective document collections (*e.g.*, what documents are being collected, how they are being collected, what computers or other electronic devices are being searched, and any search terms or other restrictions being utilized to collect documents).

After a request for a preliminary injunction is filed, the parties should collect and produce the “core documents” associated with that application promptly. Although every dispute is unique, attorneys who frequently practice before the Court generally can identify the documents that are most likely to contain relevant information. For example, where a corporate transaction (*e.g.*, a merger) is being challenged, the “core documents” typically include, at least, (i) the minutes of the relevant meetings of the board of directors and any board committees, (ii) the materials provided to the directors related to the transaction, (iii) the working group lists associated with the transaction, and (iv) the engagement agreements and fee arrangements with investment advisors.

The parties should identify the key custodians and focus their document collection efforts on those custodians. Typically, parties agree to limit the number of custodians from which each party collects. In connection with any such negotiations, each party should make a good faith, reasonable attempt to identify the custodians who are reasonably likely to possess relevant documents. Notwithstanding any agreement to limit the number of custodians, unless otherwise agreed, parties should collect from any centralized document repository or system that is likely to contain relevant documents (*e.g.*, document management systems, sharepoints, central files).

Parties typically agree to limit the computer devices and systems from which they collect, the date range associated with various document requests, and the file types collected (*e.g.*, excluding “.exe” files). Parties also typically agree that they will not produce documents created after the date that the complaint was filed, unless post-complaint events are or become relevant to the dispute.

Even in expedited discovery, counsel should interview the custodians from whom they have collected to understand, among other things, any potential sources of relevant documents (*e.g.*, centralized document repositories or systems, PDAs, work and home computers), determine the records that are kept in the ordinary course, and identify any relevant jargon, acronyms or code names.

Outside litigation counsel should actively oversee the collection of documents. As in any other case, the Court expects Delaware counsel to play an active role in the collection, review and production of documents

in expedited litigation. The role that the Court expects Delaware counsel to play is set forth above in the general discussion of document collection and review. Those expectations are not lessened in expedited litigation, and if anything become more important because of the absence of any room in the schedule to redress discovery shortcomings.

If search terms are utilized to identify potentially relevant documents, the parties should make a good-faith, reasonable attempt to negotiate those terms with the opposing parties. In any such discussions, the Court expects the parties to exchange relevant information, such as statistics concerning the number of documents or “hits” associated with particular search terms and examples of documents that are responsive to particular search terms but are not relevant to the case.

- iv. Document Review and Production. The Court expects outside litigation counsel actively to oversee document collection, review and production pursuant to a reasoned process designed to result in the prompt production of the documents necessary for a fair presentation of the dispute to the Court.

The Court does not require documents to be produced in a particular format. The parties are expected to cooperate to produce documents in a format that is usable to the parties. Typically, the parties agree to produce most documents as single- or multiple-page image files, and to produce spreadsheets, audio and video files, etc., in their native format. The parties also typically agree to provide standard load files (e.g., a data file for metadata and an image file for images), certain metadata (if reasonably available) and text-searchable documents. Absent agreement, the parties typically do not provide OCR (optical character recognition) data.

Eliminating the production of duplicate, substantively identical documents (both within and across custodians) is a standard practice that the Court encourages. In connection with the foregoing, parties typically record the custodians possessing duplicate copies and provide that information as a separate field in the production load files.

As mentioned above, the parties usually agree to produce significant documents as soon as possible, and all other documents on a rolling basis, and the Court encourages this practice.

- v. Privilege and Redaction Logs. In expedited litigation, the Court encourages the parties to make agreements that reduce the time, expense and burden associated with conducting a document-by-document privilege review and preparing privilege and redaction logs so that the merits of the application may be developed in the limited time available and fairly presented to the Court.

For example, the parties may agree to limit the types of documents that will be logged (*e.g.*, to include only documents from a certain time frame or relating to certain subjects, or to exclude communications post-dating the filing of the complaint or solely between attorneys). The parties also may agree to defer a privilege log until later stages of the litigation.

The parties also frequently agree to forego a redaction log if the information in such a log would be redundant of information provided in the redacted documents—for example, if the redacted document identifies the sender and recipients of the communication, the general subject matter (*e.g.*, through a “subject” line on an email), and the basis for the redaction (*e.g.*, the redacted material is stamped “Redacted—attorney-client privilege”).

Finally, the parties sometimes agree to forego a full document-by-document privilege review before production and, instead, enter into a “quick peek” agreement whereby the party seeking discovery is permitted to review responsive documents without effectuating a waiver of privilege by the producing party. Whether a quick peek agreement is appropriate depends on the facts and circumstances of each case, and counsel and client should confer to make an informed decision about whether to enter into such an agreement. A sample quick peek agreement is attached as Exhibit 11. This sample does not necessarily ensure that documents produced pursuant to the agreement will not be considered a waiver of privilege in other jurisdictions, and this risk should be discussed between counsel and client.

- vi. Discovery from Third Parties. Expedited litigation often involves discovery of third parties, such as investment advisors. The Court expects that the parties will (i) encourage the third parties that they have retained or with which they have relationships to respond promptly to discovery requests, and (ii) help facilitate the completion of third party discovery in accordance with the expedited schedule.
- d. Discovery Disputes
  - i. Parties should meet and confer before bringing discovery disputes to the Court’s attention. The Court will not be inclined to consider arguments or authorities that have not previously been presented to the other side. If the argument or authority had been presented, perhaps the dispute would have been resolved.
  - ii. If one party moved to compel or seeks a protective order, the responding party should not cross-move on the identical issue just to get the last (and fourth) brief. In ruling on a motion to compel, the Court can grant any relief that would be sought by way of protective order. *See* Rules 26(c) & 37(a)(4)(B) & (C). Likewise, in ruling on a motion for protective order,

the Court can grant any relief that would be sought by way of a motion to compel. *See* Rule 26(c).

e. Confidentiality Stipulations and Orders

- i. Confidentiality stipulations and orders should recognize that proceedings in open court are generally public and that materials used in open court become part of the public record. These stipulations also typically cover more than the topics covered by Rule 5 and should typically reference Rule 26 as well. A stipulation should not provide that confidentiality restrictions would “continue to be binding throughout and after the conclusion of the Litigation, including without limitation, any appeals therefrom” without making any exception for information that becomes part of the public record. Such a restriction as drafted is overbroad and an invalid prior restraint.
- ii. If counsel believes that certain limited and highly confidential information requires that the courtroom be closed, then counsel should make an application well in advance of the hearing in question. In some circumstances, it may be appropriate for counsel to agree on a more limited procedure to protect confidentiality (for example, agreeing to use aliases to refer to certain non-parties in court), and inform the Court of that agreement.
- iii. Responsibilities of Parties Obtaining Access To Confidential Information: Litigation in the Court of Chancery often involves the production in discovery of very sensitive, non-public information. When litigants and their counsel and advisors obtain access to such information, it is their responsibility to abide strictly by the terms of the confidentiality order in place. Particularly troubling have been situations when litigants have had access to confidential, non-public information about the value of a public corporation and have traded in the securities of that corporation. If a litigant or a litigant’s advisor engages in such trading, they should expect to be subject to intensive scrutiny and, at minimum, to face the requirement of reporting themselves to the Securities and Exchange Commission and possibly even worse sanctions, including the mandatory disgorgement of any trading profits and a potential bar to acting as a class representative in future class or derivative actions in this Court. To avoid these situations, counsel for litigants and their advisors who receive access to confidential, non-public information should discuss these principles with them and advise them that procedures need to be in place to avoid violations of the order and trading in securities on the basis of confidential, non-public information. More generally, litigants and non-litigants who access confidential discovery material under a confidentiality order of this Court should be reminded by counsel that their use and handling of such confidential information may also be subject to other laws and regulations of the State of Delaware and other jurisdictions



protecting personal privacy and other public policy purposes.

- iv. Two sample confidentiality stipulations are attached as Exhibits 7 and 8, and available on the Court's website.

8. Compendia and Appendices

- a. The compendium is counsel's opportunity to provide the Court with authorities that the Court otherwise does not have at its fingertips.
  - i. Each member of the Court has in Chambers a set of the Delaware case reporters and the Delaware statutes. Hence a compendium need not include these authorities.
  - ii. Rule 171(h) calls for a party to provide unreported decisions because these decisions are not in the books that are readily available to the Court. Authorities from non-Delaware jurisdictions are similarly not readily available to the Court and must be pulled from Westlaw or Lexis. Well-advised practitioners will include the key non-Delaware authorities, even if they are formal, published decisions.
  - iii. The Court has ready access to the major Delaware treatises. If you are relying on excerpts from other treatises or practitioner pieces, consider including these materials in the compendium.
  - v. A compendium that includes every single unreported or non-Delaware authority will be large and cumbersome. The members of the Court often carry compendia with them. Include the decisions that the Court should read. As a rough guideline, if a case is cited only once, consider leaving it out of the compendium. If a case already has been provided in an earlier compendium, simply note that fact. You need not provide an additional copy.
  - v. Use your judgment. If you are confident enough to compile a shorter compendium of what you consider the key authorities, feel free to submit it, and even include the key Delaware published materials. Counsel who give the Court and its law clerks handy-to-use compilations of the key legal sources are likely to best ensure that the Court understands their arguments. This is also true of the key factual exhibits.
- b. The appendix is counsel's opportunity to provide the Court with the documentary information necessary to decide a motion. As with compendia, members of the Court often carry appendices with them. To the extent possible, parties responding to a motion or opening brief should avoid duplicating materials in their own appendices. The Court does not need multiple copies of large documents. Cite to the document that appeared in the appendix that accompanied the opening brief.

- c. Use tabs. For some reason, the advent of e-Filing has led some practitioners to believe that an untabbed appendix or compendium is useful. It is not. To find Exhibit 13, a tab is still necessary. If you want the judge and law clerk to read your papers, it is critical to touch and feel the final version yourself with a view toward considering how reader-friendly it is.
  - d. Avoid the Manhattan Phonebook. If a submission is huge, uncomfortable to hold, and likely to fall apart, please break it into separate usable volumes.
9. Trial Procedure
- a. Pre-trial orders:
    - i. Parties should consider submitting the pre-trial order after the close of pre-trial briefing so that the parties can take into account the other side's briefs when negotiating stipulated issues of fact and drafting proposed issues of fact. In the sections of the pre-trial order setting forth proposed findings of fact, a party may opt to include quotations from the other side's briefs or expert reports with supporting citations. If one side has made an assertion and the other side wants to adopt it, the Court likely will treat it as fact unless it appears completely contrary to the evidence or the opposing party changes its position and shows good cause for doing so.
    - ii. All witnesses, including potential rebuttal witnesses, should be identified.
  - b. Trial exhibits:
    - i. Parties should prepare and submit Joint Exhibits. Parties should not submit separate Plaintiffs' Exhibits or Defense Exhibits. Giving a document a "JX" number does not mean you are stipulating to its admissibility; it just helps eliminate redundancy and allows everyone to work off one original set of exhibits.
    - ii. Exhibits should be in chronological order. If the matter is highly expedited, such that chronological ordering is not feasible, parties should give the Court a chronological list of exhibits as soon as practicable.
    - iii. Binders containing all exhibits that examining counsel expects to refer to in examining a particular witness, and only those exhibits, are helpful to the Court in cases with a substantial number of trial exhibits.
    - iv. Parties should work together to avoid duplication. If a duplicate is discovered, it should be eliminated.
    - v. Each side should plan its case so as to avoid deluging the Court with exhibits. It is not acceptable to simply dump in every deposition exhibit.
    - vi. Parties should deliver four copies of tabbed exhibit binders to the Register

in Chancery not later than the day before trial begins. The copies are allocated as follows: Court, Witness Stand, Court Reporter, Judicial Clerk. The Court Reporter's copy should become the official copy after trial for purposes of appeal and should remain free of annotations. Binders should have rings that measure no more than 2" in circumference. A binder with 2" rings will measure 3" across the spine. The Court, its staff, and the Court Reporters have found that larger binders are cumbersome.

- vii. Parties should meet and confer regarding and attempt to resolve as many evidentiary issues as possible.
  - (a) Any objections to proposed exhibits or witnesses shall be identified in the pre-trial order.
  - (b) Major evidentiary issues should be raised by motion in *limine*.
  - (c) Minor evidentiary issues should be addressed during trial or reserved for post-trial briefs.
  - (d) Any evidentiary objections not raised as set forth above will be deemed waived.
- c. Trial procedure:
  - i. Parties should expect to divide trial time equally.
    - (a) If your side is talking, it comes out of your time. This includes questioning witnesses, making objections, and arguing points.
    - (b) Parties should track time usage. Beginning with day two of a multi-day trial, the parties should confer and agree at the lunch break or at the end of each day on time usage to date and the anticipated time remaining for each side.
  - ii. As a general principle, whoever has the burden of proof should present their case first and control the call of the witnesses. This means that the party with the burden of proof may call an opposing party's witness as part of its case-in-chief.
  - iii. As a general principle, witnesses should appear only once unless recalled in the rebuttal case. If both sides are calling a witness, then the party with the burden of proof has the option of how to proceed. The Court generally finds that it is more efficient and comprehensible to hear witnesses tell their own story first and then be cross-examined. If the party with the burden of proof elects to proceed in that fashion, then at the time the witness is called, the party controlling the witness would present the witness first, then the other side would cross-examine the witness without

any limitation to the scope of direct. Alternatively, the party with the burden of proof may elect to proceed with a hostile examination of the witness. If this course is followed, then the party controlling the witness will be permitted to follow with a complete direct examination.

10. Forms of Order

- a. Parties should work cooperatively to agree upon forms of order.
- b. An order may be agreed as to form so as to avoid any argument that a party has waived a right to appeal or to revisit an issue that has been determined preliminarily for purposes of an injunction, discovery, or similar pre-trial purpose.
- c. If parties are truly unable to agree, then the prevailing party should submit a form of order under a cover letter that identifies the issues between the parties and explains why the proposed form of order addresses them appropriately.
  - i. Under the principle that letters should be short, a party should submit a motion for entry of order if there are a large number of issues.
  - ii. The non-prevailing party should respond by letter or opposition and provide a mark-up of the prevailing party's proposed form of order. The non-prevailing party should not respond with a completely different form of order.
  - iii. The prevailing party should then reply.
  - iv. If a motion or relief was granted in part and the Court has not otherwise directed a party to take the lead on submitting a form of order, then the movant is the prevailing party for purposes of initiating the submissions.
- d. If the Court has requested a form of order, then unless otherwise directed, a form of order should be submitted within one week of the ruling.

11. Representative Actions

- a. Parties to representative actions who are aware of other proceedings involving the same subject matter should (i) advise the Court promptly of the existence of the other matters and (ii) regularly update the Court regarding the status of the other matters.
- b. Settlements:
  - i. If a settlement has been reached in representative litigation challenging a pending transaction, the parties should advise the Court promptly and submit the memorandum of understanding. The settlement should be presented promptly for approval following the closing of the transaction.

- ii. The scheduling order for a representative action settlement should provide for the following:
  - (a) Mailing of a notice at least 60 days before the hearing date, with a shorter time only upon application and for good cause shown;
  - (b) A brief in support of the settlement and any supporting documents to be filed 15 days before the hearing date;
  - (c) Objections to be filed 10 days before the hearing date, and
  - (d) A short reply in support of the settlement and in response to any objections five days prior to the hearing date.
  - (e) A sample settlement scheduling order appears as Exhibit 9.

## Exhibit H

**2017 DELAWARE VIEWS FROM THE BENCH**

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

EFiled: Dec 2 2009 9:55AM EST  
Transaction ID 28299458  
Case No. 4705-VCL



J. TRAVIS LASTER  
VICE CHANCELLOR

New Castle County Courthouse  
500 N. King Street, Suite 11400  
Wilmington, Delaware 19801-3734

December 2, 2009

Jeffrey M. Weiner, Esquire  
Law Offices of Jeffrey Weiner  
1332 King Street  
Wilmington, DE 19801

Marc S. Casarino, Esquire  
White and Williams LLP  
824 N. Market Street, Suite 902  
Wilmington, DE 19801

RE: *State Line Ventures, LLC, et al. v. RBS Citizens, N.A.*  
C.A. No. 4705-VCL

Dear Counsel:

Mr. Weiner wrote to me by letter dated November 25, 2009, to inquire whether I would permit "substitute local counsel" to attend a hearing in light of Mr. Weiner's trial schedule. I am told that Mr. Fellheimer, an attorney who is Mr. Weiner's forwarding counsel and who has been admitted *pro hac vice*, will be arguing the motions.

Whom a party chooses as its counsel is a matter for the party to decide. I decline to offer an advisory opinion on counsel selection.

Because the letter uses the phrase "local counsel," I believe it important to make clear that the Court of Chancery does not recognize the role. I am certainly familiar with the term, and I know well that it is often used colloquially as if it were synonymous with "Delaware counsel." It is not. Our rules make clear that the Delaware lawyer who appears in an action always remains responsible to the Court for the case and its presentation. *See* Ct. Ch. R. 170(b) ("The admission of an attorney *pro hac vice* shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court."). So do the Principles of Professionalism for Delaware Lawyers.

It is of course true that Delaware counsel and forwarding counsel necessarily allocate responsibility for work, and that in some cases, the allocation may be heavily weighted towards forwarding counsel. It is also true that forwarding counsel may have primary responsibility for a matter from the client's prospective, particularly if the Delaware litigation is one part of a larger picture. This is perfectly understandable,

December 2, 2009

Page 2 of 2

efficient, and appropriate. But it does not alter the Delaware lawyer's fundamental responsibility for the Delaware proceeding. A Delaware lawyer always appears as an officer of the Court and is responsible for the positions taken, the presentation of the case, and the conduct of the litigation.

If a Delaware lawyer signs a pleading, submits a brief, or signs a discovery request or response, it is the Delaware lawyer that takes the positions set forth therein. This is true regardless of who prepared the initial draft or how the underlying work was allocated.

When a particularly questionable argument was made in the briefing, I have not hesitated to ask the **Delaware** lawyer at the hearing how the argument possibly could be advanced, regardless of whether forwarding counsel was designated to make the argument. This is a practice that I will continue (though I expect the occasions for it to be rare). It is the Delaware lawyer's responsibility to ensure that the arguments being made are appropriate. A Delaware lawyer cannot abdicate his or her obligations or cede them to forwarding counsel.

In offering these comments, I am not intimating any concern about the performance of any Delaware lawyer who might be seconded to assist Mr. Weiner while he is in trial. I am confident that if someone is chosen to assist Mr. Weiner by acting as additional Delaware counsel, that lawyer will do so in full compliance with this Court's rules and its expectations for members of the Delaware bar.

Very truly yours,

*/s/ J. Travis Laster*

J. Travis Laster  
Vice Chancellor