Southwest Bankruptcy Conference

Procedural, Practical and Economic Efficiencies: Rules and Rule Changes to Reflect Current Realities and Potential Ethical Landmines

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2022

PROCEDURAL, PRACTICAL, & ECONOMIC EFFICIENCIES: RULES AND RULE CHANGES TO REFLECT CURRENT REALITIES

Hon. Madeleine C. Wanslee (Bankr. D. Ariz.)
Nellwyn Voorhies (Donlin, Recano & Co.)
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PowerPoint in the Courtroom

First-Day and Second-Day Presentations

- Asset/Liability Snapshot
- Business Overview & Org Chart
- Events Precipitating Chapter 11
- Key Legal Questions
- Next Steps
- Target Timeline

- Know Your Audience
  - Judge vs. Lay Jury
  - Posted on Claims Agent Website
    - Voyager
    - Celsius
  - Picked up by Press

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PowerPoint in the Courtroom

- Demonstrative Evidence?
  - Presentation vs. Admissibility
  - Avoid new arguments
- Obligation to Share with Opponent?

- But, be mindful of fees (*Be efficient!*)

  See, e.g., In re C2R Global Mfg., (Bankr. E.D. Wi. 2019) (disallowing excessive fees for preparing PowerPoint presentation used in oral argument where bulk of presentation repeated argument in brief)

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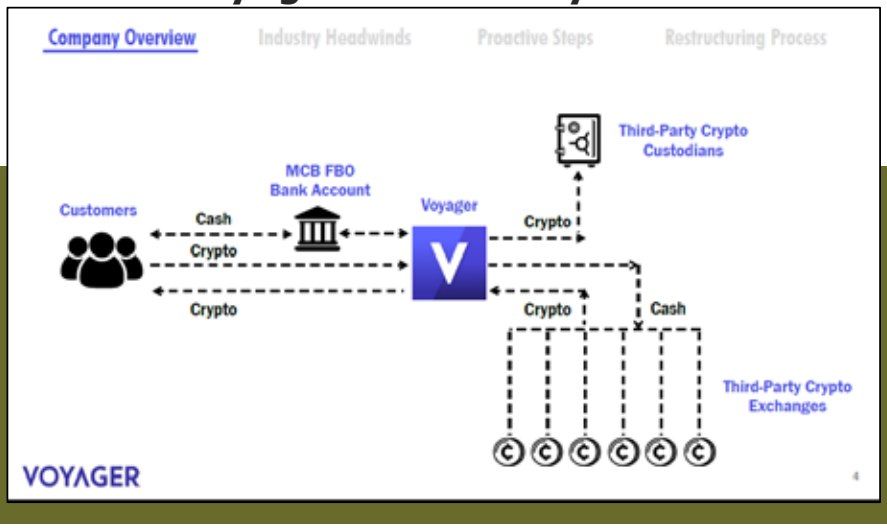
Voyager – First Day PPT



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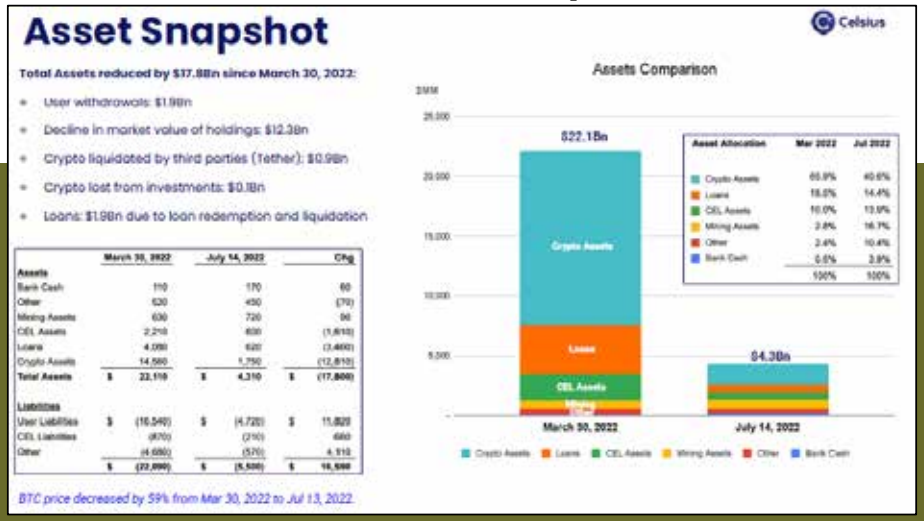
Celsius – First Day PPT



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EMPLOYMENT AND RETENTION ISSUES FOR CLAIMS AGENTS

- Claims agents – Mandatory v. Voluntary
- Official docket vs. Mirror docket
- § 156 vs. § 327 Retention

Comment and questions: In jurisdictions where there are few large 11's, many courts are unfamiliar with Claims Agents, making it more difficult to facilitate retention and create efficiencies.

- Should there be a standard rule requiring employment of a claims agent at a certain threshold of creditors?
- Should the rules regarding claims registers be consistent?
- Should a rule clarifying the difference between 327 work and 156 work be proposed?

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Claims Agent Employment Issues

- Separate *Pages*
  - Donlin - GWG Holdings (S.D. Tex.); Morehead Mem. Hosp. (M.D.N.C.); New England Motor Freight (D.N.J.)
  - Omni - Boy Scouts of Am. (Del); Thomas Health System (S.D.W.V.); PSE Holdings (Del.); Center City Healthcare (Del.)
  - Stretto – Honx (S.D. Tex)
- Separate *Agents*

Case	Debtor's Claims Agent	Committee's Claims Agent
Forever 21	Kroll	Omni
Voyager	Stretto	Epiq
Celsius	Stretto	Kroll
Intelsat	Stretto	Donlin
Essar Steel	Eqiq	Omni

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Motion for Summary Judgment

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MSJ Procedures – Eliminate Separate SOF

- Fed. R. Civ. P. 56(c)(1) *Supporting Factual Positions*:

  A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

  (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

  (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

- Separate statement of facts is not required.

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MSJ Procedures – Eliminate Separate SOF

- Case Management Order of Judge Rayes of Arizona District Court (emphasis in original):

  The Court will decide summary judgment motions under Federal Rule of Civil Procedure 56 only. In other words, the parties may not file separate statements of facts or separate controverting statements of facts, and instead must include all facts in the motion, response, or reply itself.

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MSJ Procedures – Eliminate Separate SOF

- Ninth Circuit survey:
  - Bankruptcy Districts requiring separate SOF: Arizona, Nevada, CD California, ED California, Hawaii, Idaho, Montana, Oregon, and ED Washington
  - Bankruptcy Districts not requiring separate SOF: Alaska, ND California, SD California, Guam, Northern Mariana Islands, WD Washington

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MSJ PROCEDURES – ELIMINATE SOF

Sample language, Bankruptcy Court for District of New Mexico LR 7056-1(a):

Summary Judgment Motion. A summary judgment motion and/or supporting memoranda shall contain a concise supporting legal argument, with citations to legal authority as necessary, together with a concise statement of all material facts movant contends are not in genuine dispute. The facts shall be numbered and shall refer with particularity to the portions of the record relied upon. The court may summarily deny any motion that does not comply with this rule.

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Committee Communications (New Media)

- Meeting account holders/creditors where they are at:
  - Twitter (e.g., @CelsiusUcc; @VoyagerUCC)
  - Other Social Media (e.g., Reddit, Discord, Telegram)
- Mission Statements (Celsius Doc 390)

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Committee Communications (New Media)

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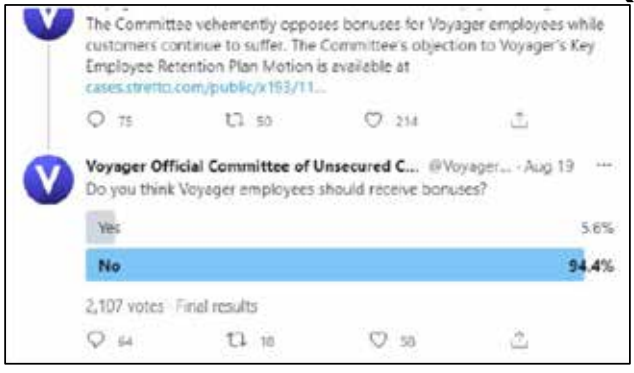
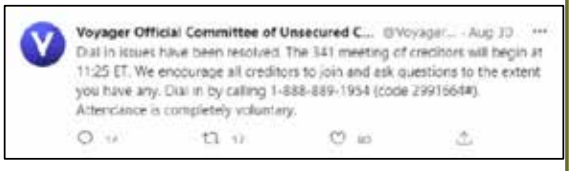
Committee Communications (New Media)





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MODERNIZING NOTICING

1. **Electronic mail service.**
2. **Voluminous documents.**

Comments and questions: If email service isn't sufficient, do debtors have to resort to publication notice, which most practitioners believe is not only expensive, but ineffectual? How much should the Court consider cost savings when considering the appropriate method of service? Although it has not yet raised issues – should a policy regarding posting documents on a website as opposed to mailing them in their entirety be put in place?

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ELECTRONIC CLAIMS FILING

Comments and questions:

Should debtors be required to accept electronic claims?

Does a debtor have an ethical obligation to amend the schedules if they receive information about a valid claim even after the Bar Date has passed?

Does the estate have an ethical duty to make it easier for parties to assert a claim?

Should the rules on electronic claim filing be standardized across jurisdictions?

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ELECTRONIC BALLOTING

Comments and questions:

What security concerns are there with electronic ballots?

Are the initial costs worth the end time savings?

Does it matter if there are funds for unsecured creditors? Should there be standard rules and procedures across jurisdictions?

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AZ District Court "Rocket Docket" for BK appeals

- LRCiv 16.2: Unless otherwise ordered, bankruptcy appeals are assigned to "expedited track."
- Appeals are generally resolved on the pleadings.
- However, per LRBankr 8010-2, except with leave of district court, initial briefs may not exceed 17 pages and reply briefs may not exceed 11.

Combination!

I'm at the Pizza Hut (what?)

I'm at the Taco Bell (what?)

I'm at the combination Pizza Hut and Taco Bell

Lyrics by Das Racist and Heems

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Combined Disclosure Stmt. & Plan

Delaware Local Rule 3017-2

- Permits combining plan and Discl Stmt when:
  1. All or substantially all of the estate's assets were liquidated in a § 363 sale;
  2. The liquidating plan complies with § 1129(a)(9) (payment of priority creditors)
  3. The liquidating plan does not seek nonconsensual releases or injunctions against nondebtor parties; and
  4. Combined assets to be distributed (excl. causes of action) are estimated be less than $25mm
- Further provides debtor may request, on shortened notice:
  1. Interim approval of Discl Stmt
  2. Approval of solicitation procedures; and
  3. Scheduling of joint hearing on final approval of Discl Stmt and plan confirmation

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Combined Disclosure Stmt. & Plan

Outside of Delaware, courts have invoked § 105(d) to extend § 1125(f) to apply to non-small business cases

- § 1125(f) expressly authorizes combining a plan and disclosure statement in small business cases

See, e.g., *In re Van Tassel*, 2011 Bankr. LEXIS 5641, *3-5 (Bankr. E.D. Cal. Jun. 7, 2011) (citing §§ 105 and 1125(f) to approve use of combined plan and disclosure statement in non-small business case); *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 425 (Bankr. S.D. Tex. 2009) ("section 1125(f) authorizes combined plans and disclosure statement [hearings] in small business cases and section 105(d) authorizes the court to combine them in other cases"); *In re HearUSA Inc.*, Case No. 11-23341, Docket No. 706 (Bankr. S.D. Fla. March 16, 2012); *In re General Growth Properties Inc.*, Case No. 09-11977, Docket No. 5863, (Bankr. S.D.N.Y. Aug. 27, 2010); *In re Amelia Island Co.*, Case No. 09-9601, Docket No. 659 (Bankr. M.D. Fla. July 20, 2010); *In re Luminent Mortgage Capital Inc.*, Case No. 08-21389, Docket No. 538 (Bankr. D. Md. May 15, 2009); *In re Cypresswoods Land Partners I*, Case No. 07-32437-H4 11, Docket No. 144 (Bankr. S.D. Tex. Sept. 26, 2008).

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Interim Compensation Procedures

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Interim Compensation Procedures

- Interim compensation under Bankruptcy Code § 331:

A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once ***every 120 days*** after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

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Interim Compensation Procedures

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Interim Compensation Procedures

- *In re Knudsen Corp.*, 84 B.R. 668 (B.A.P. 9th Cir. 1988):
  - Section 330 and 331 do not prohibit transfer of funds to professionals prior to compliance with such sections.
  - Section 328 authorizes retainer as part of compensation.
  - Critical factor: fees must not be finally allowed (*i.e.*, subject to repayment) until detailed application is filed with an objection period and court review.

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Interim Compensation Procedures

- *In re Knudsen Corp.*, 84 B.R. 668 (B.A.P. 9th Cir. 1988) (cont.):
  - Procedures approved in rare cases where court can make following findings:
    - Case is unusually large with exceptionally large monthly fee accrual;
    - Extended waiting period would place undue hardship on counsel;
    - Counsel can respond to any reassessment;
    - Retainer procedure is, itself, the subject of a noticed hearing.

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Interim Compensation Procedures

- *In re Knudsen Corp.*, 84 B.R. 668 (B.A.P. 9th Cir. 1988) (cont.):
  - Reassessment methods:
    - Payments are for only a percentage of amount billed;
    - Counsel can post a bond;
    - Counsel's financial position makes it certain that any reassessment can be repaid; funds are held in trust account until a final or interim fee allowance is made.

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Interim Compensation Procedures

- Key "Market" Procedures:
  - Serve monthly statement on counsel for key constituents (e.g., debtor, committees, UST, DIP lenders);
  - Objection period;
  - After objection period, payment of 80% of fees and 100% of costs not in dispute;
  - Required interim fee applications, absent which no further monthly interim payments can be made.

QUESTIONS ?? THANK YOU!

Hon. Madeleine C. Wanslee (Bankr. D. Ariz.)
Nellwyn Voorhies (Donlin, Recano & Co.)
Khaled Tarazi (Buchalter)
Bradley Cosman (Perkins Coie)

TABLE OF MATERIALS

- Ariz. D. Ct. Local Rules Concerning Bankruptcy Appeals
- Sample Local Standing Orders / Rules Regarding Interim Compensation Procedures
- Celsius First Day Presentation
- Celsius Second Day Presentation
- Voyager First Day Presentation
- Voyager Second Day Presentation
- Celsius Committee's "Mission Statement"
- Del. L. Rule 3017-2
- Voorhies Outline – "Practice vs. Practicality in Procedures"
- Abridged version of Rule 2002
- Cyber Litigation Opinion

Arizona District Court local rules
putting bankruptcy appeals on expedited track

LRCiv 16.2

DIFFERENTIATED CASE MANAGEMENT

(a) Statement of Purpose and Scope of Authority. Pursuant to the Civil Justice Reform Act, 28 U.S.C § 471 et seq., the United States District Court for the District of Arizona has established a Differentiated Case Management ("DCM") system to screen cases for complexity, assign cases to specific tracks based on that complexity, and manage cases to disposition according to predetermined milestones established for the respective tracks.

(b) Tracks. Unless otherwise ordered by the assigned District Judge or Magistrate Judge, the type of cases identified in the following tracks must be assigned as follows:

(1) Expedited Track.

(A) Assignment.

(i) Cases are assigned to this track based on nature of suit, and are those that usually are resolved on the pleadings. Expedited Track cases include:

Bankruptcy appeals;

Social Security appeals;

Student Loan, Veteran's Benefits, and other recovery actions;

Forfeiture/Penalty actions;

Freedom of Information Act (FOIA) actions;

Office of Navajo and Hopi Indian Relocation actions;

Summons and Subpoena Enforcement actions.

(ii) Other cases may be assigned to this track based on complexity. Such determination may be made either by the parties at filing, or by the Court at a preliminary scheduling conference.

(iii) A case in a nature of suit listed in (i) above, but which may have more complex issues or facts, may likewise be assigned to another track.

(B) Management. A preliminary scheduling conference is not required; however, a scheduling order will issue.

(2) Detainee Track.

(A) Assignment. All cases filed by criminal or civil detainees are assigned to this track and are administered by the Staff Attorneys' Office.

(B) Management.

(i) Habeas Corpus and Mandamus Actions. A service order will set the briefing schedule.

(ii) All Other Actions Filed by Pro Se Detainees. A service order will set the maximum date to effect service as the limit set in Rule 4(m) of the Federal Rules of Civil Procedure or sixty (60) days from filing of the service order, whichever is later. When the first defendant makes an appearance in the action, a scheduling order will issue setting:

(I) a discovery cutoff one-hundred fifty (150) days from the date the scheduling order issues; and

(II) a dispositive motion filing deadline one-hundred eighty (180) days from the date the scheduling order issues.

(iii) Detainee Actions Filed by an Attorney. After a screening order issues, the Court may assign these cases to the Standard Track.

(3) Standard Track.

(A) Assignment. Cases that do not meet the criteria of the Expedited or Detainee tracks, and are not determined to be complex, are assigned to this track.

(B) Management.

(i) A preliminary scheduling conference, pursuant to Rule 16 of the Federal Rules of Civil Procedure, will be scheduled within one-hundred eighty (180) days of filing, and conducted by the assigned District Judge or designee, or the assigned Magistrate Judge.

(ii) If the assigned District Judge or Magistrate Judge is unable to try the case on the date set for trial, the case may be referred to the Chief Judge for reassignment to any available District Judge or Magistrate Judge.

(4) Complex Track.

(A) Assignment. Complex cases are those which require extensive judicial involvement, and will be so designated by the District Judge or Magistrate Judge, counsel, and parties.

(B) Management. A preliminary scheduling conference will be conducted before the assigned District Judge or Magistrate Judge for all cases on this Complex track, and an initial scheduling order, in accordance with Rule 16(b) of the Federal Rules of Civil Procedure, will issue following the conference.

(C) Multidistrict litigation. An attorney filing a complaint, answer, or other pleading in a case that may involve multidistrict litigation (see 28 U.S.C. § 1407), must file with the pleading a paper describing the nature of the case listing the title(s) and number(s) of any other related case(s) filed in this or other jurisdictions.

9th Cir. BAP R. 8010(c)-1. Length of Briefs

LRBankr 8010-2

LENGTH OF BRIEFS

Except with leave of the district court, the appellant's and appellee's initial briefs may not exceed seventeen (17) pages, and reply briefs may not exceed eleven (11) pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations or similar materials.

Committee Notes: The page limits are those set by LRCiv 7.2(e) for civil motions generally and differ from those in the Ninth Circuit BAP.

SAMPLE LOCAL STANDING ORDERS/RULES REGARDING INTERIM COMPENSATION PROCEDURES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In the matter of:	
Order Establishing Procedures For Monthly Compensation and Reimbursement of Expenses of Professionals	Amending General Order M-348 M-388

By resolution of the Board of Judges for the Southern District of New York, it is resolved that in order to provide professionals with clear and concise procedures for monthly compensation and reimbursement of expenses in chapter 11 cases (the "Monthly Fee Order"), and as amended to shorten the time to fourteen (14) days to review fee statements, all Monthly Fee Orders filed in the bankruptcy court for the Southern District of New York shall conform substantially to the official Monthly Fee Order form annexed hereto.

NOW, THEREFORE, IT IS ORDERED that the annexed official Monthly Fee Order be, and the same is adopted, effective December 1, 2009, and shall apply to all Monthly Fee Orders signed on or after that date.

Dated: New York, New York
November 25, 2009

/s/ *Stuart M. Bernstein*
Stuart M. Bernstein
Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
	)	Case Nos.: __-B-_____ (___)
Debtors.	)	through __-B-_____ (___)
	)	(Jointly Administered)
	)	

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 331 ESTABLISHING PROCEDURES FOR MONTHLY COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS

[NAMES OF DEBTORS], debtors and debtors-in-possession (collectively, the "Debtors"), move, by a motion dated _____ ____, 20__ (the "Motion"), for an order, pursuant to §§ 105(a) and 331 of the United States Bankruptcy Code (the "Code"), establishing procedures for monthly compensation and reimbursement of expenses of professionals retained by order of this Court, and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; and it appearing that proper and adequate notice has been given by service of the Motion on the Office of the United States Trustee, counsel to each official committee (If no committee is appointed, the 20 largest unsecured creditors.), counsel to all post-petition lenders (or counsel to their agent(s)), and all parties who filed a notice of appearance; and that no other or further notice is necessary; and upon the record of the hearing herein; and upon the representation of the Debtors that this estate is administratively solvent; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, that except as may otherwise be provided in Court orders authorizing the retention of specific professionals, all professionals in these cases may seek monthly compensation in accordance with the following procedure:

(a) On or before the twentieth (20th) day of each month following the month for

which compensation is sought, each professional seeking compensation under this Order will serve a monthly statement, by hand or overnight delivery on (i) _____, the officer designated by the Debtors to be responsible for such matters; (ii) counsel to the Debtors; (iii) counsel to all official committees; (iv) counsel for the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: _____, Esq.); (vi) counsel to all post-petition lenders or their agent(s); and (v) _____ (anyone else the Court may designate);

(b) The monthly statement need not be filed with the Court and a courtesy copy need not be delivered to the presiding judge's chambers since this Order is not intended to alter the fee application requirements outlined in §§ 330 and 331 of the Code and since professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Code, the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court, Southern District of New York;

(c) Each monthly fee statement must contain a list of the individuals and their respective titles (e.g. attorney, accountant, or paralegal) who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, a reasonably detailed breakdown of the disbursements incurred (No professional should seek reimbursement of an expense which would otherwise not be allowed pursuant to the Court's

Administrative Orders dated June 24, 1991 and April 21, 1995 or the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 dated January 30, 1996.), and contemporaneously maintained time entries for each individual in increments of tenths (1/10) of an hour;

(d) Each person receiving a statement will have at least fourteen (14) days after its receipt to review it and, in the event that he or she has an objection to the compensation or reimbursement sought in a particular statement, he or she shall, by no later than the thirty-fifth (35th) day following the month for which compensation is sought, serve upon the professional whose statement is objected to, and the other persons designated to receive statements in paragraph (a), a written "Notice Of Objection To Fee Statement," setting forth the nature of the objection and the amount of fees or expenses at issue;

(e) At the expiration of the thirty-five (35) day period, the Debtors shall promptly pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in each monthly statement to which no objection has been served in accordance with paragraph (d);

(f) If the Debtors receive an objection to a particular fee statement, they shall withhold payment of that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e);

(g) Similarly, if the parties to an objection are able to resolve their dispute following the service of a Notice Of Objection To Fee Statement and if the

party whose statement was objected to serves on all of the parties listed in paragraph (a) a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the debtor shall promptly pay, in accordance with paragraph (e), that portion of the fee statement which is no longer subject to an objection;

(h) All objections that are not resolved by the parties, shall be preserved and presented to the Court at the next interim or final fee application hearing to be heard by the Court. See paragraph (j), below;

(i) The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Code on any ground whether raised in the objection or not. Furthermore, the decision by any party not to object to a fee statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Code;

(j) Approximately every 120 days, but no more than every 150 days, each of the professionals shall serve and file with the Court an application for interim or final Court approval and allowance, pursuant to sections 330 and 331 of the Bankruptcy Code (as the case may be), of the compensation and reimbursement of expenses requested;

(k) Any professional who fails to file an application seeking approval of compensation and expenses previously paid under this Order when due shall (1) be ineligible to receive further monthly payments of fees or expenses as

provided herein until further order of the Court and (2) may be required to disgorge any fees paid since retention or the last fee application, whichever is later;

(l) The pendency of an application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular statement shall not disqualify a professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court;

(m) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any professionals;

(n) Counsel for each official committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement of professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee he or she represents; provided, however, that such committee counsel ensures that these reimbursement requests comply with this Court's Administrative Orders dated June 24, 1991 and April 21, 1995;

and it is further

ORDERED, that each professional may seek, in its first request for compensation and reimbursement of expenses pursuant to this Order, compensation for work performed and reimbursement for expenses incurred during the period beginning on the date of the professional's retention and ending on _____ ____, 20__; and it is further

ORDERED, that the amount of fees and disbursements sought be set out in U.S. dollars; [if the fees and disbursements are to be paid in foreign currency, the amount shall be set out in U.S. dollars and the conversion amount in the foreign currency, calculated at the time of the submission of the application;] and it is further

ORDERED, that the Debtors shall include all payments to professionals on their monthly operating reports, detailed so as to state the amount paid to each of the professionals; and it is further

ORDERED, that any party may object to requests for payments made pursuant to this Order on the grounds that the Debtors have not timely filed monthly operating reports, remained current with their administrative expenses and 28 U.S.C. § 1930 fees, or a manifest exigency exists by seeking a further order of this Court, otherwise, this Order shall continue and shall remain in effect during the pendency of this case; and it is further

ORDERED, that all time periods set forth in this Order shall be calculated in accordance with Federal Rule of Bankruptcy Procedure 9006(a); and it is further

ORDERED, that any and all other and further notice of the relief requested in the Motion shall be, and hereby is, dispensed with and waived; provided, however, that the Debtors must serve a copy of this Order on all entities specified in paragraph (a) hereof.

Dated: New York, New York
_____ ___, 20__

_____
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:

PROCEDURES FOR CHAPTER 11 CASES	:	Conforming Time Computation Amendment, Effective 12/1/09

GENERAL ORDER ADOPTING GUIDELINES GOVERNING PROCEDURES FOR PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES TO PROFESSIONALS

UPON CONSIDERATION of the recommendations of the Chapter 11 Subcommittee of the Lawyer's Advisory Committee of the Bankruptcy Court for the District of New Jersey, the Court finds a need to implement policies and procedures to better serve the bench, bar and public in chapter 11 cases. Accordingly, by resolution of the Board of Judges of the United States Bankruptcy Court for the District of New Jersey,

IT IS ORDERED pursuant to 11 U.S.C. §§ 105(a) and 331 that the Guidelines Governing Procedures For Payment Of Interim Compensation And Reimbursement Of Expenses To Professionals attached hereto as Exhibit A are hereby **ADOPTED**; and

IT IS FURTHER ORDERED that

1. The Court reserves the right to modify the provisions of this General Order to accommodate the needs of a chapter 11 case before it; and
2. The Exhibits/Standard Forms And Orders referenced in this General Order may be revised by the Court at any time on an individual basis without the need to further amend this General Order; and

IT IS FURTHER ORDERED that this Order shall apply to chapter 11 cases pending on the date of this Order.

Dated: November 25, 2009

/s/ Judith H. Wizmur
Hon. Judith H. Wizmur, Chief Judge
United States Bankruptcy Court
District of New Jersey

EXHIBIT A

GUIDELINES GOVERNING PROCEDURES FOR PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES TO PROFESSIONALS PURSUANT TO 11 U.S.C. §§ 105(a) AND 331

The procedures set forth below concern the submission of motions seeking the entry of an administrative order establishing procedures for payment of interim compensation and reimbursement of expenses to professionals pursuant to 11 U.S.C. §§ 105(a) and 331 for services rendered and expenses incurred during a Chapter 11 case. This will enable both the Court and practitioners to understand the procedures in advance and ensure that motions and corresponding relief they seek conform to procedures that are accepted by the Court when it is appropriate to enter such types of orders. Accordingly, the following guidelines governing procedures for payment of interim compensation and reimbursement of expenses to professionals pursuant to 11 U.S.C. §§ 105(a) And 331 have been approved by the Court.

A. SCOPE OF APPLICABILITY

1. All professionals retained in a Chapter 11 case pursuant to Bankruptcy Code §§327 and 1103 (the "Professional") may seek post-petition interim compensation pursuant to the within guidelines by filing the appropriate motion seeking the entry of an administrative fee order ("Administrative Fee Order").

B. SUBMISSION AND MONTHLY STATEMENTS

2. On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, each Professional seeking compensation pursuant to an Administrative Fee Order shall file with the Court and serve a monthly fee and expense statement (the "Monthly Fee Statement"), by hand or overnight delivery or by any means directed by the Court upon the following persons:

   (a) the officer designated by the Debtor to be responsible for such matters;

   (b) counsel to the Debtor;

   (c) counsel to all official committees;

   (d) United States Trustees Office for Region III – Newark , NJ office;

   (e) counsel to all post-petition lenders or their agents;

(f) all parties filing an entry of appearance and request for notices pursuant to Federal Rule of Bankruptcy Procedure 2002; and

(g) any other party the Court may so designate.

C. CONTENT OF MONTHLY STATEMENT

3. Each Monthly Fee Statement shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules for the United States Bankruptcy Court for the District of New Jersey with the exception that provisions of DNJ LBR 2016-1(a)(8) [cover sheet] and (a)(9) [narrative explanation] are not required.

4. All timekeepers must maintain contemporaneously time entries for each individual in increments of tenths ($1/10^{th}$) of an hour.

D. REVIEW PERIOD

5. Each person receiving a Monthly Fee Statement shall have twenty one (21) days after service of the Monthly Fee Statement to review it (the "Objection Deadline").

E. PAYMENT

6. Upon the expiration of the Objection Deadline, each Professional may file and serve upon each of the parties set forth in Section B2 herein, including, but not limited to, the Debtor a certificate of no objection or a certificate of partial objection, whichever is applicable, after which the Debtor is authorized to pay each Professional an amount (the "Actual Interim Payment") equal to the lesser of (i) eighty percent (80%) of the fees and 100 percent (100%) of the expenses requested in the Monthly Fee Statement or (ii) eighty percent (80%) of the fees and 100 percent (100%) of the expenses not subject to any objection.

F. OBJECTIONS

7. If any party objects to a Monthly Fee Statement, it must file a written objection (the "Notice Of Objection To Monthly Fee Statement") and serve it upon the Professional and each of the parties served with the Monthly Fee Statement as set forth in Section B2 of these guidelines including, but not limited to, the Debtor so that the Notice Of Objection To Monthly Fee Statement is received on or before the Objection Deadline.

8. The Notice Of Objection To Monthly Fee Statement must set forth the nature of the objection and the amount of fees and/or expenses at issue.

9. If the Debtor received an objection to a particular Monthly Fee Statement, the Debtor shall withhold payment of that portion of the Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in Section E7 herein.

10. If the parties to an objection are able to resolve their respective dispute(s) following the service of a Notice Of Objection To Monthly Fee Statement and if the party whose Monthly Fee Statement was objected to serves upon all the parties listed in Section B2 herein a statement indicating that the objection is withdrawn and describing in detail the terms of the resolution, then the Debtor shall promptly pay in accordance with Section E7 herein that portion of the Monthly Fee Statement which is no longer subject to an objection.

11. If the parties are unable to reach a resolution of the objection within twenty one (21) days after service of the objection, then the affected Professional may either (a) file a response to the objection with the Court together with a request for payment of the difference, if any, between the Actual Interim Payment and the non-objected to portion of the Actual Interim Payment made to the affected Professional (the "Incremental Amount"); or (b) forgo payment of the Incremental Amount until the next interim or final fee application or any other date and time so directed by the Court at which time it will consider and dispose of the objection, if so requested.

12. The service of an objection to a Monthly Fee Statement shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the objection or not.

13. Furthermore, the decision by any party not to object to a Monthly Fee Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code and applicable rules.

G. FEE APPLICATIONS

14. Parties can file at four (4) month intervals or such other intervals directed by the Court ("Interim Period") an interim fee application. Each Professional seeking approval of its interim fee application shall file with the Court and serve upon the requested parties an interim application for allowance of compensation and reimbursement of expenses, pursuant to Bankruptcy Code §331, of the amounts sought in the Monthly Fee Statements issued during such period (the "Interim Fee Application").

15. The Interim Fee Application must include a summary of the Monthly Fee Statements that are the subject of the request and any other information requested by the Court and shall comply with the mandates of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedures, the Local Rules for the United States Bankruptcy Court for the District of New Jersey and the applicable Third Circuit law.

16. An Interim Fee Application must be filed and served within forty-five (45) days of the conclusion of the Interim Period.

17. Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under the Administrative Fee Order until such time as the Interim Fee Application is submitted.

18. The pendency of a fee application or a Court order that payment of compensation or reimbursement of expenses was improper as to a particular Monthly Fee Statement shall not disqualify a Professional from the further payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court. Additionally, the pendency of the an objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from future payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

19. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals.

20. Counsel for each official committee may, in accordance with the foregoing procedure for monthly compensation and reimbursement to professionals, collect and submit statements of expenses, with supporting vouchers, from members of the committee he or she represents; provided, however, that such committee counsel ensures that these reimbursement requests comply with the applicable rules and these guidelines.

21. Each Professional may seek, in its first request for compensation and reimbursement of expenses pursuant to these guidelines, compensation for work performed and reimbursement for expenses incurred during the period of time between the commencement of the case through and including a specific date.

H. ADMINISTRATIVE ISSUES

22. Any party may object to requests for payments made pursuant to the Administrative Fee Order on the grounds that the Debtors have not timely filed monthly operation reports, remained current with their administrative expenses and 28 U.S.C. § 1930 fees, or a manifest exigency exists by seeking a further order of this Court.

23. Debtor shall include all payments to Professionals on their monthly operating reports, detailed so as to state the amount paid to the Professionals.

24. Otherwise, the Administrative Fee Order shall continue and shall remain in effect during the pendency of the case.

25. All time periods set forth in this Order shall be calculated in accordance with Federal Rule of Bankruptcy Procedure 9006(a).

26. All fees and expenses paid to Professionals are subject to disgorgement until final allowance by the Court.

I. SERVICE OF THE ADMINISTRATIVE FEE ORDER

27. Debtors must serve a copy of the Administrative Fee Order upon all parties served with the underlying motion seeking an Administrative Fee Order; all affected Professionals; all parties listed in Section B2 herein and any other party the Court shall designate.

APPENDIX D5

LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINES FOR EASTABLISHING INTERIM COMPENSATION PROCEDURES FOR PROFESSIONALS

Bankruptcy Code at 11 U.S.C. § 331 limits the frequency with which professionals employed under 11 U.S.C. § 327 or § 1103 may apply for compensation for services rendered and reimbursement for expenses to once every 120 days after the date of the order for relief unless the court otherwise permits.

These guidelines set forth procedures for interim compensation provided that professionals satisfy the requirements of Knudsen Corp v. U.S. Trustee, 84 B.R. 668 (9th Cir. B.A.P. 1988).

1. NOTICE

Notice of a hearing on a motion to approve interim compensation procedures should be given to the United States Trustee, all creditors and equity holders, the debtor, and parties requesting special notice in accordance with LBR9013-4.

2. CONTENT OF MOTION

The motion to approve interim compensation procedures should describe in detail the proposed procedures.

3. GUIDELINES

The court will generally approve interim procedures which:

A. Provide for the monthly payment of fees and reimbursement of expenses (subject to the other guidelines set forth herein).

B. Require service of copies of the invoices and supporting timesheets for which fees and costs are requested on the debtor, the United States Trustee, all official committees or, if none appointed, the 20 largest unsecured creditors, and parties requesting special notice.

C. Provide those served with an opportunity to object within 14 calendar days after the service of the invoices by notifying the applicant in writing and setting forth the specific grounds for the objection.

D. Provide the applicant with the option to either request a hearing on the objection or hold back the amount of fees and/or expenses that are the subject of the objection until the hearing on the application for interim compensation.

E. Provide for an award of 80% of the fees requested with a hold-back of 20% of such fees and for an award of 100% of expenses; provided that the 20% hold-back of fees may include any fees to which an objection was raised.

F. Require that an application for an interim award of compensation and expenses, in compliance with applicable federal and local bankruptcy rules and the Guidelines

of the Office of the United States Trustee for the Southern District of California, must be filed with the court and noticed for hearing in accordance with LBR 2002-2 approximately once every 120 days.

G. State that neither the United States Trustee nor any party in interest shall be barred from raising objections to any charge or expense in any professional fee application filed with the court on the ground that no objection was raised with respect to the invoice.

H. Provide that if the applicant fails to comply with the 120-day fee application procedure set forth in paragraph 3.F, said applicant shall not be entitled to continue to utilize the interim fee compensation procedure thereafter.

In re Celsius Network LLC

Case No. 22-10964
United States Bankruptcy Court for Southern District of New York
Honorable Judge Martin Glenn
July 18, 2022

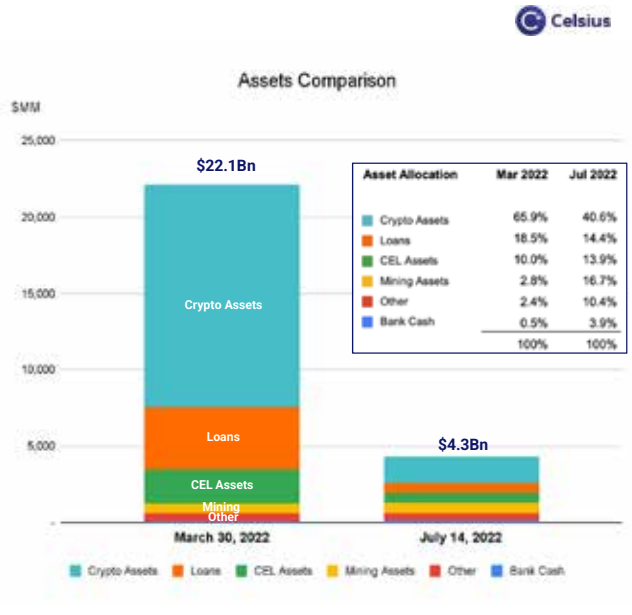
Asset Snapshot

Total Assets reduced by $17.8Bn since March 30, 2022:

- User withdrawals: $1.9Bn
- Decline in market value of holdings: $12.3Bn
- Crypto liquidated by third parties (Tether): $0.9Bn
- Crypto lost from investments: $0.1Bn
- Loans: $1.9Bn due to loan redemption and liquidation

	March 30, 2022	July 14, 2022	Chg
Assets			
Bank Cash	110	170	60
Other	520	450	(70)
Mining Assets	630	720	90
CEL Assets	2,210	600	(1,610)
Loans	4,080	620	(3,460)
Crypto Assets	14,560	1,750	(12,810)
Total Assets	**$ 22,110**	**$ 4,310**	**$ (17,800)**
Liabilities			
User Liabilities	$ (16,540)	$ (4,720)	$ 11,820
CEL Liabilities	(870)	(210)	660
Other	(4,680)	(570)	4,110
	$ (22,090)	**$ (5,500)**	**$ 16,590**

BTC price decreased by 59% from Mar 30, 2022 to Jul 13, 2022.



Key Legal Questions

Legal issues critical to the outcome of this case include:

- Are the crypto assets in Celsius' possession property of the estate? Is the answer to this question different for crypto assets held under the Custody vs. the Earn program? What about crypto assets transferred to Celsius to collateralize institutional and retail loans?
- What does it mean to unimpair a crypto claim or to pay a crypto claim in full?
- Are customers entitled to the return of crypto in-kind?
- The amount of a crypto claim is determined as of what date (e.g., as of the petition date, effective date, distribution date)?
- Which Celsius entities do customers have claims against?
- Do retail and institutional borrowers have a setoff right where they (a) borrowed cash, stablecoins, or other crypto from Celsius and (b) transferred crypto to Celsius?
- Can Celsius recover customer withdrawals or loan liquidations completed in the 90 days before filing as preferences?

3

Current Status of Operations

Celsius Program	Status After Pause Date (June 12, 2022)	Status After Petition Date (July 13, 2022)
Earn Program (Retail)	– No withdrawals, swaps, or transfers between accounts – New and existing customers can transfer crypto assets to their accounts – Customers continue to accrue rewards in Earn accounts	– Unchanged – Customers cannot activate new accounts; not possible to halt new transfers from existing customers – Customers do not accrue rewards in Earn accounts
Custody Program (Retail)	– No withdrawals, swaps, or transfers between accounts – New and existing customers can transfer crypto assets to their accounts	– Unchanged – Customers cannot activate new accounts; not possible to halt new transfers from existing customers
Borrow Program (Retail)	– Customers can take out new loans – Existing loans administered in the ordinary course	– No new loans – Celsius no longer liquidating retail loans or demanding margin calls, but accepting loan repayments and continuing to hold coins posted as collateral
Institutional Lending and Borrowing	– No new loans – Existing loans administered in the ordinary course	– Unchanged – Celsius has paused liquidations of institutional loans and no longer demanding margin calls, but accepting loan repayments and continuing to hold coins posted as collateral

4

Proactive Steps

Celsius has taken proactive steps to safeguard and preserve its assets.

- Key steps were taken before filing to pull crypto assets back into Celsius' custody
  - Celsius unwound most positions where it had borrowed from and posted collateral to third parties
  - Nearly all of Celsius' assets are stored on Fireblocks
  - Celsius is no longer relying on an intermediary to hold the "keys" to its crypto assets
- In addition, Celsius:
  - Halted new loans, coin swaps, and coin transfers among customers;
  - Froze loan accounts and ceased liquidating any loans; and
  - Suspended new deployment/investment activities, including staking its assets on other protocols.

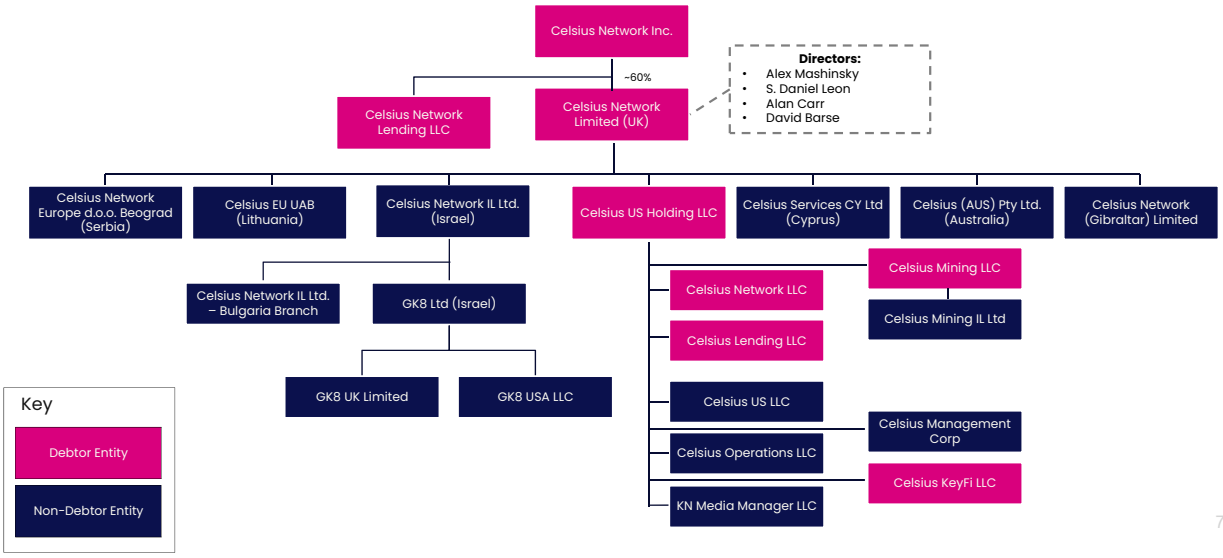
Celsius seeks to conserve its assets and avoid, to the greatest extent possible, without further instruction from this Court, actions that may impact the outcome of the key legal issues posed.

5

Business Overview

6

Corporate Structure



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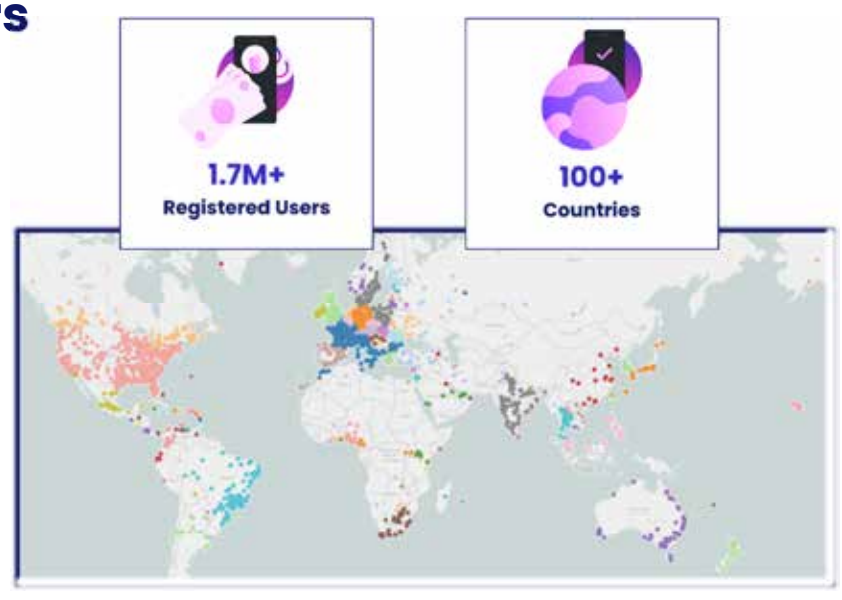
Customers

Celsius has a global community of registered users, as well as institutional and corporate clients*

*Figures as of July 2022.



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Key Business Segments - Retail

Earn Program: **Retail customers transferred coins to Celsius and earned rewards**

- Under the Terms of Use ("TOUs"), title to coins is transferred to Celsius, and Celsius is entitled to use, sell, pledge, and rehypothecate those coins.
- Since April 15, 2022, the Earn product has been limited to U.S. accredited investors and foreign customers.

Borrow Program: **Celsius leant USD or coins to borrowers who post coins as collateral**

- Borrowers were able to choose from different loan products based upon LTV ratios of posted collateral, with applicable interest rates being higher for higher LTV loans.
- Title to coins is transferred to Celsius and Celsius is entitled to use, sell, pledge, and rehypothecate those coins.

Custody Program: **Custodial services for customer, incl. U.S. non-accredited investors**

- Began in April 2022
- Title remains with customer and Celsius cannot use coins without instructions from the customer.

9

Key Business Segments – Institutional and Mining

Institutional Lending and Borrowing Program: Bespoke lending and borrowing with institutional clients, such as hedge funds and market-makers

- Depending on the creditworthiness of the counterparty, loans to institutional investors may be secured, partially secured, or unsecured

Mining: Celsius, through its Debtor subsidiary Celsius Mining LLC, operates one of the larges Bitcoin mining enterprises in the U.S.

- Celsius operates over 43,000 rigs and plans to operate 112,000 rigs by Q2 2023.

10

Key Business Segments – Deployment

Celsius

DeFi protocols: Celsius deployed assets on decentralized finance protocols in order to generate yield.

Staking: Celsius would stake assets on other protocols, such as Ether 2.0, in order to generate yield

CeFi trading: Celsius engaged in certain opportunistic market-neutral trades with its digital assets, including "cash and carry" trades and other exchange-based trades.

NOTE: Celsius still has certain open positions in certain of these business activities, but is not doing any new deployment.

11

Celsius

How Celsius Is Different

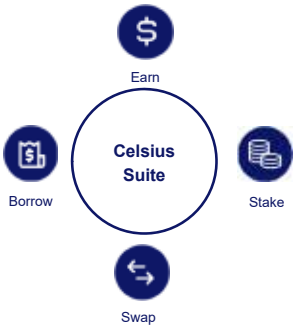
Offers users a way to earn rewards on their digital assets

A platform that does more than store users' assets

Does not –
Hold users' cash or
provide users with individual "wallets"

$634M+

Total Rewards Paid on Deposits*

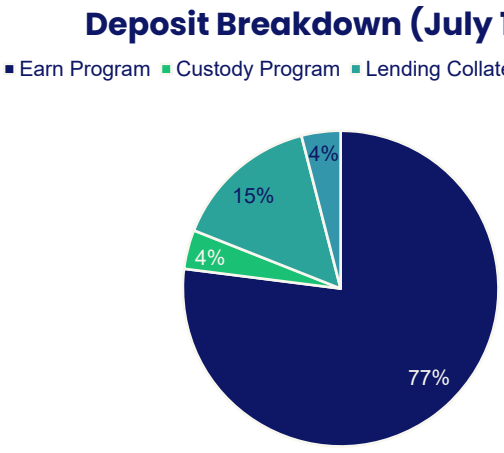


*Calculated as of December 31st 2021.

12

Deposits by Program

Celsius



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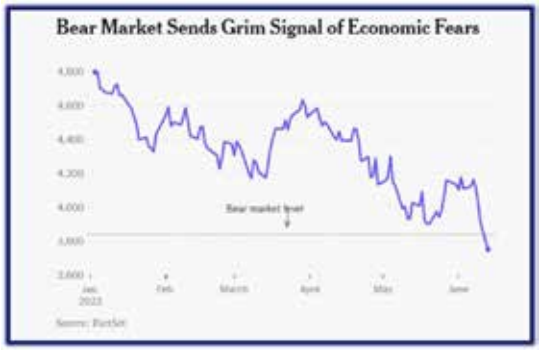
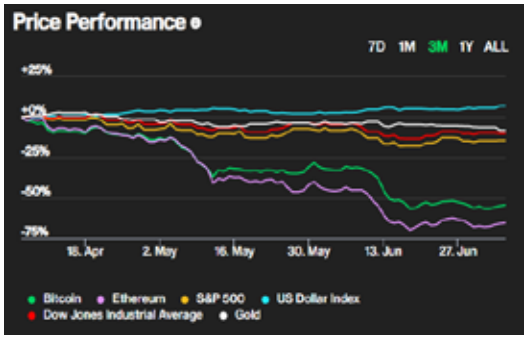
Events Leading to Chapter 11 and Path Forward

14

Industry Headwinds

Celsius





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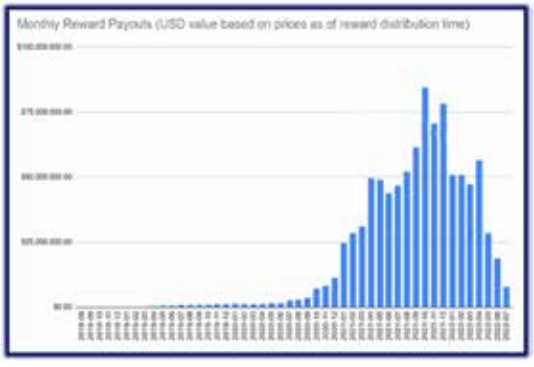
Transfer and Reward Activity

Celsius



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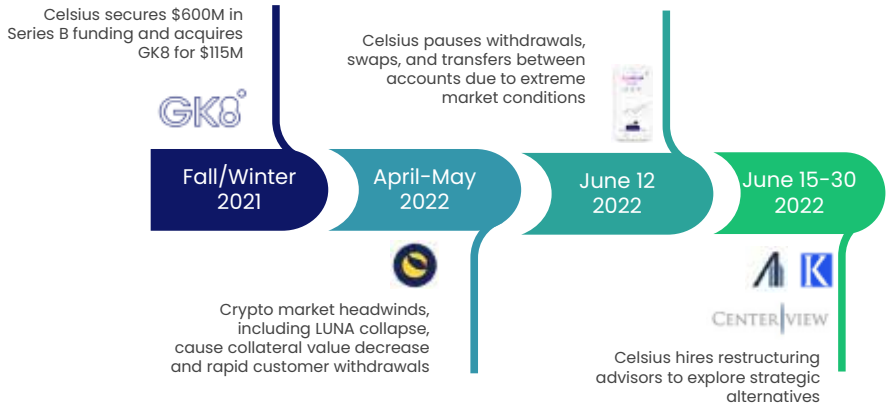
Timeline of Events Leading up to Chapter 11



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Next Steps

- Preserve value while negotiating a comprehensive restructuring transaction with stakeholders
- Use Bitcoin minted by mining operations to help fund mining operations and grow Bitcoin holdings
- Consider asset sales and third-party investment opportunities
- File and confirm a chapter 11 plan that will (i) provide customers with the option, at the customers' election, to recover either cash at a discount or remain "long" crypto, (ii) maximize returns for stakeholders, and (iii) reorganize the Celsius business

18

Appendix

Key Terminology

- **Blockchain technology utilizes encryption and authentication to create a secure, decentralized ledger where users are linked in a peer-to-peer network**
- **All performed transactions are public, but the transferor and transferee identities remain anonymous**
- **Cryptocurrency is stored in "wallets," software apps that generate and store keys used to send and receive cryptocurrency.**
- **Cryptocurrency "miners" validate transactions on the blockchain in return for payment in kind**
  - **Proof of Work: "first come, first serve" form of mining where the first to validate a transaction receives the cryptocurrency payment**
  - **Proof of Stake: attributes mining power to the proportion of coins held by a miner, creating a more efficient energy system**

Celsius

Second Day Hearing Presentation

In re Celsius Network LLC, Case No. 22-10964
United States Bankruptcy Court for Southern District of New York
Honorable Judge Martin Glenn
August 16, 2022

Agenda

- **Committee Formation**
- **Progress Since Filing**
- **Cryptocurrency Market Update**
- **Customer Correspondence**
- **Path Forward**

Formation of Committee

- Official Committee of Customers was appointed on July 27. Committee Members:
  - Caroline G. Warren
  - Thomas DiFiore
  - Scott Duffy for ICB Solutions
  - Christopher Coco
  - Andrew Yoon
  - Mark Robinson
  - Keith Noyes for Covario AG

3

Objection Resolutions

- The Debtors and the Committee are committed to working together on a path forward that maximizes value for all stakeholders.
- On August 11, advisors to the Debtors and the Committee and its members held an introductory meeting.
- We believe all Committee objections to second day relief have been resolved. One objection from the U.S. Trustee on the wages motion remains unresolved.
- The Debtors and the Committee plan to meet on August 23 to discuss the Debtors' business plan and restructuring framework.

4

Progress Since Filing

Key Workstreams Advanced Since Filing

DIP Financing	Soliciting DIP proposals and charting liquidity needs. *See* Budget and Coin Report [Docket No. 447].
Go-Forward Plan	Celsius and its advisors are preparing a business plan for a standalone reorganization that provides optionality for customer recovery; Celsius has an August 23 meeting with the Committee to discuss.
Engagement with Stakeholders	Debtors have engaged with creditors directly, as well as counsel to the Committee, counsel to the Ad Hoc Group of Custodial Account Holders, and counsel to the Ad Hoc Group of Withhold Account Holders.
Legal Issue Analysis	The Debtors and their advisors are advancing their thinking on the key legal issues in these chapter 11 cases and engaging with the Committee's counsel.

5

Special Committee & Regulatory Involvement

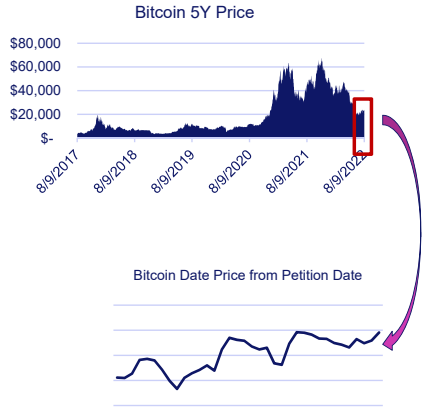
- Delegated full authority to direct the company's restructuring, including all aspects of its pending Chapter 11 cases.
- Delegated full authority to investigate allegations of misconduct involving the company or its employees, and to take remedial action in connection with such investigation.
- In July, the Special Committee tasked Celsius' outside counsel with conducting an investigation and coordinating with the advisors to the Official Committee of Unsecured Creditors on their investigation.
- While findings or actions by the Special Committee may be disclosed in due course through the Chapter 11 cases, Celsius does not intend to comment on specific allegations, or to comment on or provide interim updates regarding the Special Committee's investigative work at this time.
- Celsius has continued to work cooperatively with US and foreign regulators since the filing to respond to information requests and inquiries made as part of a number of non-public law enforcement investigations.

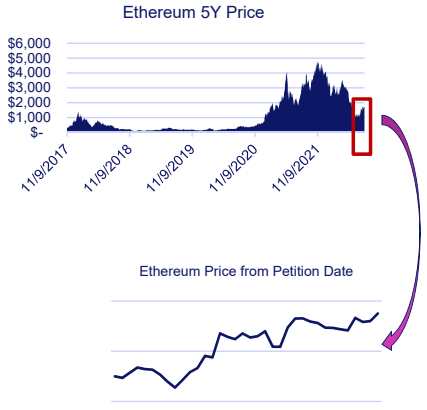
6

Cryptocurrency Market Update

Crypto has slightly rebounded since the petition date but is still down from historic prices.

- **BTC has seen a 25% increase since the petition date**
- **ETH has seen a 82% increase since the petition date**





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Customer Correspondence

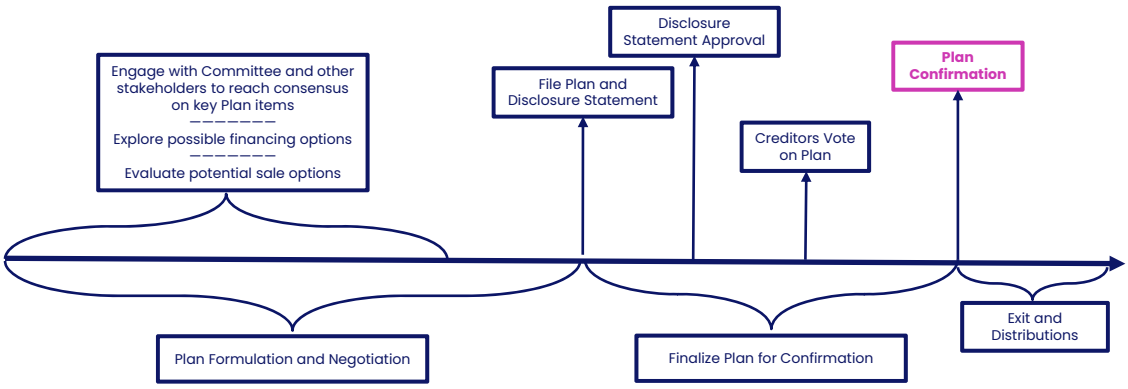
Customers have filed over 250 letters on the docket and the Debtors' advisors have responded to hundreds of calls and emails. The common themes can be summarized as follows:

Concern	Response
Customers will lose all of their money in Celsius.	Celsius filed for bankruptcy to protect customer assets. Celsius is working tirelessly to identify the means that will provide the greatest possible recovery to its customers through the restructuring.
Customers should be treated equally.	Similarly situated customers will be treated similarly.
Celsius profits from the restructuring.	Celsius has undertaken significant cost-reduction measures in its short time in bankruptcy. Employee and insider accounts will not receive preferential treatment as compared to other customer accounts. Celsius is not profiting from the restructuring.
Celsius' restructuring process will take years to resolve.	Celsius and its advisors are working to expeditiously complete its restructuring, as a prolonged restructuring does not maximize the estates' value.
Customers may have missed claims process deadlines.	Customers have not missed any claims process deadlines. Celsius will communicate any deadlines in due course.

8

Celsius

Path Forward



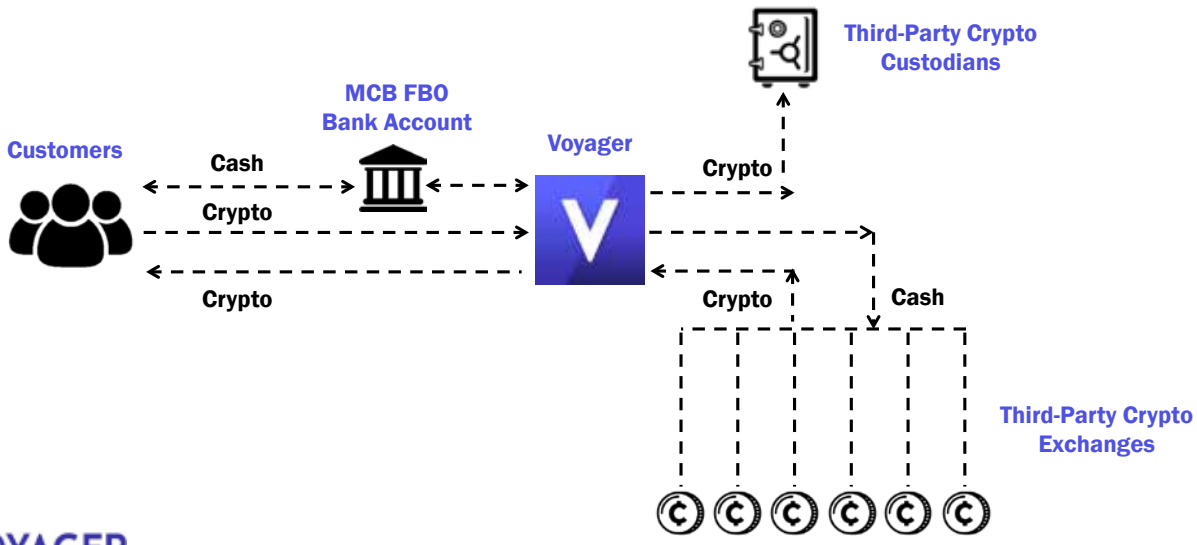
9

VOYAGER

First Day Presentation

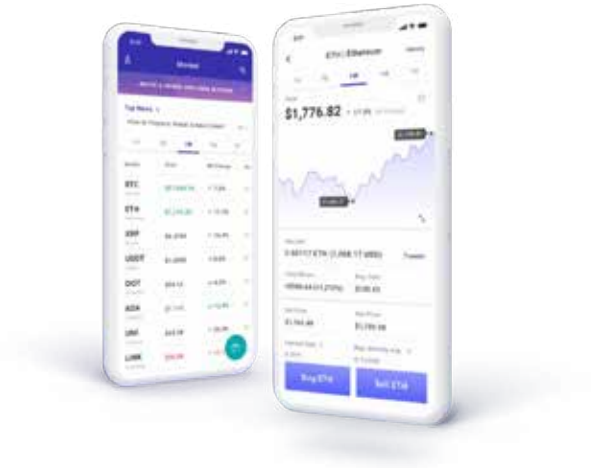
In re Voyager Digital Holdings, Inc. (Case No. 22-10943)
United States Bankruptcy Court for Southern District of New York
Honorable Judge Michael E. Wiles
July 8, 2022

- Voyager has:
  - Over $110 million of cash and owned crypto assets on hand;
  - $350 million of cash held in the For Benefit of Customers (FBO) account at Metropolitan Commercial Bank;
  - Approximately $1.3 billion of crypto assets on platform; and
  - Claims against Three Arrows Capital of more than $650 million.



Trading Services | Custodial Services | Lending

- Industry-leading cryptocurrency brokerage that allows customers to buy, sell, trade, and store cryptocurrency
- Over 100 unique crypto assets to trade
- 3.5 million active users



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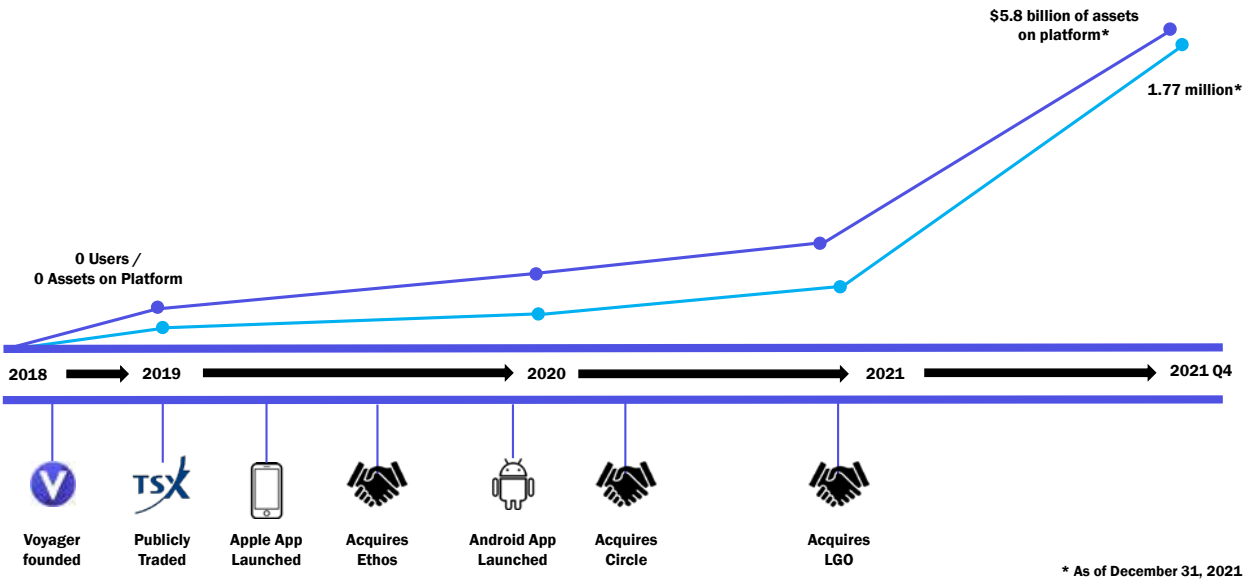

* As of December 31, 2021

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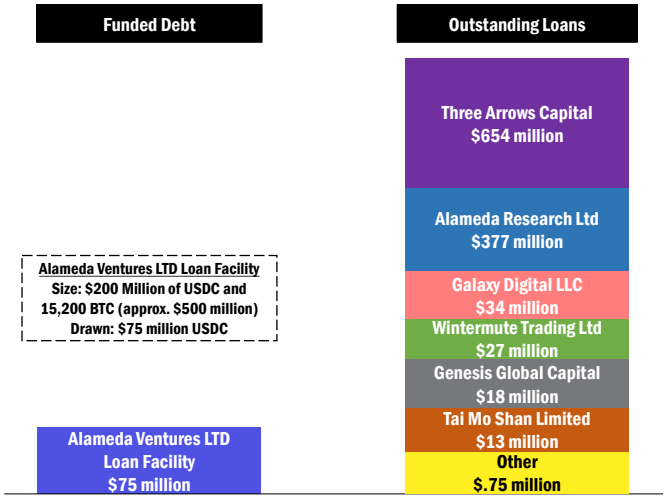


VOYAGER

Industry Headwinds

What to Expect from This Bear Market Based on History

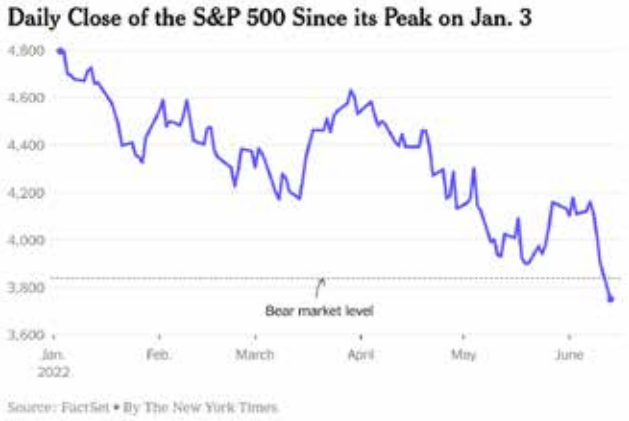
Bear market confirmed as U.S. stocks' 2022 descent deepens

The Equity Bear Market Won't Be Over Before Recession Begins

Stock Market Crash 2022: It's All About The Fed And Its Taper

S&P 500 posts worst first half since 1970, Nasdaq falls more than 1% to end the quarter

Inflation rose 8.6% in May, highest since 1981



VOYAGER

'The Music Has Stopped': Crypto Firms Quake as Prices Fall

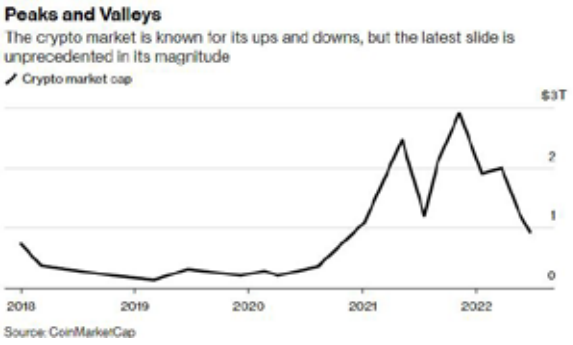
Bitcoin Flirts With Lowest Level Since 2021 as Equities Drop

Bitcoin Plummets Below $20,000 for First Time Since Late 2020

A $2 Trillion Free-Fall Rattles Crypto to the Core
A market that has gone through several major downdrafts in its short life may be facing its biggest test yet.

Cryptocurrencies Melt Down in a 'Perfect Storm' of Fear and Panic

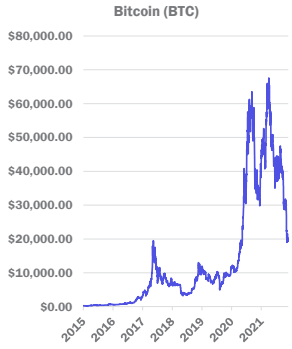
The Fall of Terra: A Timeline of the Meteoric Rise and Crash of UST and LUNA

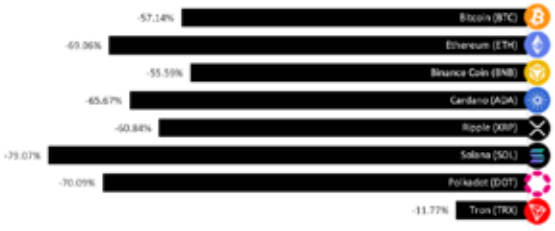


VOYAGER

Bitcoin, Ether Bounce Off Lows After Record-Breaking Rout

- Largest cryptocurrency tumbles below previous cycle's highs
- Cryptocurrencies have lost over $2 trillion in market value





VOYAGER

- **A stablecoin is a type of cryptocurrency that is tied (or "pegged") to another currency, commodity, or financial instrument.**
- **TerraUSD ("UST") was a stablecoin that was "pegged" to TerraLuna ("Luna") via an arbitrage mechanism.**
- **In May 2022, UST "de-pegged" and the arbitrage mechanism was unable to "re-peg" UST.**
- **The ensuing "death spiral" led to the collapse of Luna and UST.**
  - **$18 billion of Luna was wiped out in a matter of weeks.**

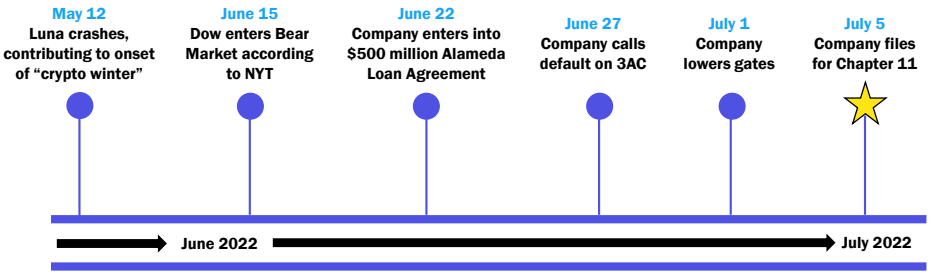
VOYAGER

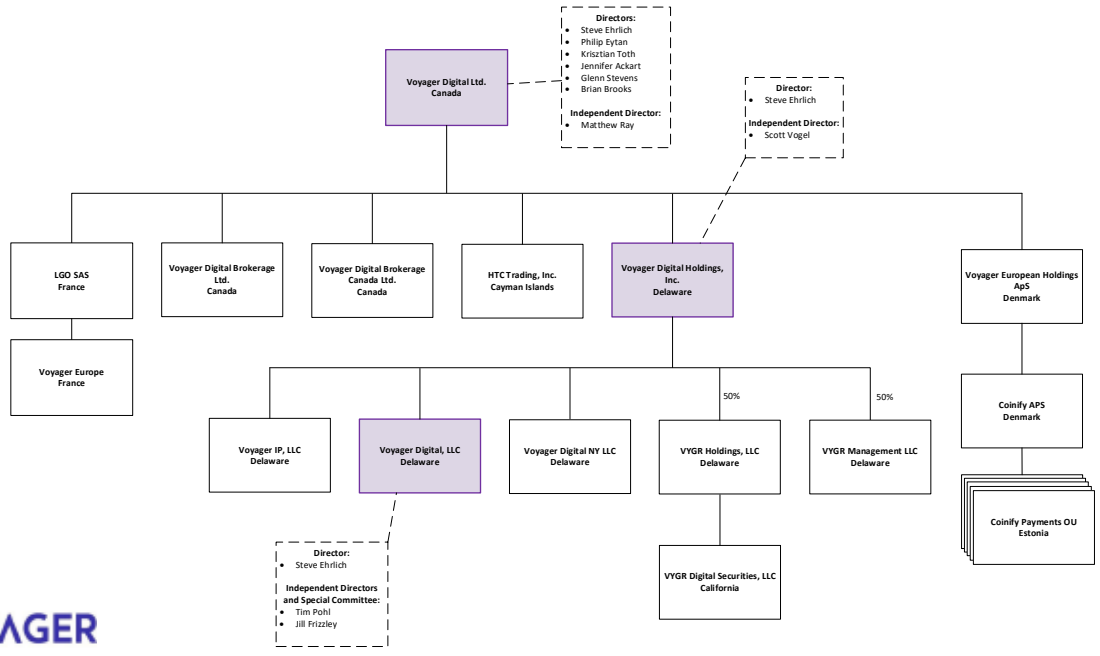
- Three Arrows Capital ("3AC") is a Singapore-based hedge fund that focuses on the cryptocurrency sector.
- 3AC was heavily invested in Luna and incurred significant losses when Luna collapsed.
- On June 27, 2022, 3AC was ordered by a court in the British Virgin Islands to commence liquidation proceedings.
  - On July 1, 2022, 3AC commenced chapter 15 proceedings in the Bankruptcy Court for the Southern District of New York.

THREE ARROWS CAPITAL

VOYAGER

Proactive Steps

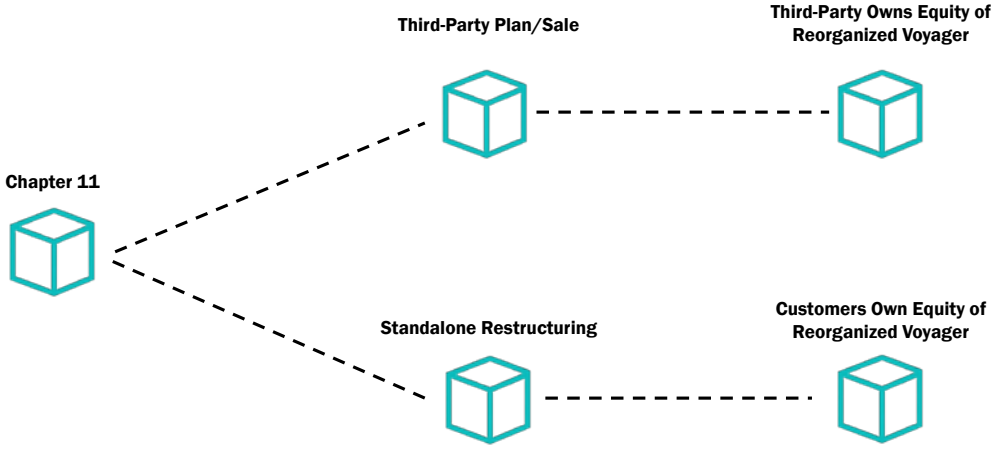

May 12
Luna crashes, contributing to onset of "crypto winter"
June 15
Dow enters Bear Market according to NYT
June 22
Company enters into $500 million Alameda Loan Agreement
June 27
Company calls default on 3AC
July 1
Company lowers gates
July 5
Company files for Chapter 11
June 2022
July 2022


Voyager Digital Ltd.
Canada
Directors:
Steve Ehrlich
Philip Eytan
Krisztian Toth
Jennifer Ackart
Glenn Stevens
Brian Brooks
Independent Director:
Matthew Ray
Director:
Steve Ehrlich
Independent Director:
Scott Vogel
LGO SAS
France
Voyager Europe
France
Voyager Digital Brokerage Ltd.
Canada
Voyager Digital Brokerage Canada Ltd.
Canada
HTC Trading, Inc.
Cayman Islands
Voyager Digital Holdings, Inc.
Delaware
Voyager European Holdings ApS
Denmark
Coinify APS
Denmark
Coinify Payments OU
Estonia
Voyager IP, LLC
Delaware
Voyager Digital, LLC
Delaware
Voyager Digital NY LLC
Delaware
VYGR Holdings, LLC
Delaware
50%
VYGR Management LLC
Delaware
50%
Director:
Steve Ehrlich
Independent Directors and Special Committee:
Tim Pohl
Jill Frizzley
VYGR Digital Securities, LLC
California

Restructuring Process

17

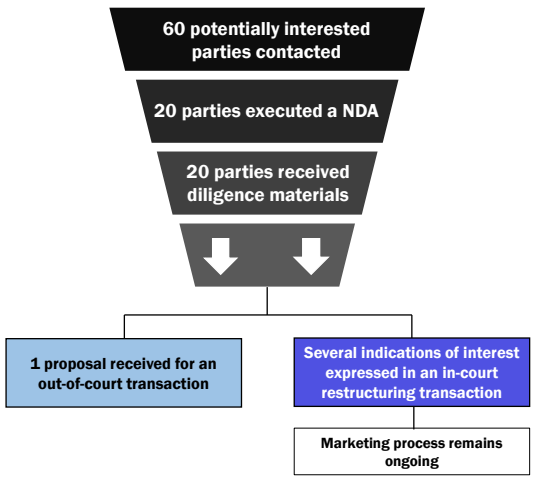
Company Overview | Industry Headwinds | Proactive Steps | **Restructuring Process**



VOYAGER

18

Class Treatment	Standalone Restructuring	Third Party Transaction
Account Holder Claims	• Account holders will receive a pro rata share of (i) a to be determined percentage of the specific cryptocurrency held by such account holder, (ii) 100% of new common shares in reorganized Topco (subject to dilution by a management incentive plan), (iii) the existing Voyager tokens and (iv) any recovery on account of the 3AC loan. • The Plan will provide a mechanism by which each individual account holder may elect to increase (decrease) its pro rata share of new common shares in reorganized Topco in exchange for a decrease (increase) in its pro rata share of coins, subject to certain maximum participation thresholds.	Subject to negotiation with strategic third party
Other General Unsecured Claims	Other General Unsecured Claims (includes prepetition trade and litigation claims) will receive a to be determined recovery.	
Alameda Ventures Ltd. Loan Facility Claims	Alameda Ventures Ltd. Loan Facility Claims shall be cancelled, released, discharged and extinguished, will be of no further force or effect.	
Existing Equity Interests	All Existing Equity Interests will be cancelled, released, and extinguished, and will be of no further force or effect.	



- Additionally, Voyager is facing several legal and operational challenges, including:
  - Attempts by several states to terminate the Company's money transmitter licenses. Such attempts clearly violate Section 525 of the Bankruptcy Code.
  - Unauthorized ACH transfers.
- Objective of the Company's chapter 11 process is to provide customers with clarity through entire process and complete the Company's restructuring as quickly and efficiently as possible.
  - Company is pursuing all available alternatives to maximize return for customers.
  - Chapter 11 process provides the Company with the best opportunity to pursue a value-maximizing reorganization for stakeholders.
- Voyager intends to fully utilize all available tools provided by the chapter 11 process to engage with customers in an organized and efficient matter.

VOYAGER

Second Day Hearing Presentation

In re Voyager Digital Holdings, Inc. (Case No. 22-10943)

United States Bankruptcy Court for Southern District of New York

Honorable Judge Michael E. Wiles

August 4, 2022

Formation of the Committee

- Official Committee of Unsecured Creditors (the "Committee") appointed on July 19, 2022.
  - Melissa and Adam Freedman
  - Richard Kiss
  - Christopher Moser
  - Brandon Mullenberg
  - Jason Raznick
  - Russell G. Stewart
  - Byron Walker
- Voyager and the Committee are working closely together to ensure coordination and alignment on a path forward.
- The Committee does not oppose any of the relief sought today and filed a statement in support of the FBO Motion [Docket No. 193].

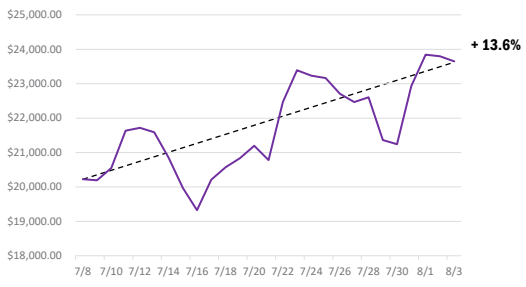
McDermott Will & Emery

FTI CONSULTING

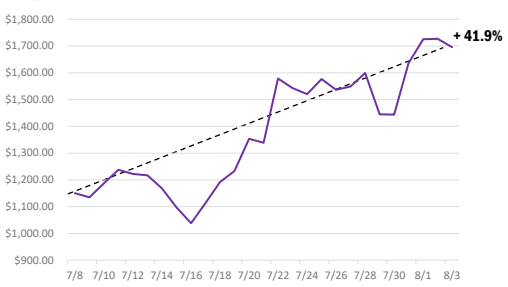
Cryptocurrency Market Update

- Cryptocurrency market has partially rebounded since the Petition Date.

Price of Bitcoin up nearly 14% since the Petition Date

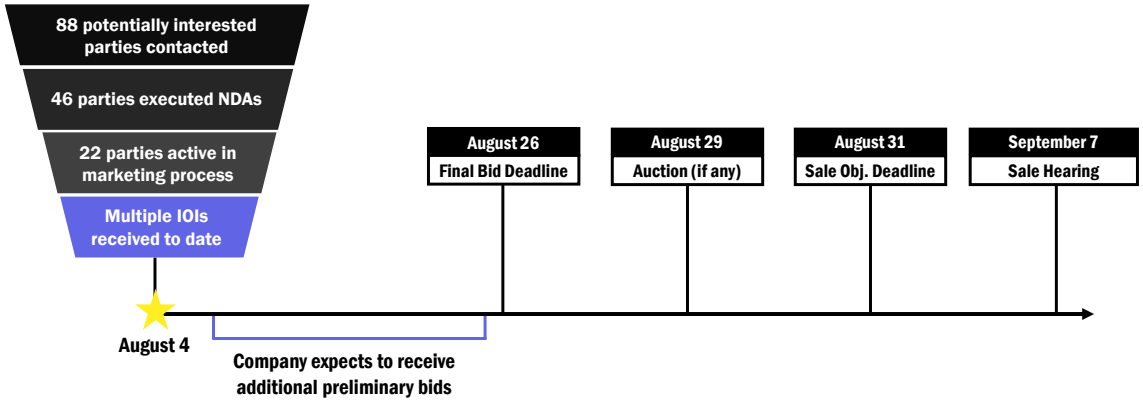


Price of Ethereum up nearly 42% since the Petition Date



Marketing Process Update

- Company received indications of interest from several parties and expects to receive more in the coming days.
- Company is focused on running a clear and transparent marketing process to ensure all interested parties are on a "level playing field."



VOYAGER

KaJ Labs Letter

Re: Press Releases by KaJ Labs

On July 11, 2022, KaJ Labs ("KaJ") announced, via press release, that it issued a letter of intent (the "LOI") to acquire the assets of Voyager Digital Holdings, Inc. ("Voyager"). The press release was published in several major news publications, including Bloomberg, Forbes, and Reorg Research.[1]

On July 21, 2022, KaJ announced, via press release, that it rescinded the LOI due to "disagreements regarding the deal structure and the closing process." The press release was published in Bloomberg, Reorg Research, and several other publications.[2]

KaJ's press releases are a complete fabrication. KaJ has not participated in Voyager's marketing and sale process. KaJ did not sign a confidentiality agreement and was not given access to any confidential information. KaJ did not submit (and to date still has not submitted) an LOI to Voyager. KaJ did not engage in any conversations with Voyager's management team or any of Voyager's advisors regarding deal structure or the closing process and, therefore, the statement regarding "disagreements" about deal structure and the closing process are completely fabricated.

The only communication with KaJ to date are emails from a KaJ principal asking Voyager to publicly acknowledge receipt of an LOI (which, as noted above, would have been false). Voyager responded by inviting KaJ to sign a confidentiality agreement and participate in the process just like every other potential bidder. KaJ ignored Voyager's invitation.

It is unclear what KaJ hopes to gain by the public release of false and misleading statements. But to ensure that those false statements have no impact on the fair and transparent process that Voyager and its advisors are currently engaged in, Voyager believes it is critical to correct the record. Voyager remains steadfast in its restructuring process and continues to work to drive toward a value-maximizing transaction that is beneficial to Voyager's customers and stakeholders.

[1] See, e.g., https://www.bloomberg.com/press-releases/2022-07-11/kaj-labs-announces-letter-of-intent-to-acquire-voyager-digital-assets-for-350-million

[2] See, e.g., https://www.bloomberg.com/press-releases/2022-07-21/kaj-labs-rescinds-350-million-loi-to-acquire-voyager-digital-s-assets

VOYAGER

AlamedaFTX Letter

- Voyager has already received bids through the marketing process that are higher and better than AlamedaFTX's proposal; AlamedaFTX's tweets, interview on Fox, and press releases are inaccurate.

AlamedaFTX Letter (cont'd.)

- Voyager separately sent AlamedaFTX a cease and desist letter regarding its public statements.
- AlamedaFTX does not have a "leg up."
- AlamedaFTX is still making public statements about its bid and the process.

Customer Letters

- 31 customers have filed letters on the Court's docket; Voyager had 1.1 million customers with active accounts as of the Petition Date.

Concern	Response
Customers will lose all of their money in Voyager's chapter 11 cases.	These chapter 11 cases are for customers. All is <u>not</u> lost. Voyager is working tirelessly to identify the transaction that provides the greatest possible recovery to its customers. Voyager is confident in its restructuring process and prospects through either a sale to a third party or a "standalone" restructuring.
The letter from the FDIC indicates that Voyager committed fraud.	Voyager actively communicated with the FDIC in March of 2021 and again in January 2022 to address the FDIC's expressed concerns; Voyager addressed those concerns as demonstrated by changes to its Website and Customer Agreement on both occasions and is in active discussions with the FDIC to resolve the situation as quickly as possible.
Customers will not receive cash held on Voyager's platform.	Voyager filed a motion with the Bankruptcy Court to release cash from the FBO Account to its customers. If approved, Voyager plans to release funds as quickly as possible.
No party is interested in acquiring Voyager's business.	Voyager already received several indications of interest and expects to receive more in the coming weeks. Voyager's advisors are engaged in active discussions with over 20 potentially interested parties. If approved, the Bidding Procedures Motion will provide a timeline for an auction and sale to a strategic third party in the event that Voyager, in coordination with the Committee, pursues a sale transaction.

Other Customer Concerns

- Customers have voiced other concerns to Voyager on social media and other forums.

Concern	Response
Voyager stole customer money and is profiting from the restructuring at the expense of customers.	Most employees received the majority of their compensation in the form of equity; that equity will be cancelled under Voyager's proposed chapter 11 plan. Many employees have cryptocurrency accounts with Voyager and will receive the same treatment as customers in any restructuring transaction. Voyager is <u>not</u> looking or seeking to capture upside in the markets by freezing claims as of the Petition Date.
Voyager should have commenced a SIPC liquidation.	Voyager is not a member of SIPC. Membership in SIPC requires approval from FINRA, and FINRA historically has declined to approve digital asset brokers like Voyager. SIPC denied Voyager's application in 2018, 2019, and 2020.
Voyager's restructuring process will take years.	Voyager is working to expeditiously complete its restructuring efforts. Prolonged restructuring cases do not benefit Voyager employees, customers, or stakeholders. Voyager's chapter 11 cases will not take "years;" subject to regulatory approvals, Voyager plans to emerge from bankruptcy in Q1 2023.

FDIC Letter

Voyager Cryptocurrency Disclosures

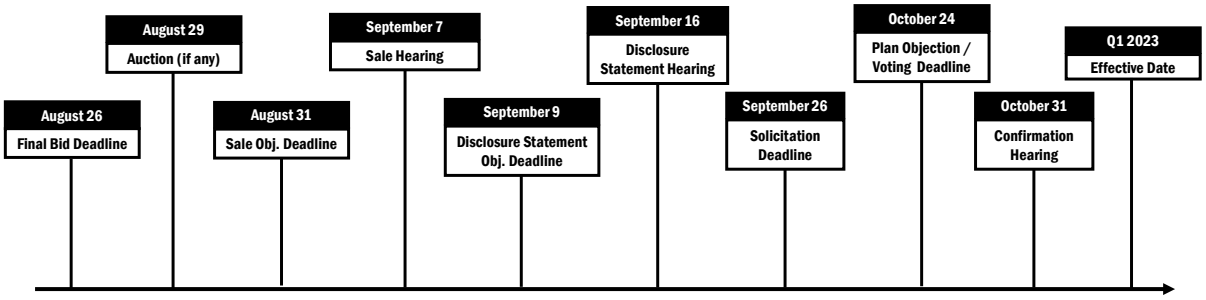
Cryptocurrencies are highly speculative in nature, involve a high degree of risk and can rapidly and significantly decrease in value. It is reasonably possible for the value of Cryptocurrencies to decrease to zero or near zero.

Cryptocurrency held on the Voyager Platform is not protected by FDIC insurance or any other government-backed or third party insurance.

3AC Liquidation Proceedings Update

- 3AC creditor committee appointed on July 18; Voyager selected as one of five committee members.
  - Blockchain.com
  - CoinList
  - Digital Currency Group
  - MatrixPort
  - Voyager Digital

Case Timeline



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111 South Wacker Drive, Suite 5100
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Email: mandolina@whitecase.com
gregory.pesce@whitecase.com

Proposed Counsel to the Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
CELSIUS NETWORK LLC, *et al.*,[1]	)	Case No. 22-10964 (MG)
Debtors.	)	(Jointly Administered)

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' STATEMENT REGARDING THESE CHAPTER 11 CASES

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 121 River Street, PH05, Hoboken, New Jersey 07030.

The Official Committee of Unsecured Creditors (the "**Committee**") of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**" or "**Celsius**") submits this statement (the "**Statement**") regarding the Committee's objectives for these chapter 11 cases:

Celsius was built on promises that it was safer, and provided its account holders with greater returns than, traditional banks.[2] Those promises pervaded Celsius' marketing, much of which came directly from Alex Mashinsky – Celsius' chief executive officer.

Celsius continued to reassure its account holders, regulators, and the broader market place that it was adequately capitalized, even as the crypto industry experienced a period of turmoil in the spring and summer of 2022. For example, on June 7, 2022, Celsius published, and directly emailed many of its account holders, a Medium blog titled "*Damn the Torpedoes, Full Speed Ahead*"[3] where it told customers that:

> **Celsius continues to process withdrawals without delay.** We have not had any issues meeting withdrawal requests. Celsius honors all withdrawals as quickly as possible and works hard to support customers if and when there are delays.
>
> **Celsius has the reserves (and more than enough ETH) to meet obligations,** as dictated by our comprehensive liquidity risk management framework.

Those claims were echoed by Mashinsky, who repeatedly promised customers in his public videos and messages that their funds were safe, that Celsius had adequate capital reserves and robust risk management protocols, and that users could withdraw their coins at any time.

[2] *See*, *e.g.*, Bound to Be Rich, *How Safe Are The Banks? – Alex Mashinsky, CEO of Celsius*, YOUTUBE (June 11, 2021), https://www.youtube.com/watch?v=MQoAb286-Hs, at 0:09 – 0:46; CTO Larsson, *Alex Mashinsky Celsius – CON MAN or HERO?*, YOUTUBE (Aug. 2, 2021), https://www.youtube.com/watch?v=EbnibyhNd6M, at 3:00.

[3] *See* Celsius, "Damn the Torpedoes, Full Speed Ahead," (June 7, 2022), https://blog.celsius.network/damn-the-torpedoes-full-speed-ahead-4123847832af.

Celsius' assurances turned out to be empty and false promises. On June 12, 2022—less than a week after promising to "damn the torpedoes"—Celsius initiated a "Pause" and halted all account holder withdrawals due to "extreme market conditions."[4] Celsius, which had previously championed its transparency, then largely went silent.

One month later, on July 13, 2022 (the "**Petition Date**"), the Debtors filed their chapter 11 cases. As account holders soon found out, the voluntary "Pause" was replaced by the Bankruptcy Code's automatic stay, which enjoins any action against Celsius or Celsius' property.[5] As part of Celsius' bankruptcy filing, Mashinsky made several alarming admissions, including that "despite the Company's directive to engage in only market neutral exchange deployments, certain asset deployment decisions were made in the midst of its unexpected growth that in hindsight proved problematic."[6] Mashinsky also disclosed for the first time that Celsius' obligations, which were predominantly owed to account holders, exceeded its assets by nearly $1.2 billion (an amount that is unverified and may be understated).[7] He further disclosed that a large amount of the Debtors' assets, including $467 million of ETH (a major cryptocurrency) and a $576 million intercompany

[4] *See* Celsius, "A Memo to the Celsius Community," (June 12, 2022), https://blog.celsius.network/a-memo-to-the-celsius-community-59532a06ecc6.

[5] *See* 11 U.S.C. § 362.

[6] *See Declaration of Alex Mashinsky Chief Executive Officer of Celsius Network, LLC, in Support of Chapter 11 Petitions and First Day Motions* [D.I. 23] ("**Mashinsky Decl.**"), ¶ 92.

[7] Mashinsky Decl. ¶ 16.

loan to fund its cryptocurrency mining operations, were "illiquid."[8] The Debtors have not yet publicly disclosed the digital currency that Celsius holds or provided any indication of when the Debtors plan to return their customers' funds.

Since the Petition Date, hundreds of account holders have written letters to the Court and the Committee expressing their frustration with the situation and, in many circumstances, describing extreme hardship caused by their inability to access their cryptocurrency. The Committee has read those letters and understands the extraordinary impact that Celsius' conduct has had on people's lives, including their ability to make mortgage payments and save for their children's college tuition.

Under section 1102 of the Bankruptcy Code, the U.S. Trustee—an arm of the U.S. Department of Justice charged with overseeing the integrity of the bankruptcy process—is empowered to appoint an official committee of unsecured creditors. The Committee has a fiduciary duty to, and acts as the collective voice for, all unsecured creditors. Under the Bankruptcy Code, a committee is tasked with, among other things, (1) investigating the debtor, (2) participating in the formulation of a plan of reorganization or liquidation, and (3) providing access to information to and receiving comments from the constituents represented by the committee.[9] To ensure that an official committee of unsecured creditors has the resources to exercise its fiduciary duties, the Bankruptcy Code empowers a committee to engage counsel and other advisors at the debtor's expense.[10]

[8] *Id.* ¶¶ 68; 77. Mashinsky represented that the reported dollar value of ETH in his declaration is based on market prices as of July 10, 2022.

[9] *See* 11 U.S.C. §§ 1102(b)(3); 1103.

[10] *See* 11 U.S.C. § 1103.

On July 27, 2022, the U.S. Trustee appointed the Committee. The Committee is comprised of seven members, each of whom holds crypto (or digital) assets through the Celsius platform.[11] The members of the Committee include institutions and individuals who participated in each of Celsius' various products and programs. The Committee's goal is to maximize the recoveries of account holders and unsecured creditors. It understands its fiduciary duty and does not take that duty lightly. The Committee intends to be a vigorous participant in the Debtors' bankruptcy and to put the interests of the Debtors' account holders and unsecured creditors first.

Following its appointment, the Committee immediately sprang into action. On July 30, 2022, the Committee hired the international law firm of White & Case LLP as its counsel. Last Monday, the Committee engaged restructuring advisor M3 Partners and the blockchain consultant Elementus—a cutting edge firm that has worked on some of the highest profile forensic investigations of crypto exchanges, including Quadriga CX. The Committee then engaged Perella Weinberg Partners, one of the leading restructuring investment banks, to advise on potential transactions to maximize value for account holders and unsecured creditors. Finally, the Committee is in the process of engaging Kroll Inc. to establish a website and call center to provide information regarding the bankruptcy process to account holders and unsecured creditors, including important deadlines and instructions on how to fill out proof of claim forms.

The Committee's advisors have already rolled up their sleeves. The Committee immediately sent diligence requests to dig into Celsius' current financial position, operations, and other affairs. The Committee has also reviewed, and begun preparing responses to, the various motions filed by Celsius—including the Debtors' request to conduct a process to potentially sell

[11] The members of the Committee are Caroline G. Warren, Thomas DiFiore, ICB Solutions, Christopher Coco, Andrew Yoon, Mark Robinson, and Covario AG. *See Notice of Appointment of Official Committee of Unsecured Creditors* [D.I. 241].

mined bitcoin and its GK8 business. Although there remains much to do, those efforts have already borne fruit. Last week, the Debtors decided to withdraw the motion to retain their ex-CFO following input from the Committee.

The Committee is committed to thoroughly investigating Celsius, including potential misconduct by Celsius and its insiders, and to pursuing a resolution that will maximize Celsius' value for the benefit of its account holders and unsecured creditors. There will likely be many novel legal issues involved in this bankruptcy, but the Committee is mindful that the Debtors' restructuring should be achieved as quickly as practicable and will focus on the following objectives.

First, the Committee intends to ensure the Debtors are effectively safeguarding their account holders' assets. One thing is clear from Mashinsky's declaration: the Debtors did not have the necessary internal protocols and risk management controls to avoid costly investment decisions. The Committee intends to investigate whether the Debtors are properly safeguarding account holders' assets. To the extent the Committee believes the Debtors are not doing so, it will move swiftly and take proper actions to remedy any issues.

Second, the Committee intends to oversee the Debtors' efforts to develop a viable business plan that reduces overhead and preserves the Debtors' limited cash reserves. The Debtors have halted many of their operations. They have stopped accepting cryptocurrency, authorizing withdrawals, engaging in exchange deployments, and making loans to institutional investors.[12] At the moment, the Debtors appear prepared to fund these Chapter 11 Cases using their current cash reserves, proceeds generated from their bitcoin mining activities, and the proceeds of other

[12] Mashinsky Decl. ¶¶ 64, 73, 84.

potential asset sales. Committee oversight of the Debtors' business plan is particularly critical, here, where it is essential to quickly provide account holders' a recovery.

Third, the Committee intends to thoroughly investigate the prepetition conduct of Mashinsky and other Celsius insiders, including the problematic asset deployment decisions, prepetition transfers, and other issues. The Committee has already started this investigation and will work to ensure causes of action against Mashinsky and others are preserved and prosecuted for the benefit of the Debtors' estate and the Committee's constituents.

Fourth, the Committee will explore strategic options to reorganize or sell the business (or portions thereof) to maximize value for account holders and unsecured creditors. Critically, the Committee has heard from the community regarding the importance of account holders receiving in-kind payment of the cryptocurrency they transferred to Celsius (rather than USD or other fiat money). The Committee will explore options for an in-kind recovery to provide account holders with an opportunity to participate in a potential future recovery in cryptocurrency prices.

Finally, the Committee understands the importance of open communication with its stakeholders and will work hard to balance the need of transparency with protecting the confidentiality of information received from the Debtors and non-Debtor parties so that it has the information to efficiently protect its constituents' rights. The Debtors have approximately 300,000 active users with an account balance of greater than $100.[13] The Committee and its professionals are committed to providing their constituents with access to clear information regarding the status of and key developments in these cases, the claims process, as well as designated points of contact and methods for those constituents to raise and discuss specific concerns. The Committee intends to file a motion shortly to engage Kroll Inc. as its independent information agent, as well as to

[13] Mashinsky Decl. ¶ 89.

establish procedures consistent with the Bankruptcy Code to achieve appropriate transparency. In the meantime, the Committee's advisors have set up the following email address CelsiusCommitteeInquiries@ra.kroll.com where claimants can send questions or information to add to the Committee's investigation. The Committee has also established the Twitter account @CelsiusUcc to publish updates to the community.

The Committee is prepared to work day and night to protect the rights of its constituents who have been harmed by Celsius' improvident decisions and is up to the task before it.

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Dated: August 8, 2022
New York, New York

Respectfully submitted,

/s/ *David M. Turetsky*

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Proposed Counsel to the Official Committee of Unsecured Creditor

Rule 3017-2 Combined Hearings on Approval of Disclosure Statements and Confirmation of Plans in Chapter 11 Cases.

(a) Applicability. This Local Rule shall be applicable to all cases arising under chapter 11 of the Code where a plan proponent is seeking Court permission to have combined hearings on approval of a disclosure statement and confirmation of a plan (other than "pre-packaged" plans where solicitation of acceptances or rejections of a plan was completed prior to the commencement of the bankruptcy case(s) and a plan proponent has filed the disclosure statement and plan contemporaneously with the commencement of the bankruptcy case(s)). Situations in which the use of the procedures set forth in this rule would be appropriate include, but are not limited to, the following non-exclusive examples:

(i) The plan proposes to treat as unimpaired (x) all classes of unsecured claims, and (y) all classes of interests in any debtor that is a public company;

(ii) The debtor(s), in the aggregate, have less than fifty general unsecured creditors; the proposed plan does not seek non-consensual releases/injunctions with respect to the claims creditors may hold against non-debtor parties; none of the debtor(s) are public companies, or the classes of interest in any debtor that is a public company public are unimpaired;

(iii) The proposed plan is a liquidating plan; general unsecured creditors are not entitled to vote on the plan because they are deemed to reject it; the plan does not seek any form of release or injunction in favor of non-debtor parties from creditors or interest holders in classes that are deemed to reject the plan;

(iv) The proposed plan is a liquidating plan in which all or substantially all of the assets of the debtor(s) were or will be liquidated pursuant to a sale under 11 U.S.C. § 363; the plan does not seek non-consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties; and the debtor(s)'s combined assets to be distributed pursuant to the proposed plan are estimated, in good faith, to be worth less than $25 million (excluding causes of action).

(b) Interim Approval of the Disclosure Statement; Combined Disclosure Statement and Plan; Approval of Solicitation Procedures and Scheduling Combined Hearing on Approval of the Adequacy of Disclosure Statement and Confirmation of Plan. Upon the filing of a disclosure statement and proposed plan, or a combined disclosure statement and proposed plan, in each case which disclosure statement is complete when filed, a plan proponent may file a motion requesting Court permission (1) to combine the plan and disclosure statement into one document; (2) for interim approval of the disclosure statement; (3) for approval of solicitation procedures; (4) for the scheduling of a hearing on shortened notice to consider interim approval of the proposed disclosure statement (the "Interim Hearing"); and (5) for the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of the proposed plan (the "Joint Hearing").

(i) The motion shall provide at least fourteen (14) days' notice of the deadline to object to any of the relief requested in the motion(the "Notice Period"), and shall be served on the United States Trustee and the creditors' committee (or the twenty (20) largest unsecured creditors, if no creditors' committee is formed), the Securities and Exchange Commission if any of the debtors are public companies, and all parties who have requested service of notices under Fed. R. Bankr. 2002(d). If the debtors have a claims agent who maintains a website for the debtors' case, the claims agent shall post such notice on the home page of that website. If an objection is timely filed within such Notice Period, a hearing on the motion will not occur less than seven (7) days after expiration of the Notice Period. If no objection is timely filed within such Notice Period, or such objection is resolved prior to the date scheduled for the Interim Hearing, the motion may be granted without a hearing.

(ii) The motion shall identify the proposed balloting agent, which may include counsel to the plan-proponent; and

(iii) The motion shall identify any voting procedures in addition to those required in section (c) of this Local Rule; and

(iv) The motion shall certify that the notice of the deadline to object to final approval of the adequacy of the disclosure statement and confirmation of the proposed plan will comply with Fed. R. Bankr. Pro. 2002(b), and that the proposed date for the Joint Hearing shall not be less than seven (7) days after such objection deadline, unless otherwise ordered by the Court; and

(v) The motion shall be accompanied by a proposed order which, in addition to setting the hearing date for the Joint Hearing, approves: (A) on an interim basis, the disclosure statement; (B) the voting procedures to be utilized, which procedures shall comply with subsection (c) of this Local Rule; (C) the form of notice to be provided to creditors and interest holders of the debtor(s); and (D) the form of ballot to be provided to creditors and interest holders that are entitled to vote on the proposed plan, which ballot shall comply with subsection (d) of this Local Rule. The proposed order shall further provide that objections not made to the types of relief requested under (B), (C) or (D) of this subparagraph (v) at the time of the hearing on the motion shall not be considered at the time of the Joint Hearing on the disclosure statement and plan.

(c) Solicitation and Voting Procedures. The proposed order shall contain, inter alia, the following provisions:

(i) Establishment of a record date pursuant to Fed. R. Bankr. P. 3017(d) and 3018(a); and

(ii) Establishment of a voting deadline not more than ten (10) days prior to the combined hearing.

(d) Form of Ballots. If a proposed plan seeks consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties, then the ballot must inform the creditors of such releases/injunctions and disclose the manner in which to indicate assent or opposition to such consensual releases/injunctions.

(e) Plan Supplements. The plan proponent must file any plan supplement on or before seven (7) days prior to the earlier of (a) the deadline for submission of ballots to vote to accept or reject a plan, or (b) the deadline to object to

confirmation of the plan, unless otherwise ordered by the Court.

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Practice vs. Practicality in Procedures

Should we update the rules to reflect reality?

Let's start at the very beginning, a very good place to start . . .

There are three main sources of rules and or guidance for bankruptcy practitioners: The Federal Rules of Bankruptcy Procedure, Local Bankruptcy Court Rules, and Guidelines established by the Office of the United States Trustee. Although these provide a generally workable framework, there are conflicts and inconsistencies between the rules themselves, as well as numerous inconsistencies between different jurisdictions. This can easily become a trap for the unwary. In addition, as we move further into the electronic age, the methods of communication which are most prevalent, and arguably most efficient, are not addressed in the existing rules. Although Courts have tried to work with the existing rules, particularly in response to the health and safety regulations caused by the pandemic, perhaps it is time to modernize and clarify a few rules…..

Rules of Bankruptcy Procedure

The Federal Rules of Bankruptcy Procedure govern procedures for bankruptcy proceedings. For many years, such proceedings were governed by the General Orders and Forms in Bankruptcy promulgated by the Supreme Court. By order dated April 24, 1973, effective October 1, 1973, the Supreme Court prescribed, pursuant to 28 U.S.C. § 2075, the Bankruptcy Rules and Official Bankruptcy Forms, which abrogated previous rules and forms. The Bankruptcy Rules and Official Forms were last amended in 2021.

A. Employment and Retention Issues for Claims Agents

Claims agents are retained either pursuant to Section 156 (c), or as professionals under Section 327, which causes inconsistencies across jurisdictions, as well as some general confusion over their appropriate role. Section 156 (c), which is the most common basis for hiring a claims agent, provides that:

Section 156 (c)

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States.

The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

1. **Claims agents – Mandatory v. Voluntary.**
   In the majority of districts, employment of a claims agent is at the Debtor or Trustee's discretion. However, a few of the larger districts have created Local Rules that require the appointment of a claims agent when creditors hit a certain threshold, such as:

   - *SDNY – Rule 5075-1(b) Estate Retention of Claims and Noticing Agent. In a case in which the number of creditors and equity security holders, in the aggregate, is 250 or more, the estate shall retain, subject to approval of the Court, a claims and noticing agent in accordance with the Protocol for the Employment of Claims And Noticing Agents under 28 U.S.C. §156(c), which shall be available on the Court's website*

   - *EDNY - Administrative Order No. 658 requires the retention – pursuant to an order of the Court – of an approved claims and noticing agent in a case having, in the aggregate, one thousand (1,000) or more creditors and/or equity security holders*

   - *N.D.Ill – Local Rule 1007-2. In all cases with more than 500 creditors, the debtor must file a motion to employ a notice or claims agent approved by the clerk to perform this function. The claims register prepared and maintained by a claims agent retained under this Rule will be the official claims register of the court.*

   - *D. Del - Local Rule 2002-1(f) provides that "[i]n all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file" a motion requesting authority to retain a Claims and Noticing Agent "on the first day of the case or within seven (7) days thereafter."*

   - *D. Nev. - Local Rule 2002-1(f) provides that "[i]n all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file" a motion requesting authority to retain a Claims and Noticing Agent "on the first day of the case or within seven (7) days thereafter."*

2. **Official docket vs. mirror docket.**
   In some jurisdictions the claims agent is the official keeper of the claims, and the claims agent'' register as reflected on their proprietary website is the official register. In other courts a mirror docket is created on the claims agent's website, but the Clerk of the Court maintains the official docket. Similarly, some courts immediately allow all claims to be "filed" with the claims agent, whereas others require claims be filed directly with the court. This has become less common as more jurisdictions become familiar with the

efficiencies and cost savings of using claims agents. However, to the extent courts or clerks request it, this practice can create problems with inconsistent claim numbers, as well as interfering with the ease of access to documents by the public.

3. **Section 156 vs. 327 Retention.**
Many jurisdictions require a claims agent to seek two separate retention orders, one under Section 156, which is typically a "first day order" that covers the clerical aspect of the Claims Agents duties – such as processing claims and transfers of claims, and maintaining noticing lists. The second order is as a "professional" under 327, and covers duties that could arguable be considered "consulting", such as assistance with preparing schedules and statements and soliciting the votes on a plan of confirmation. However, some jurisdictions allow/require Claims Agents to combine all services under one employment order. Other jurisdictions draw the lines between the 327 work and the 156 work at different tasks, for example allowing preparation of schedules and statements, but not other "consulting" tasks. Below are some examples of conflicting guidelines or rules.

- *W.D. Pa.Rule 1002-8 EMPLOYMENT OF CLAIMS AND NOTICING AGENTS UNDER 28 U.S.C. § 156(c): (a) An application seeking to retain a claims and noticing agent under 28 U.S.C. § 156(c) ("Section 156(c) Application") should be limited in scope to those duties that would be performed by a Clerk of Court with respect to providing notice and processing claims (such as maintaining a claims register). The Section 156(c) Application should exclude those duties that would not be performed by a Clerk of Court, for example, duties involving the preparation of schedules, acting as balloting and tabulation agent, or distributing assets pursuant to a confirmed plan of reorganization; such services should be the subject of a separate application and order of the Court.*

- *W.D. Pa. Rule 1002-9 EXPANSION OF DUTIES OF CLAIMS AND NOTICING AGENTS (a) To the extent a debtor or trustee in a Complex Chapter 11 Case would like a claim and noticing agent who has been retained pursuant to a granted Section 156(c) Application to be allowed an enlarged scope of duties beyond those permitted by W. PA. LBR 1002-8, such requests shall be made on a case-by-case basis upon proper Application for Employment of Administrative Agent, as set forth herein.*

- *D.Nev. Upon application and order, the services of a claims agent may be employed by the Debtor's estate pursuant to 28 U.S.C. §156(c) to perform services for the court under the direction of the Clerk of the Bankruptcy Court ("Clerk") to include among other things: Serve as the court's notice agent to mail notices to the estates' creditors and parties in interest. Provide expertise, consultation and assistance in claim and ballot*

processing and with other administrative matters with respect to the debtor's bankruptcy cases. Provide expertise, consultation and assistance with the preparation of schedules, statements of financial affairs and master creditor lists, if necessary, and any amendments thereto. Process, image and docket all proofs of claim filed in the debtor's case(s) . . .

- *D. Del. (Court form for employing claims agents) This Section 156(c) Application pertains only to the work to be performed by Claims and Noticing Agent under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and S.D.N.Y. LBR 5075-1, and any work to be performed by Claims and Noticing Agent outside of this scope is not covered by this Section 156(c) Application or by any Order granting approval hereof. Specifically, Claims and Noticing Agent will perform the following tasks in its role as claims and noticing agent (the "Claims and Noticing Services"), as well as all quality control relating thereto*

Comment and questions: In jurisdictions where there are few large 11's, many courts are unfamiliar with Claims Agents, making it more difficult to facilitate retention and create efficiencies. Should there be a standard rule requiring employment of a claims agent at a certain threshold of creditors? Should the rules regarding claims registers be consistent? Should a rule clarifying the difference between 327 work and 156 work be proposed?

B. Modernizing Noticing

FRBP Rule 2002 [attached in part] provides specific rules for service. Mentioned throughout is service by mail, which until recently was considered the only proper method of service. There is also a description of the type of paper for printing pleadings, implying that pleadings should be served on paper. 2002 has no reference to electronic service of any sort, and no mention of using alternate media to deliver documents, such as disc drives or flash drives. However, there it does provide that courts have some discretion in determining how service is effectuated:

(m) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

Many courts have been extremely flexible about allowing alternate forms of service, and some jurisdictions have express local rules allowing parties to opt-in to email service in lieu of mail service for certain types of service. The question is – should there be rules that expressly control these issues and make them consistent across jurisdictions?

1. **Electronic mail service.**
   In numerous instances courts have allowed notices and pleadings to be served on certain parties only by email. In the digital age sometimes debtors only communicate with clients or vendors by email, and it is impossible to find

physical addresses for service. In addition, for much of the last three years people did not regularly go to their physical place of work, but instead worked remotely. Email was actually more likely to be received than first class mail. When there is an option, we have found that most of our clients prefer to serve the most important documents, such as bar date notices, by both electronic mail and regular mail. However, a recent slip opinion by Judge Goldblatt in the District of Delaware, ***In re Cyber Litigation*** *Inc.*, 2021 WL 4927550 (Bankr. D. Del. Oct. 21, 2021) [attached to the materials], ultimately concluded that the email notice comported with constitutional due process standards but did not meet the requirements of Bankruptcy Rule 2002, which instructs that such notices be provided to creditors by mail. Therefore, the objection to the late filed claim was denied, despite the fact that the creditor was provided with due process. I have not seen other opinions on this issue, but if other courts follow this ruling it could create issues in numerous cases

2. **Voluminous documents.**
Voluminous documents, such as 200 page disclosure statements and plans, or 50 page listings of contracts to be assumed and assigned, can create significant costs in a large estate. Both printing costs and postage costs go up drastically once a notice exceeds eight pages. As a practical matter, several years ago parties sending such documents out on a disc drive as opposed to printing the entire document thousands of times, usually with a cover page explaining what was on the disc, and providing a phone number to call if the parties preferred to have a paper copy sent to them.

This was followed by sending out flash drives, as fewer people had computers that accepted discs. An even less expensive alternative is to eliminate both paper and flash drives and instead mail ballots and an explanatory letter to voting parties which includes a link to the claims agent's website where they can review and/or download the documents. By mailing a paper notice, and giving the parties the option to call an 800 number and request a paper package in lieu of reviewing the documents electronically, there does not seem to be any concerns over either due process or Rule 20002. This option can result in hundreds of thousands of dollars in savings in a large case. This has been allowed in cases such as: *ASAIG, LLC* (S.D. Texas 2020); *In re First River* (W.D. Texas); *In re Professional Financial Investors*, (N.D. Cal. 2020), and *In re Gumps Holdings,* (D. Nev. 2018).

Comments and questions: If email service isn't sufficient, do debtors have to resort to publication notice, which most practitioners believe is not only expensive, but ineffectual? How much should the Court consider cost savings when considering the appropriate method of service? Although it has not yet raised issues – should a policy regarding posting documents on a website as opposed to mailing them in their entirety be put in place?

C. Electronic Claims filing

With the advent of ECF many courts are now permitting and encouraging the electronic filing of proofs of claims, as well as all other pleadings. In Delaware, claims can be filed directly on the Court website even by creditors with no Pacer access. A few jurisdictions require the claims agent to have the ***ability*** to accept and process electronic claims, but do not require the debtor to accept them, and other courts have been silent on this issue. Individual debtors also set different rules if there is no electronic filing rule mandated by the Court. Many Debtors refuse to allow claims to be filed by email, and do not facilitate any type of electronic filing. There are numerous ways to allow electronic filing other than by email; a fillable form can be created on the court or claims agent's website, or a portal can be created which simplifies the process of filing the claim and attaching supporting documentation. In general, when large numbers of claims are expected, electronic filing, especially through bespoke systems, can create time and cost savings. Generally, data that is received electronically can be processed more quickly and less expensively.

Comments and questions:
Should debtors be required to accept electronic claims? Does a debtor have an ethical obligation to amend the schedules if they receive information about a valid claim even after the Bar Date has passed? Does the estate have an ethical duty to make it easier for parties to assert a claim? Should the rules on electronic claim filing be standardized across jurisdictions?

D. Electronic Balloting

Although it is much more complex than simply allowing standard proofs of claim to be accepted electronically, it is possible to accept plan ballots electronically (particularly with the aid of a sophisticated claims agent). With the use of technology such as bespoke portals and DocuSign or other verification methods, it is not difficult to provide a secure procedure that allows the soliciting party to ascertain which ballots are authentic. As with filing proofs of claims electronically, depending on the size of the voting base electronic filing can save money and allow for much faster tabulation of votes. It also makes it easier for the party tabulating the votes to cross reference the voting amount with the amount of the claim scheduled or filed. Electronic filing is not the answer in every case; in cases where the majority of creditors are unsophisticated or do not have access to electronic means, it may not be cost-effective to go through the process of setting up the infrastructure.

Comments and questions:
What security concerns are there with electronic ballots? Are the initial costs worth the end time savings? Does it matter if there are funds for unsecured creditors? Should there be standard rules and procedures across jurisdictions?

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

Primary tabs

(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (*l*), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

(1) the meeting of creditors under §341 or §1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

….

(b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under §1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; (2) for filing objections and the hearing to consider confirmation of a chapter 9, or chapter 11 plan; and (3) for the hearing to consider confirmation of a chapter 13 plan.

(d) NOTICE TO EQUITY SECURITY HOLDERS. In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to §341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets;

(f) OTHER NOTICES. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:

(1) the order for relief;

(2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under §305;

(3) the time allowed for filing claims pursuant to Rule 3002;

(6) the waiver, denial, or revocation of a discharge as provided in Rule 4006;

(g) ADDRESSING NOTICES.

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision—

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) Except as provided in §342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

(4) Notwithstanding Rule 2002(g)(1)–(3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.

(5) A creditor may treat a notice as not having been brought to the creditor's attention under §342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED.

(1) *Voluntary Case.* In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order

converting the case to chapter 12 or chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor;
- the trustee;
- all indenture trustees;
- creditors that hold claims for which proofs of claim have been filed; and
- creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

(2) Involuntary Case. In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor;
- the trustee;
- all indenture trustees;
- creditors that hold claims for which proofs of claim have been filed; and
- creditors, if any, that are still permitted to file claims because an extension was granted under Rule 3002(c)(1) or (c)(2).

(3) *Insufficient Assets*. In a case where notice of insufficient assets to pay a dividend has been given to creditors under subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under §705 or appointed under §1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under §1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices…

(*l*) Notice by Publication. The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.

(m) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(*o*) Notice of Order for Relief in Consumer Case. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 21 days from the date thereof.

(p) NOTICE TO A CREDITOR WITH A FOREIGN ADDRESS.

(1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged.

(q) NOTICE OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES.

(1) *Notice of Petition for Recognition*. After the filing of a petition for recognition of a foreign proceeding, the court shall promptly schedule and hold a hearing on the petition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under §1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing.

(2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives*. The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under §1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.

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United States Bankruptcy Court, D. Delaware.

IN RE: CYBER LITIGATION INC., Debtor.

Case No. 20-12702 (CTG)
|
Signed 10/28/2021

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Related Docket No. 457

AMENDED [*] MEMORANDUM OPINION

CRAIG T. GOLDBLATT, UNITED STATES BANKRUPTCY JUDGE

***1** The debtor has moved to disallow a claim filed by Hansen Networks, which the debtor scheduled as its largest unsecured creditor, on the ground that the proof of claim was filed after the bar date and should thus be disallowed as untimely. The parties have stipulated that the official bar date notice, as approved by the Court, was sent to the wrong address. D.I. 374-1. An evidentiary hearing established that the bar date notice was sent by mail to David Hansen, the principal of Hansen Networks, but at an address where Mr. Hansen was no longer residing at the time the notice was sent. The evidentiary record also makes clear, however, that the bar date notice was sent by email to an email account that Mr. Hansen actively used.

Is that email notice good enough? If the only question before the Court were whether the notice satisfied the requirements of due process, this Court would conclude that it was. Due process requires that notice be provided in a means "such as one desirous of actually informing the [party to be bound] might reasonably adopt to accomplish it." [2] Sending an email to an email address that the party actively used would seem to fit that description.

But meeting the constitutional due process standard is not the only requirement. The debtor is also obligated to comply with the Federal Rules of Bankruptcy Procedure. And Bankruptcy Rule 2002(a)(7) provides that "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice *by mail* of ... (7) the time fixed for filing proofs of claim pursuant to Rule 3003(c)." Fed. R. Bankr. P. 2002(a)(7) (emphasis added). This Court's bar date order authorized the Debtor, with the assistance of the claims agent, to provide that notice. D.I. 145 ¶ 12. And fairly read, the term "notice by mail" does not include email.

Bankruptcy Rule 2002(a)(7) is what the Supreme Court described in *Kontrick v. Ryan* as a "claims processing rule." [3] The issue in *Kontrick* was not the claims bar date but the deadline under Bankruptcy Rules 4004 and 4007 for bringing a non-dischargeability action. While the Court held that compliance with such a rule could be forfeited (there, the defendant failed to raise the untimeliness of the claim until after the court entered judgment), *Kontrick* leaves no doubt that Bankruptcy Rules 4004 and 4007 set out mandatory requirements with which litigants must otherwise comply. [4] The same is true of Rule 2002(a)(7). Perhaps, in a case in which a debtor could prove that a creditor obtained actual subjective knowledge of the bar date with more than 21 days' notice, the failure to provide appropriate service by mail of the bar date notice could be treated as harmless error under Bankruptcy Rule 9005. [5] But the record established here would not support such a finding.

***2** The Court does note that it is troubled by the manner in which Mr. Hansen conducted himself at his deposition. Mr. Hansen testified (at a deposition that was focused, at least in part, on whether notice was provided to the correct address) that he could not recall his home address. [6] Other answers were evasive. [7] While Mr. Hansen endeavored to repair the damage by offering, at the evidentiary hearing, explanations for some of his deposition conduct, those efforts were no more than partially successful. The Court does not believe, however, that this conduct provides a basis to deprive Hansen Networks of the procedural protections afforded to it by Bankruptcy Rule 2002(a)(7). The debtor's objection to Hansen Networks' proof of claim on timeliness grounds will

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thus be overruled, without prejudice to the rights of the debtor or any other party-in-interest to object to the allowance of the claim on any other ground. [8]

Factual and Procedural Background

The debtor was in the business of detecting and preventing online fraud. [9] Its business collapsed in September 2020 amidst allegations that the enterprise was itself largely fraudulent, including claims that the debtor had raised almost $125 million from investors based on fabricated financial statements. *Id.* at 6.

1. Hansen Networks and the bar date order

Hansen Networks is a provider of information technology services, such as email support, file support, networking, and telephones. Sept. 15, 2021 Hearing Tr. at 20. Hansen Networks provided services for the debtor for approximately two years, from 2018 through 2020. *Id.* at 20-21. The debtor's schedules list Hansen Networks as their largest unsecured creditor, holding a contingent, unliquidated, and disputed claim for just under $300,000. D.I. 115.

Mr. Hansen is the principal of Hansen Networks. He was also a cofounder of the debtor, Sept. 15, 2021 Hearing Tr. at 21. While employed by the debtor, Hansen held a variety of positions, including Managing Director of Technical Operations and Strategies, Chief of Staff, and Chief Information Officer. *Id.* at 43-44.

In early December 2020, this Court issued an order establishing February 12, 2021 as the deadline for filing proofs of claim. D.I. 145. As Bankruptcy Rule 2002 permits, that order authorized the debtor and its claim agent, rather than the Clerk of the Court, to provide notice of the bar date to creditors and parties-in-interest. *Id.* ¶ 12. The debtor filed the bar date notice, formally captioned as *Notice of Deadlines for Filing Proofs of Claim*, on the Court's docket. *See* D.I. 157. The debtor's claims agent filed affidavits of service indicating that the bar date notice was mailed to various parties-in-interest between December 14, 2020, and January 4, 2021, and published in the national edition of the New York Times. *See generally* D.I. 174, 191, 192, and 199. The affidavit of service docketed at D.I. 174 shows that the bar date notice was mailed to Hansen Networks at 4255 Dean Martin Drive in Las Vegas, Nevada. The affidavit also shows mail service on Mr. Hansen at an address that was redacted (in light of privacy concerns), but that the trial record reveals was located in Bayamon, Puerto Rico. *See* D.I. 487 ¶ 6. The affidavit also shows email service on Hansen Networks at billing@hansennetworks.com and on David Hansen at an email address that was redacted, D.I. 174 at 5, 7, 18, but that the trial record reveals was david.note@outlook.com. D.I. 487 ¶ 6. [10]

2. Formal notice of the bar date and Hansen Networks' proof of claim

***3** A stipulation filed by the parties in May 2021 states that, approximately one month after the passage of the bar date, in March 2021, counsel for Hansen Networks reached out to the debtor advising that Hansen Networks contended that it had not received notice of the general bar date. D.I. 374-1 at 2. The stipulation also recites that the debtor confirmed with the claims agent that the mail and email address to which the bar date notice was sent were inaccurate "and therefore not received" by Hansen Networks. *Id.* The parties' stipulation indicated that they agreed that the formal service on Hansen Networks was ineffective, and that so long as Hansen Networks promptly filed a proof of claim, such a claim would not be subject to disallowance as untimely on account of the formal service of the bar date notice made on Hansen Networks. The stipulation preserved, however, the debtor's ability to seek to enforce the bar date "on any other grounds that such proof of claim was not timely filed," *id.*, meaning that the debtor would still be permitted to offer other reasons why the bar date could properly be enforced against Hansen Networks. That stipulation was approved by order of this Court on May 20, 2021. D.I. 374. Hansen Networks filed a proof of claim, in the amount of $343,693.55, on May 26, 2021. Proof of Claim No. 83.

3. Claim objection and August 25, 2021 hearing

The debtor objected to the claim on the ground that it was untimely, contending, among other things, that the service made by mail and email on Mr. Hansen was sufficient to bind Hansen Networks. D.I. 457. Hansen Networks opposed the motion, asserting that Mr. Hansen did not in fact receive the notice that was allegedly served on him, and attaching a declaration by Mr. Hansen that states that he never received the notice of the bar date. D.I. 480.

Mr. Hansen was subsequently deposed. In its reply in support of the motion to disallow, the debtor attached certain pages of the deposition transcript in which Mr. Hansen claimed not to

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know his home address and was generally evasive in response to the questions posed. D.I. 489. [11]

When the matter first was set for hearing on August 25, 2021, Hansen Networks contended that it had not had a fair opportunity to respond to certain of the points set forth in the debtor's reply brief and that the pages that the debtor selected from Mr. Hansen's deposition were incomplete. Aug. 25, 2021 Hearing Tr. at 15, 21. The Court accordingly determined that it would be more appropriate to resolve this contested matter on a more complete evidentiary record. *Id.* at 25-29; *see also* D.I. 495 at 1-2.

4. Mr. Hansen's testimony re: service by mail

That evidentiary hearing was held on September 15, 2021 and included the "in-court" testimony of Mr. Hansen. [12] Perhaps because of Mr. Hansen's surprising deposition testimony in which he said that he did not remember his home address, coupled with an affidavit of the claims agent that identified an address in Bayamon, Puerto Rico on which mail service was effected, much of Mr. Hansen's direct testimony was dedicated to explaining where he lived, and how it could be that he was unable to remember his address at his deposition.

To that end, Mr. Hansen testified that in May 2020, not long after the onset of the pandemic, he and his fiancé decided to move to Puerto Rico after he had lived in Las Vegas, Nevada for about 19 years. Sept. 15, 2021 Hearing Tr. at 9. Mr. Hansen's fiancé had lived for several years in St. Thomas, and after an unsuccessful effort to move there in March and April of 2020, Mr. Hansen decided in May to move to Puerto Rico. *Id.* at 9-10.

Mr. Hansen testified that he is not fluent in Spanish and has moved to five different residences in his time living in Puerto Rico in order to "get an idea and feel for where [on] the island we wanted to live and to ... raise a family." *Id.* at 10. Mr. Hansen's testimony, and the leases that were admitted into evidence, show that Mr. Hansen was a resident at an address in Bayamon, Puerto Rico from May 1, 2020 until July 31, 2020. *Id.* at 14; HN1. [13] He thereafter moved to a number of other parts of Puerto Rico – first to a condominium in Condado through October 2020, [14] then to the El Dorado Club in Vega, Alta, Puerto Rico. [15]

***4** Mr. Hansen explained that, in addition to being unfamiliar with Spanish, because he had moved many times and never used any of the addresses for mail, the addresses "were never anything I really would actively use." Sept. 15, 2021 Hearing Tr. at 18. In explaining some of his seemingly evasive deposition testimony, Mr. Hansen said at trial that he was unable to provide more concrete testimony at his deposition regarding his addresses because "I did not know exact dates of ... all my moves and I did not want to give an exact date if it was off [by] even a day. Again, it was something that I just didn't want to do. I did not want to give anything incorrect on the record." *Id.* at 19. Whether or not one finds this explanation for the answers (and non-answers) that Mr. Hansen provided at his deposition satisfactory, the record does establish that by the time the debtor's claims agent served Mr. Hansen by mail with notice of the bar date in December 2020, Mr. Hansen no longer lived at the address in Bayamon, Puerto Rico to which that notice was addressed. [16]

5. Mr. Hansen's testimony re: email service

On direct examination, counsel for Hansen Networks showed Mr. Hansen the affidavit of the claims agent, D.I. 487, demonstrating service of the bar date notice by mail to Bayamon, Puerto Rico and by email to the david.note@outlook.com email address. Sept. 15, 2021 Hearing Tr. at 34. Mr. Hansen testified that he never received the mail at the address in Bayamon, Puerto Rico, but acknowledged his use of the Outlook email address. *Id.* He denied, however, ever seeing any email related to the debtor's bankruptcy case that were sent to that email address. *Id.* Other than stating that he had not used his Outlook email address for business related to Hansen Networks before October 2020, *id.* at 35, Mr. Hansen offered no further explanation for that claim. *Id.*

On cross-examination, Mr. Hansen acknowledged that he has no reason to dispute that the bar date notice was in fact sent to his Outlook email address. *Id.* at 46. And he also admitted that he recently used that address for communications related to the bankruptcy case. *Id.* at 45.

Jurisdiction

This claims allowance dispute arises under 11 U.S.C. § 502 and is therefore within the district court's subject-matter jurisdiction set forth in 11 U.S.C. § 1334(b). The U.S. District Court for the District of Delaware has referred such cases (as 28 U.S.C. § 157(a) authorizes) to this Court under its February 29, 2012 *Amended Standing Order of Reference*.

Claims allowance disputes are core matters under 28 U.S.C. § 157(b)(2)(B).

Analysis

Claims allowance is governed by Bankruptcy Code section 502, which provides that a proof of claim filed under section 501 "is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a). The Code also expressly contemplates that such proofs of claim will be subject to a bar date, providing that a claim should be disallowed if "proof of such claim is not timely filed." 11 U.S.C. § 502(b)(9). [17]

For the bar date to be enforceable, however, a creditor must, at a bare minimum, receive sufficient notice to satisfy the constitutional requirement of due process. As the Supreme Court has explained, that means "notice reasonably calculated, under all the circumstances, to apprise [the creditor of the bar date]." [18] In addition, however, Congress has authorized the Supreme Court to promulgate rules of bankruptcy procedure. *See* 28 U.S.C. § 2075. "The Rules are binding and courts must abide by them unless there is an irreconcilable conflict with the Bankruptcy Code." [19] Bankruptcy Rule 2002 accordingly imposes procedural requirements that must be met in connection with the establishment of a bar date.

I. The notice provided to Hansen Networks complied with the requirements of due process.

***5** It is well established that to bind a creditor to a claims bar date, known creditors must receive "actual notice." A long line of cases establishes that the paradigmatic means for providing "actual notice" is by mail to a creditor's last known address. [20] Here, it is stipulated that the address to which the bar date notice was mailed was not Hansen Networks' last known address. D.I. 374-1 at 2.

Mailing a notice to a creditor's last known address, however, while surely *sufficient* to satisfy due process, has never been found to be a *necessary* element of due process. Rather, the Supreme Court explained in *Mullane* that an "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." [21] That means that the notice itself "be of such nature as reasonably to convey the required information," and the party to be bound must be afforded "a reasonable time ... to make their appearance." *Id.* The Court then turned to the *means* by which notice is provided. "[W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 315.

The Supreme Court more recently elaborated on this principle in *Jones v. Flowers*. [22] There, the Court held that when a taxing authority provided notice of tax foreclosure sale by mail, and the notice was returned as undeliverable, due process required the taxing authority to make some other effort to provide the homeowner with notice. The Court explained that while its precedents have "deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent," the circumstance in which the sender becomes aware that its notice has not reached the recipient presents "a new wrinkle." *Id.* at 226-227. Explaining that *Mullane* requires that means employed for notice "must be such as one desirous of actually informing the [creditor] might reasonably adopt to accomplish it," the Court concluded that one "who actually desired to inform a real property owner of an impending tax sale of a house" would not "do nothing when a certified letter sent to the owner is returned unclaimed." *Id.* at 229. "If the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner's office to prepare a new stack of letters and send them again. No one 'desirous of actually informing' the owners would simply shrug his shoulders as the letters disappeared and say, 'I tried.' " *Id.*

***6** Following this authority, the question here, at least as far as due process is concerned, is whether the notice provided to Hansen Networks was by a means that might have been employed by a debtor who was "desirous of actually informing" its creditors of the bar date.

Here, the record shows that the debtor's claims agent emailed the notice to an email address that Mr. Hansen actively used. Mr. Hansen is the principal of Hansen Networks. Under the established principle that notice on an agent is sufficient to bind the principal, there is no question that sending an email to Mr. Hansen is a means that might be employed by

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someone who wanted to provide appropriate notice to Hansen Networks. [23]

The evidentiary record establishes that notice of the bar date order was sent to a personal email address that Mr. Hansen actively used. There is nothing in the record to suggest that the email was returned to the claims agent as undeliverable. In fact, Mr. Hansen admitted that he used this same email address in a subsequent exchange of messages with the debtor. Sept. 15, 2021 Hearing Tr. at 45-50. While Mr. Hansen testified that he did not use the email address for Hansen Networks business before October 2020, Sept. 15, 2021 Hearing Tr. at 35, that testimony has nothing to do with the critical question – whether an email sent to that email address would be reasonably calculated to reach Mr. Hansen, and thus Hansen Networks. The Court concludes that it was.

Specifically, the factual record suggests that the means of notice provided here is at least as good (in terms of its likelihood of reaching the intended recipient) as an envelope placed in the mail addressed to the creditor's last known address. A party who is giving notice under current circumstances would take account of the remote work environment brought on by the global pandemic, the well-publicized challenges faced by the U.S. Postal Service, and the increased reliance on electronic communications. In light of those circumstances, a fair case could be made that a debtor who was singularly focused on ensuring that a creditor would learn of a bar date would send an email notice to an email address that the creditor actively used rather than dropping an envelope into a mailbox.

That is particularly true here. Mr. Hansen is a sophisticated party with a degree in computer science and more than 20 years of experience in the information technology industry. Sept. 15, 2021 Hearing Tr. at 8, 44-45. While a case involving an email sent to an email address of a 90-year-old man that was set up by his granddaughter might present a closer question, the record before the Court makes clear that one may reasonably presume that Mr. Hansen is more than capable of maintaining and keeping abreast of an email account. Indeed, the evidence in the record establishing that Mr. Hansen moved frequently and was difficult to reach through the postal service makes it all the more likely that he would have monitored his email and that one who was trying to reach him (or his company) would do so by sending him an email. [24]

II. The notice provided is nevertheless inadequate because it failed to comply with Bankruptcy Rule 2002.

***7** In addition to satisfying the requirement of due process, a debtor is also obligated to meet the requirements of the Bankruptcy Rules. As the Third Circuit has explained, the "United States Supreme Court prescribes rules of practice and procedure for bankruptcy cases. 28 U.S.C. § 2075. The rules are not to 'abridge, enlarge, or modify any substantive right.' *Id.* Pursuant to this authority, the Court has promulgated the Federal Rules of Bankruptcy Procedure." [25] When the Supreme Court does promulgate such a procedural rule, those rules "are binding and courts must abide by them unless there is an irreconcilable conflict with the Bankruptcy Code." *Id.* at 235.

Bankruptcy Rule 2002 sets forth specific requirements of notice. Specifically, Bankruptcy Rule 2002(a) requires "at least 21 days' notice by mail" of certain events, such as a section 341 meeting, the use, sale or lease of property of the estate outside the ordinary course of business, or a hearing on a motion to dismiss or convert a case. Fed. R. Bankr. P. 2002(a)(1), (2) & (4). Included on this list of events that require 21 days' notice by mail is "the time fixed for filing proofs of claim pursuant to Rule 3003(c)." Fed. R. Bankr. P. 2002(a)(7). [26]

Bankruptcy Rule 2002(g) explains how notices are to be addressed. Notices mailed to a creditor "shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case." Fed. R. Bankr. P. 2002(g)(1). If the creditor has not made such a request, notice "shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later." Fed. R. Bankr. P. 2002(g)(2).

The clear import of the Bankruptcy Rules, therefore, is that a creditor is entitled to receive notice of the bar date by mail, at the address required by Bankruptcy Rule 2002(g). Here, it is stipulated that Hansen Networks did not receive such a notice by mail. [**] And the evidentiary record makes clear that the notice of bar date that was sent by mail to Mr. Hansen was sent to his residence in Bayamon, Puerto Rico after Mr. Hansen had moved out of that residence. [27] Because the requirements of the bankruptcy rules have not been satisfied, the bar date may not be enforced against Hansen Networks in the absence of a showing that the error was a harmless one.

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III. The failure to provide proper notice was not harmless error.

***8** The failure to comply with the requirements of Bankruptcy Rule 2002 would not necessarily be the end of the story if the debtor could show that the error was "harmless." Bankruptcy Rule 9005 provides that "[w]hen appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights." Bankruptcy Rule 9005 further provides that Rule 61 of the Federal Rules of Civil Procedure applies in bankruptcy cases. And Rule 61 states that "[a]t every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." Fed. R. Civ. P. 61.

In order to show that the failure to provide proper service by mail was harmless, however, it is insufficient to demonstrate that the creditor was sent notice by some other means by which he *might* or *should* have learned of the bar date. In the absence of a showing that the creditor obtained actual, subjective knowledge of the bar date, the Court is unable to conclude that the failure to meet the specific requirements of the rules may be treated as a no-harm-no-foul situation.

To that end, Mr. Hansen testified that he was not actually aware of the bar date until he was served with the subpoena for his Rule 2004 deposition. Sept. 15, 2021 Hearing Tr. at 32-33. And he further testified that because the amount of his claim was "a significant amount of money," if he had been aware of the bar date "I would definitely want to make sure that we were going to recover that." *Id.* at 35. Further, as described above, Hansen Networks did in fact file a proof of claim within the time frame set out in the parties' stipulation after it had learned of the bar date.

Whatever one may think about Mr. Hansen's credibility as a general matter, this testimony accords with ordinary common sense. The Court does not believe that Mr. Hansen had actual knowledge of the bar date by virtue of the email sent to his email address. If he had, the Court is persuaded that Hansen Networks would have filed a timely proof of claim. The Court therefore cannot conclude that the failure to provide notice in the manner required by Bankruptcy Rule 2002 was harmless error. [28]

Conclusion

For the reasons described above, the debtor's objection to Hansen Networks' claim on timeliness grounds will be overruled, without prejudice to the rights of the debtor or any other party-in-interest to object to the claim on other grounds. Hansen Networks is directed to settle an order to that effect for entry by the Court.

All Citations

Slip Copy, 2021 WL 5047512

Footnotes

* Following the issuance of this Memorandum Opinion, the Court was apprised of a provision of Federal Rule of Bankruptcy Procedure 9036, as amended in 2019, that relates to the matters addressed herein. While that Rule is not applicable to circumstances of this case, to avoid introducing any confusion regarding the application of the Rule in the cases to which it is directed, the Court is issuing this Amended Memorandum Opinion, which adds (in addition to this footnote) note ** on p. 17.

2 Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

3 540 U.S. 443 (2004).

4 The Court did not resolve the question whether the rules at issue would admit of an "equitable exception" in appropriate circumstance, a question on which there was a division of authority among the courts of appeals. *See id.* at 457-458 & n.11.

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5 Fed. R. Bankr. P. 9005 provides, in relevant part, that "[w]hen appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights"). Bankruptcy Rule 9005 also makes Rule 61 of the Federal Rules of Civil Procedure applicable to bankruptcy cases. That rule states that "[a]t every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." Fed. R. Civ. P. 61.

6 *See* D.I. 489-1 at 3-4 (in which Mr. Hansen states, in response to a question regarding the addresses of the properties where he lives, that "I don't know either address off the top of my head").

7 *See id.* at 5 (in which Mr. Hansen states, when asked where he lived when he resided in Las Vegas, "in a house").

8 This Memorandum Opinion sets out the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable to this contested matter under Fed. R. Bankr. P. 9014(c).

9 Declaration of Daniel P. Wikel, Chief Restructuring Office of NS8 Inc., in Support of Chapter 11 Petition and First Day Motions, D.I. 9 at 4.

10 This email address is also included, in unredacted form, in the parties' briefs, which are available on the Court's public docket.

11 *See* D.I. 489-1 at 3-4 (in which Mr. Hansen states, in response to a question regarding the addresses of the properties where he lives, that "I don't know either address off the top of my head"); *id.* at 5 (in which Mr. Hansen states, when asked where he lived when he resided in Las Vegas, "in a house").

12 "In court" is in scare quotes because Mr. Hansen was physically located at his residence in Vega Alta, Puerto Rico, and appeared "in court" by Zoom. *See* D.I. 518.

13 Documents that were admitted into evidence are cited to using the document numbers designated by the parties.

14 Sept. 15, 2021 Hearing Tr. at 15; HN2.

15 Sept. 15, 2021 Hearing Tr. at 16; HN3.

16 Mr. Hansen also explained, consistent with the parties' stipulation, that Hansen Networks moved to a remote-only working environment in 2017, such that the only address for receipt of mail would be the address of Hansen Networks' accountant. *Id.* at 23.

17 Fed. R. Bankr. P. 3003(c)(3) further contemplates that the bankruptcy court will establish a bar date, stating that the "court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed."

18 *Mullane*, 339 U.S. at 314.

19 *In re Mansaray-Ruffin*, 530 F.3d 230, 235 (3d Cir. 2008).

20 *See In re Freedom Communications Holdings*, 472 B.R. 257, 262 (Bankr. D. Del. 2012) ("here, as is generally the case, mailing a notice to a party's last known address is 'reasonably calculated' to provide actual notice"); *see also* *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988) (stating mail service is efficient and reasonably calculated to provide actual notice); *In re Eagle Bus Mfg., Inc.*, 62 F.3d 730, 736

(5th Cir. 1995) (reasoning mail to the last known address of a creditor satisfies due process as "reasonably calculated" to inform the creditor of the bar date).

21 *Mullane*, 339 U.S. at 314.

22 547 U.S. 220 (2006).

23 *See, e.g., In re Color Tile Inc.*, 475 F.3d 508, 513 (3d Cir. 2007) ("Where an agent receives notice, that notice is imputed to the principal"); *Huston v. Procter & Gamble Paper Prods. Corp.*, 568 F.3d 100, 106 (3d Cir. 2009) (same).

24 *See, e.g., Gilbertson v. J. Givoo Consultants I, Inc.*, No. CV-20-6991 (JHR), 2021 WL 689114 at *1 (D. N.J. February 23, 2021) ("[I]t is appropriate in the modern digital age to distribute notice by mail, email, and text, because although people frequently move and change addresses, they typically retain the same email addresses and phone numbers").

25 *Mansaray-Ruffin*, 530 F.3d at 234.

26 *See also* Fed. R. Bankr. P 2002(f) ("the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of ... (3) the time allowed for filing claims pursuant to Rule 3002").

** Note that Fed. R. Bankr. P. 9036, as amended in 2019, provides, in relevant part, that:

> Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk, or some other person as the court or these rules may direct, may send the notice to—or serve the paper on—a registered user by filing it with the court's electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing.

Fed. R. Bankr. P. 9036.

The 2019 Advisory Committee notes state that the 2019 amendments are intended to "permit both notice and service by electronic means." Nothing in the record of this case suggests that either Hansen Networks or Mr. Hansen was a "registered user" that may be served by the court's electronic-filing system or had consented to service by electronic means. Nor does the docket reflect the entry of an appearance for Hansen Networks or Mr. Hansen before the docketing of the bar date notice. *See* D.I. 157, Notice of Bar Date (Dec. 14, 2020); D.I. 374, Certification of Counsel (May 20, 2021) (first apparent appearance by counsel for Hansen Networks). Accordingly, nothing in the Court's conclusion that service by electronic mail does not constitute service by mail is intended to call into question the enforceability of Fed. R. Bankr. P. 9036 in a case in which that Rule, by its terms, is applicable.

27 In view of the specific requirement of Bankruptcy Rule 2002(g) regarding the manner in which the mail notice to a creditor must be addressed, it would not appear that successful mail service on Mr. Hansen would be sufficient, though it is certainly possible (as described below) that such service could render the failure to comply with the letter of Bankruptcy Rule 2002(g) a "harmless error."

28 While the Court believes that actual subjective knowledge *is* required, at least in these circumstances, to conclude that the failure to provide notice as required by the rules is harmless, it bears note that notice that *did* comport with the rules would be effective even if the creditor never obtained actual, subjective knowledge of the bar date. In this sense, the term "actual notice" (when used to describe notice sent by mail to the

creditor's proper address), and in particular the distinction between such “actual notice” and the “constructive notice” that is provided when notice is given by publication, *see* *In re Nortel Networks, Inc.*, 531 B.R. 53, 62 (Bankr. D. Del. 2015), is somewhat misleading. A creditor that is sent a properly addressed bar date notice is deemed to have received “actual notice” and may be bound by the bar date even if the record demonstrates that the envelope was consumed, unopened and unread, by the creditor's dog. In this sense, at least, the notion of “actual notice” may rely on a legal fiction in the same way that “constructive notice” does.

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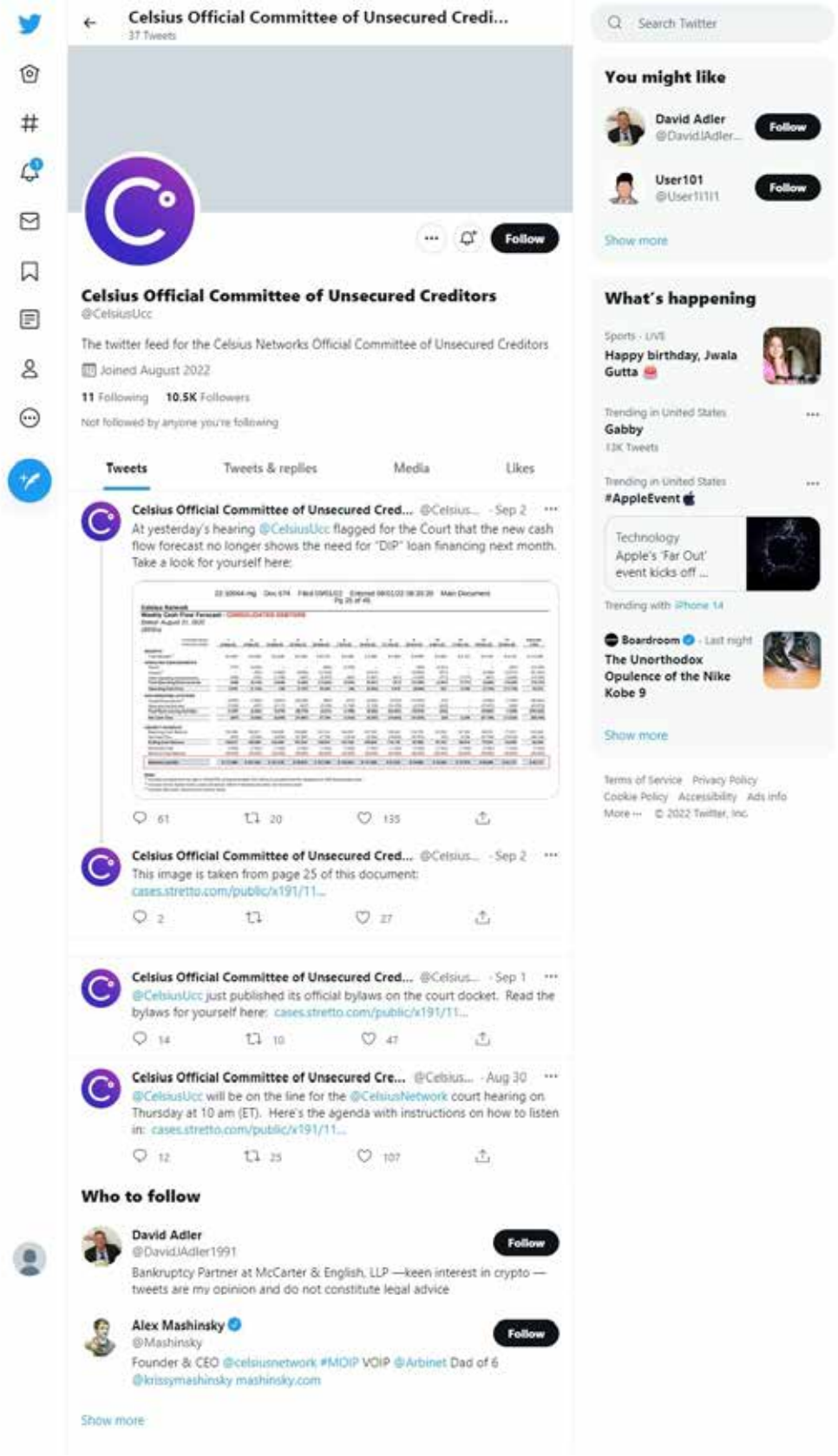

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https://mobile.twitter.com/CelsiusUcc

Timestamp

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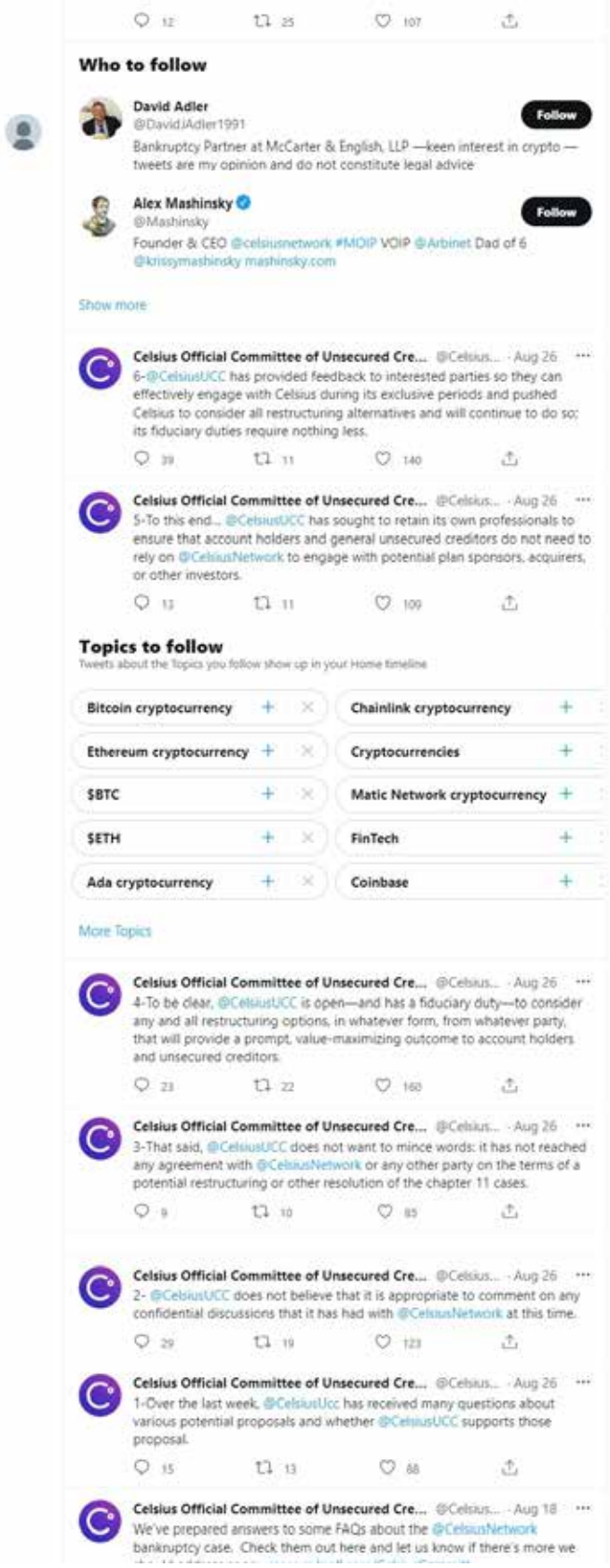

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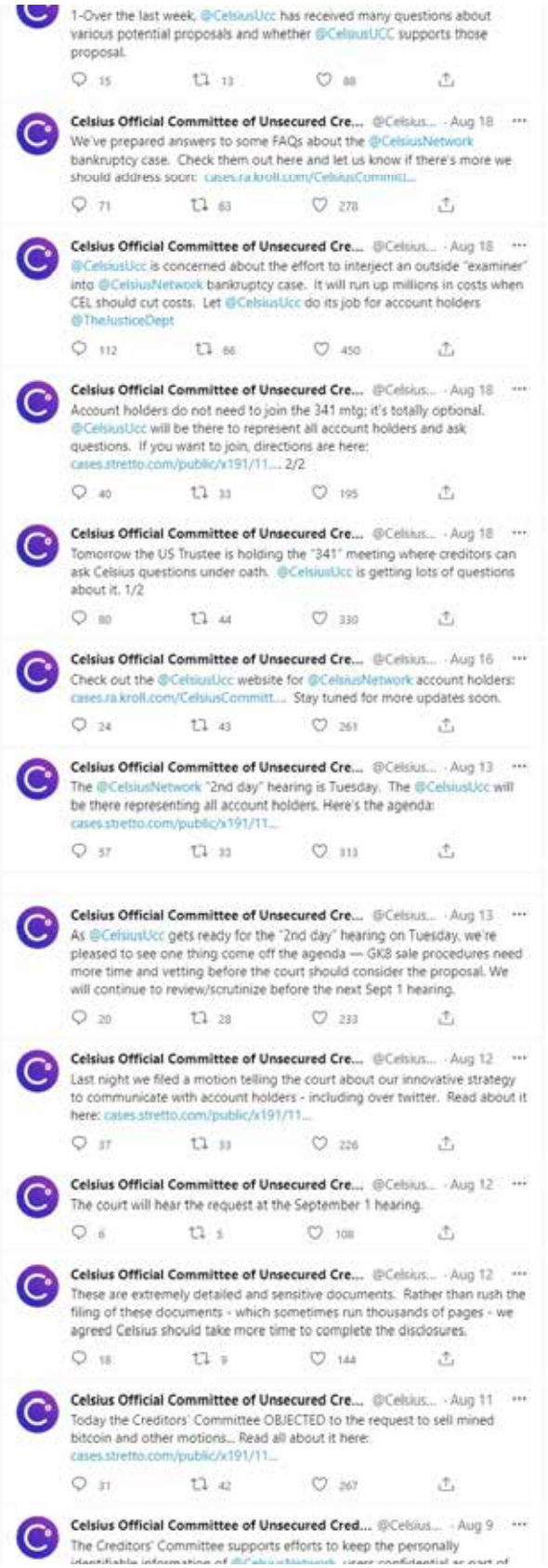

1-Over the last week, @CelsiusUcc has received many questions about various potential proposals and whether @CelsiusUCC supports those proposal.

15 13 88

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 18
We've prepared answers to some FAQs about the @CelsiusNetwork bankruptcy case. Check them out here and let us know if there's more we should address soon: cases.ra.kroll.com/CelsiusCommitt...

71 63 278

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 18
@CelsiusUcc is concerned about the effort to interject an outside "examiner" into @CelsiusNetwork bankruptcy case. It will run up millions in costs when CEL should cut costs. Let @CelsiusUcc do its job for account holders @TheJusticeDept

112 66 450

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 18
Account holders do not need to join the 341 mtg; it's totally optional. @CelsiusUcc will be there to represent all account holders and ask questions. If you want to join, directions are here: cases.stretto.com/public/x191/11.... 2/2

40 33 195

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 18
Tomorrow the US Trustee is holding the "341" meeting where creditors can ask Celsius questions under oath. @CelsiusUcc is getting lots of questions about it. 1/2

80 44 330

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 16
Check out the @CelsiusUcc website for @CelsiusNetwork account holders: cases.ra.kroll.com/CelsiusCommitt.... Stay tuned for more updates soon.

24 43 261

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 13
The @CelsiusNetwork "2nd day" hearing is Tuesday. The @CelsiusUcc will be there representing all account holders. Here's the agenda: cases.stretto.com/public/x191/11...

57 33 313

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 13
As @CelsiusUcc gets ready for the "2nd day" hearing on Tuesday, we're pleased to see one thing come off the agenda — GK8 sale procedures need more time and vetting before the court should consider the proposal. We will continue to review/scrutinize before the next Sept 1 hearing.

20 28 233

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 12
Last night we filed a motion telling the court about our innovative strategy to communicate with account holders - including over twitter. Read about it here: cases.stretto.com/public/x191/11...

37 33 226

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 12
The court will hear the request at the September 1 hearing.

6 5 108

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 12
These are extremely detailed and sensitive documents. Rather than rush the filing of these documents - which sometimes run thousands of pages - we agreed Celsius should take more time to complete the disclosures.

18 9 144

Celsius Official Committee of Unsecured Cre... @Celsius... · Aug 11
Today the Creditors' Committee OBJECTED to the request to sell mined bitcoin and other motions... Read all about it here: cases.stretto.com/public/x191/11...

31 42 267

Celsius Official Committee of Unsecured Cred... @Celsius... · Aug 9
The Creditors' Committee supports efforts to keep the personally identifiable information of @CelsiusNetwork users confidential as part of

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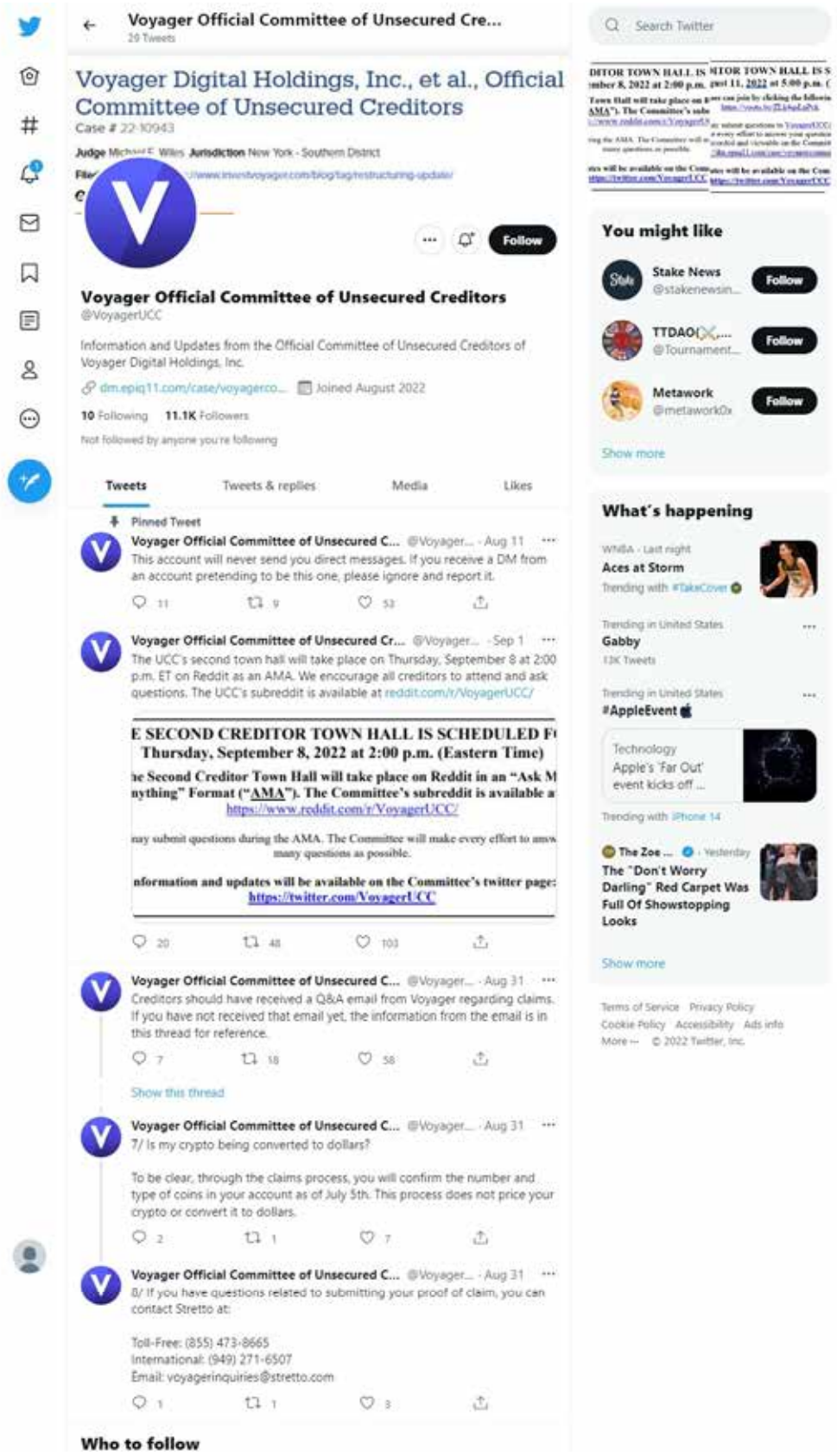

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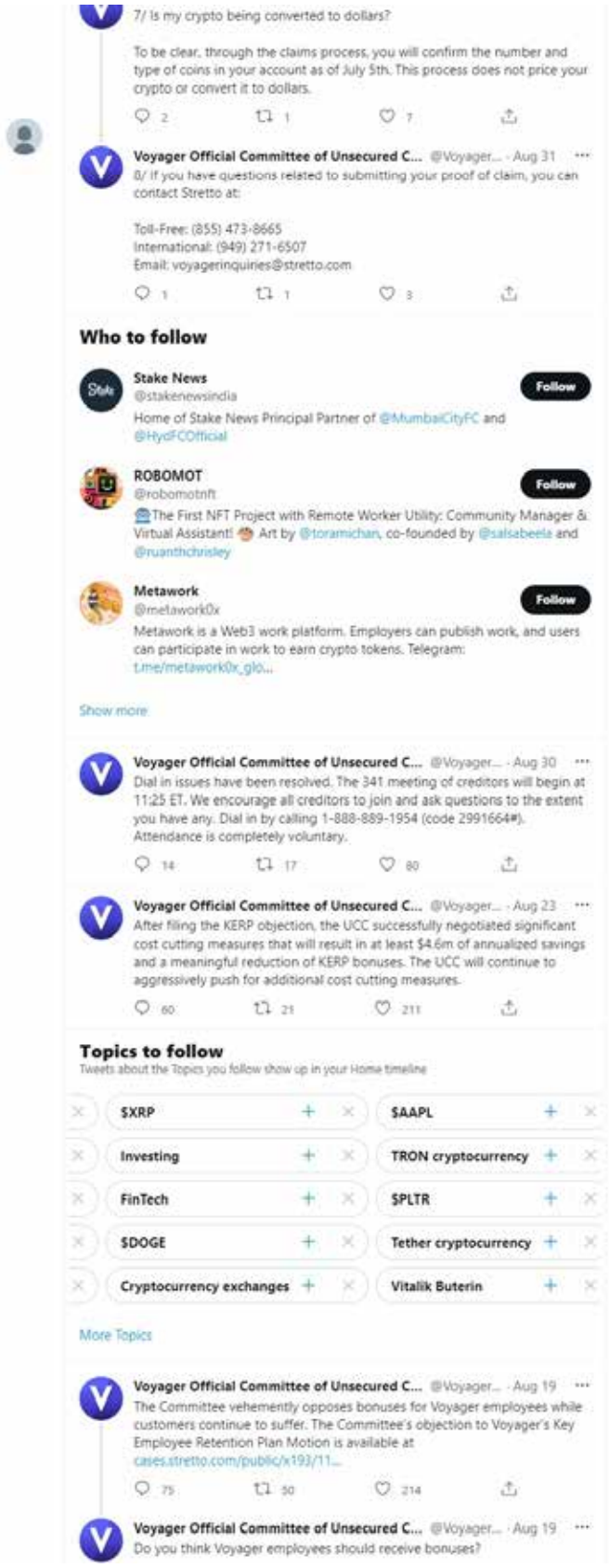

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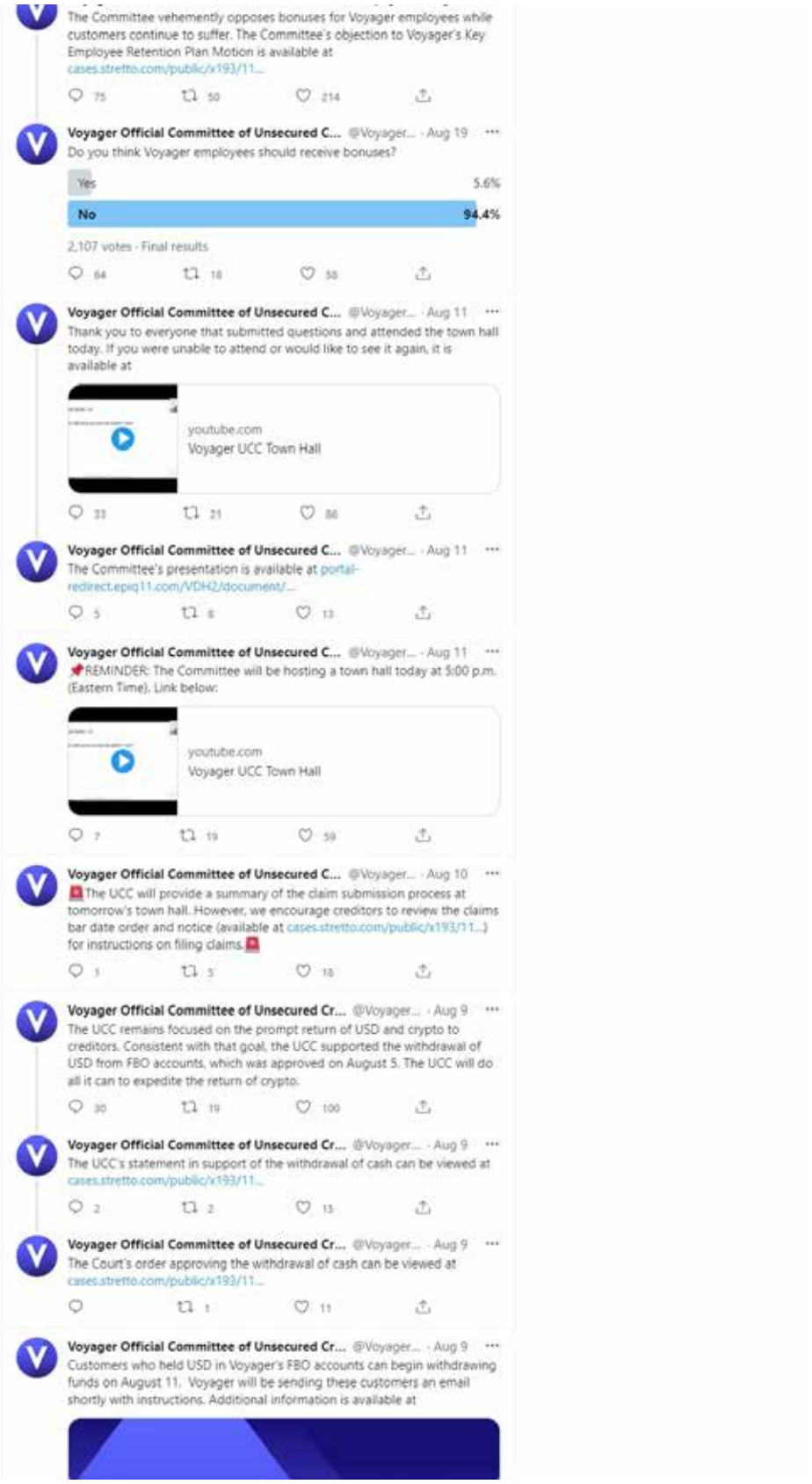

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Faculty

Bradley A. Cosman, CIRA is a partner in the Phoenix office of Perkins Coie LLP, where counsels local clients and businesses nationwide across the full spectrum of corporate restructuring issues, including legal, strategic, financial and operational. A former consultant at FTI Consulting, he represents constituents throughout the capital stack, including corporate debtors, trustees, receivers, lenders, trade creditors, committees, private equity, asset-purchasers and other parties-in-interest. Mr. Cosman has experience representing privately held and middle-market companies in all aspects of insolvency, as well as official committees of unsecured creditors. He also counsels clients in non-distressed transactional and general corporate matters. Regularly requested to speak on the topics of bankruptcy and restructuring, Mr. Cosman is one of only a handful of Arizona lawyers chosen by the federal judges in the District of Arizona to serve as a Lawyer Representative to the Ninth Circuit Judicial Conference. He previously was elected to serve as chair of the Bankruptcy Section of the State Bar of Arizona and continues to participate on the Bankruptcy Section's Executive Committee. Mr. Cosman is a 2019 ABI "40 Under 40" honoree, and he has been listed in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law from 2020-22, as an *Arizona Super Lawyers* Rising Star from 2014-19, and as a *Super Lawyer* for 2021. He received his B.S. in marketing and his B.S. in finance, both *summa cum laude*, in 2001 from Arizona State University and his J.D. *magna cum laude* in 2008 from Arizona State University Sandra Day O'Connor College of Law, where he served as senior articles editor of the *Arizona State Law Journal*.

Khaled Tarazi is an attorney in Buchalter PC's Scottsdale, Ariz., office and a member of its Insolvency & Financial Law practice group. He focuses his practice on distressed business situations, including nonbankruptcy workouts and chapter 11 restructurings. Mr. Tarazi has experience serving as counsel for distressed companies, secured and unsecured creditors, creditors' committees, landlords, leaseholders, and commercial debtors in loan workouts and bankruptcy matters. He was named by *The Best Lawyers in America* to its "Ones to Watch" list and for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law from 2021-23, and he was listed in *Arizona Super Lawyers* for 2022. Mr. Tarazi is a member of ABI, the Arizona State Bar Association's Bankruptcy Section and the Arizona Bankruptcy American Inn of Court. He received his B.S.B.A. from The Ohio State University and his J.D. *magna cum laude* and Order of the Coif from the Arizona State University Sandra Day O'Connor College of Law. He also received the American College of Bankruptcy's Distinguished Bankruptcy Law Student Award for the Ninth Circuit.

Nellwyn W. Voorhies is president of Donlin, Recano & Company, Inc. in New York and has more than 25 years of experience in the legal community. She previously practiced at several large firms, including Levene, Neale, Bender, Rankin & Brill, LLP, Baker & McKenzie and Sheppard, Mullin, Richter & Hampton LLP. Ms. Voorhies moved to consulting after having practiced for 13 years, working on chapter 11 cases such as, Daewoo Motor America, Stateline Hotel, Inc., C&R Clothiers and Kenny Rogers Roasters. She also served as an extern to Hon. Leslie Tchaikovsky in the U.S. Bankruptcy Court for the Northern District of California. Ms. Voorhies maintains an active presence in the industry, holding leadership positions with ABI, the American Bar Association's Business Bankruptcy Committee of its Business Law Section, and the International Women's Insolvency &

Restructuring Confederation (IWIRC). She received her B.A. *cum laude* from Georgetown University and her J.D. from the University of California, Berkeley. She also served as an extern to Hon. Leslie Tchaikovsky of the U.S. Bankruptcy Court for the Northern District of California.

Hon. Madeleine C. Wanslee is a U.S. Bankruptcy Judge for the District of Arizona in Phoenix, sworn in on March 17, 2014. Previously, she was an associate and then partner at Gust Rosenfeld, PLC, where she was active in the firm's management committee and co-chaired the firm's Bankruptcy Practice Group. Her practice focused on bankruptcy and creditors' rights, and she represented small businesses, financial institutions, corporations and state agencies. While in private practice, Judge Wanslee was a certified bankruptcy specialist. She also argued a number of appeals, including *United Student Aid Funds Inc. v. Espinosa* before the U.S. Supreme Court. Judge Wanslee sits on the Ninth Circuit Conference Executive Committee, is program chair for the 2023 Ninth Circuit Judicial Conference, and is a former chair of the Ninth Circuit Bankruptcy Judges Education Committee. She helped to charter and is past president of the Arizona Bankruptcy American Inn of Court. She previously served on the ABC's Standards Committee and on the Arizona State Bar's Bankruptcy Advisory Committee, and chaired the Arizona State Bar's Bankruptcy Section. She also was chair of the Lawyer Representatives to the Ninth Circuit Court of Appeals. Judge Wanslee received her B.F.A. and B.A. from the University of Arizona and her J.D. from Gonzaga University School of Law, where she served as a writer and executive editor of the *Gonzaga Law Review*. Following law school, she clerked for Chief Bankruptcy Judge Robert C. Jones of the District of Nevada.