
Chambers of the
HONORABLE SAMUEL L. BUFFORD
United States Bankruptcy Judge

DATE: January 20, 2006
TO: Advisory Committee on Bankruptcy Rules
FROM: Judge Samuel L. Bufford
RE: Proposed Bankruptcy Rules for Chapter 15 – Notes

Rule 15001 provides generally for the service of motions under chapter 15. Because chapter 15 is normally invoked only when a foreign proceeding (or several foreign proceedings) is pending, there are international administrators, creditors and other parties in interest who should be notified of a motion under chapter 15 for such notice. Typically § 1505 will be invoked in a domestic bankruptcy case where the trustee or another entity seeks to take action abroad for the benefit of the domestic estate. In such cases, notice to domestic creditors typically will be sufficient, because any action abroad will have to meet the procedural requirements of the applicable country. However, if there is a related proceeding pending abroad, whether a main proceeding or a nonmain proceeding, Rule 15001 recognizes that the debtor, trustee and creditors in any such foreign proceeding are also entitled to receive appropriate notice of an application under § 1505. This rule specifies who should be given notice in chapter 15 cases and in other matters arising under chapter 15.

Rule 15002 recognizes that international and foreign sources may not be readily available to a United States court. In consequence, it requires a party citing international or foreign source in papers filed with the court to provide a copy of the material, and a translation into English. Sections 1508 and 1501 contemplate that cases under chapter 15 and other United States bankruptcy cases with foreign dimensions may require the consideration of foreign laws, including statutes and case law.

Rule 15003 provides a procedure for a trustee or other entity to be authorized to act in a foreign country under § 1505 on behalf of an estate created under § 541. Such an estate exists in a case commenced under chapter 7, chapter 9, chapter 11, chapter 12 or chapter 13. However, a petition filed under chapter 15 does not create such an estate.

Rule 15004 provides for a request for comity or cooperation under §1509(b)(3).

Such a motion may be made after a court grants recognition under § 1517 of a foreign main proceeding or a foreign non-main proceeding.

Rule 15005 provides for a foreign representative to advise a United States court that the foreign representative intends to commence a case under another chapter of the U.S. Bankruptcy Code. Section 1511(b) requires such notice to a court that has granted recognition to a foreign main or non-main proceeding before a foreign representative files such a domestic case in the United States.

Rule 15006 provides for an expanded period of time for filing a claim or interest, pursuant to § 1514(d). In addition, the rule provides that, absent a court order to the contrary, the notice be given in the same way that court notices are traditionally given in that country. Finally, the rule also requires that the notice be given in the local language of that country.

Rule 15007 provides a procedure for an application for recognition of a foreign case as a foreign main case or a foreign non-main case. This is one of the most important functions of chapter 15. It is very important to respect the due process rights of foreign administrators, foreign creditors and foreign debtors in making this application. At the same time, § 1517(c) requires that a court make a decision on such an application “at the earliest possible time.” Rule 15007 provides a procedure to make such a decision promptly while respecting the due process rights of foreign parties in interest.

Rule 15008 invokes the applicable domestic provisions in Rule 4001 for relief from stay, prohibiting or conditioning the use, sale, or lease of property, which § 1520(a) makes applicable after the recognition of a foreign main proceeding. This rule makes the applicable domestic rules available and applicable in such circumstances.

Rule 15009 provides generally that Rule 7001 and the rules in part VII apply to adversary proceedings under chapter 15. In addition to those proceedings listed in Rule 7001, it provides that the following proceedings unique to a chapter 15 case are governed by the part VII rules: A proceeding to obtain an injunction under § 1519; a request for relief under § 1521(a)(1)(2)(3) or (6); and a proceeding to recover money or property under § 549 or 552 by a foreign representative. Furthermore, § 1519(e) provides that the standards, procedures, and limitations applicable to an injunction shall apply to relief sought under § 1519. Pursuant to this provision, such relief must be sought by an adversary proceeding under Rule 7001.

Rule 15010 provides that any request for security or bond in connection with relief under § 1522(b) must be made by a motion pursuant to Rule 15001. Section 1522(b), which authorizes a court to entrust the distribution of some or all of the debtor’s assets located in the United States to the foreign representative or another person, provided that the court has satisfied the interest of creditors in the United States are sufficiently protected. Such protection is typically provided by an appropriate bond.

Rule 15011 provides generally for the intervention in a domestic U.S. case by a foreign representative, pursuant to § 1524. Such intervention may be sought in any federal or state court in the United States. Rule 15011 makes it clear that the foreign representative must comply with the local rules of any such court where the foreign representative seeks to intervene.

Rule 15012 provides the procedure for an application for cooperation and direct communication between a trustee or debtor in possession and foreign courts. Such authorization is to be sought by application. Compliance with the notice provisions of Rule 15001 is not required.

Rule 15013 recognizes that chapter 15 does not cover all of the procedures that may be required for the coordination of specific multinational cases. This rule recognizes that specific procedures may be as provided by the use of Protocol, under practice that has previously developed. This rule provides that approval for a Protocol shall be sought by motion in compliance with Rule 15001.

Rule 15014 recognizes that a party in interest, typically a debtor, may seek a ruling by a domestic court that a case filed under another chapter of the Bankruptcy Code qualifies as a main proceeding for international purposes under foreign countries' versions of the Model Law or other appropriate authority. A similar practice has developed in the European Union under EU Regulation 1346/2000. Debtors or trustees in the United States may seek a similar domestic order, in the hopes that it will be applied by foreign courts.

Rule 15015 provides generally for court-to-court communications pursuant to § 1525-1527. The International Insolvency Institute and the American Law Institute have developed guidelines applicable to court-to-court communications in cross-border cases. This rule incorporates those guidelines as United States procedure.

DRAFT PART 15 – ANCILLARY AND OTHER CROSS-BORDER CASES

Rule 15001. Chapter 15 Motions: Form and Service.

A motion under chapter 15 shall comply with Rule 9013. In addition, the motion shall be served on the 20 largest unsecured creditors located in the United States, the administrator appointed in any foreign proceeding with respect to the debtor or a member of the same corporate group as the debtor, the 20 largest unsecured creditors in each such foreign proceeding, all United States secured creditors, all secured creditors in foreign countries who are known to the movant, and the United States Trustee. Furthermore, every such motion other than one which may be considered *ex parte* shall be served by the moving party on the trustee, if the motion arises in a case filed under chapter 7, 9, 11, 12 or 13.

Rule 15002. Foreign Authorities.

Any paper filed with the court that cites a foreign or international authority in a case under title 11, shall attach a copy of the international foreign authority, with a translation into English.

Rule 15003. Authorization to Act in Foreign Country.

Authorization to act in a foreign country pursuant to § 1505 shall be made on motion of the trustee or other entity seeking such authorization. The motion shall be made in compliance with Rule 9013, and shall be served as provided in Rule 15001. An order pursuant to this provision may be granted after notice and a hearing.

Rule 15004. Motion for Comity or Cooperation.

A request for comity or cooperation under § 1509(b)(3) shall be made by motion pursuant to Rule 15001.

Rule 15005. Advice of Foreign Representative's Intent to Commence a Case Under § 1511.

Any foreign representative who intends to commence a case under § 1511(a) shall file a notice of intent to commence a domestic bankruptcy case with the court that has granted a petition for recognition under § 1515. Such a notice shall be served as provided

by Rule 15001.

Rule 15006. Filing Proof of Claim or Equity Security Interest by Foreign Creditor or Equity Security Holder in Chapter 9 Municipality or Chapter 11 Reorganization case.

(a) Applicability of rule

This rule applies in chapter 9 and 11 cases to foreign creditors and foreign equity security holders.

(b) The filing of a claim or statement of interest under Rule 3003 by a foreign creditor or security interest holder shall be made as provided by Rule 3003.

(c) Notice to a foreign creditor or security interest holder shall be given at least 90 days before the deadline for filing a claim or notice of interest, unless otherwise ordered by the court.

(d) Notice of a deadline to file a claim or security interest under Rule 3003 shall be given in the official language of the country to which the notice is directed. In addition, the notice shall be delivered by the same means that domestic notices and legal proceedings are delivered in that country, unless the court orders otherwise.

Rule 15007. Application for Recognition.

(a) A foreign representative's petition for recognition shall be filed with the court. In addition, it shall be set for hearing pursuant to Rule 15001 upon 15 days notice, or such notice as is provided by the local rules of the court.

(b) A petition for recognition shall be served pursuant to Rule 15001.

(c) If a petition for recognition requests the recognition of a foreign proceeding as a foreign main proceeding, the petition shall be accompanied by evidence of the location of the debtor's registered office, or the habitual residence in the case of an individual. All such documents shall be translated into English pursuant to § 1515(d).

(d) A party contending that a foreign proceeding is not a foreign main proceeding shall file evidence complying with Rule 7056 in support of the party's contention.

(e) A party seeking to rebut the presumption of § 1516(c), that the debtor's registered office or habitual residence is the center of the debtor's main interest, shall file evidence complying with Rule 7056 in opposition to such a determination. Should it appear

from the affidavits of such a party that the party cannot for reasons stated present evidence essential to justify the party's opposition, the court may order a continuance to permit evidence to be obtained or discovery to be had or may make such other order as is just. When a motion for recognition of a foreign main proceeding is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, supported by admissible evidence, must set forth specific facts showing that there is a genuine issue for trial.

(f) If the court finds that there is a genuine issue for trial on the recognition of a foreign main proceeding, the court shall conduct an evidentiary hearing at the earliest possible time, consistent with § 1517(c).

Rule 15008. Relief from Automatic Stay: Prohibiting or Conditioning Use, Sale, or Lease of Property; Use of Cash Collateral.

(a) A motion for relief from stay, prohibiting or conditioning the use, sale, or lease of property shall be made pursuant to Rule 4001(a). A motion for use of cash collateral shall be made pursuant to Rule 4001(b). A motion pursuant to this rule shall be served pursuant to Rule 15001.

(b) A motion for relief from the automatic stay of §§ 361 and 362, as provided by § 1520, shall be made pursuant to Rule 4001(a).

Rule 15009. Adversary Proceedings Under Rule 7001.

(a) Rule 7001 applies to adversary proceedings under chapter 15.

(b) In addition to those proceedings listed in Rule 7001, the following proceedings in a chapter 15 case are adversary proceedings governed by the rules of Part VII:

- (1) A proceeding to recover money or property under § 549 or 552;
- (2) A proceeding to obtain an injunction or other equitable relief under § 1519;
- (3) a request for relief under § 1521(a)(1), (2), (3) or (6);
- (4) An action initiated by a foreign representative pursuant to § 1523.

Rule 15010. Protection of Creditors and Other Interested Persons.

Any request for security or bond sought in connection with relief under § 1522(b) or

(c) shall be made by motion pursuant to Rule 15001.

Rule 15011. Intervention by a Foreign Representative.

Intervention in any proceedings in a state or federal court in the United States by a foreign representative shall be pursuant to the rules applicable to that court.

Rule 15012. Cooperation and Direct Communication Between the Trustee and Foreign Courts.

A trustee or other person, including an examiner, authorized by the court shall obtain authorization from the court to communicate directly with a foreign judge. Such authorization may be requested by application after notice and a hearing.

Rule 15013. Protocols.

A party seeking approval in the form of a protocol of an agreement concerning the coordination of proceedings shall seek such approval by motion pursuant to Rule 15001.

Rule 15014. Recognition of Domestic Case as a Main or Non-Main Proceeding.

(a) A party in interest may request that the court designate a case under chapter 7, 9, 11, 12 or 13 as a main proceeding or a non-main proceeding. Such a request shall be made by motion, and shall comply with the requirements of Rule 15001.

(b) A motion for designation of a case as a main proceeding pursuant to paragraph (a) shall be supported by evidence that the center of the debtor's main interests is located in the United States.

(c) A motion for designation of a case as a non-main proceeding pursuant to paragraph (a) shall be supported by evidence that the debtor has an establishment in the United States.

Rule 15015. Court-to-Court Communication.

(a) A court may communicate with a foreign court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other State.

(b) A court may communicate with an administrator in a foreign State or an authorized representative of the court in that State in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other State.

(c) A court may permit a duly authorized administrator to communicate with a foreign court directly, subject to the approval of the foreign court, or through an administrator in the other jurisdiction or through an authorized representative of the foreign court on such terms as the court considers appropriate.

(d) A court may receive communications from a foreign court or from an authorized representative of the foreign court or from a foreign administrator. The court may respond directly if the communication is from a foreign court (subject to paragraph (f) of this rule) in the case of two-way communications and may respond directly or through an authorized representative of the court or through a duly authorized administrator if the communication is from a foreign administrator.

(e) Communications from a court to a foreign court may take place by or through:

- (1) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the foreign court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate;
- (2) Directing counsel, a foreign administrator or a trustee to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the court to the foreign court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate;
- (3) Participating in two-way communications with the foreign court by telephone or video conference call or other electronic means, subject to paragraph (f).

(f) In the event of communications between the courts in accordance with paragraphs (a) and (d) by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two courts:

- (1) Counsel for all affected parties may participate in person during the communication. Advance notice of the communication shall be given to all parties in accordance with the rules of procedure applicable in each court;
- (2) The communication between the courts shall be on the record;
- (3) The courts and judges in each court may communicate fully with each other to establish appropriate arrangements for the communication without the

necessity for participation by counsel unless otherwise ordered by either of the courts.

(g) In the event of communications between the court and an authorized representative of the foreign court or a foreign administrator in accordance with paragraphs (b) and (d) by means of telephone or video conference call or other electronic means, unless otherwise directed by the court:

- (1) Counsel for all affected parties may participate in person during the communication. Advance notice of the communication shall be given to all parties in accordance with the rules of procedure applicable in each court;
- (2) The communication shall be on the record;
- (3) Judges in each court may communicate fully with the authorized representative of the foreign court or the foreign administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the court.

(h) A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following applies, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (1) Each court shall be able to simultaneously hear the proceedings in the other court;
- (2) Evidentiary or written materials filed or to be filed in one court shall be transmitted to the other court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other court or its public availability in an electronic system shall not be subject the party filing the material in one court to the jurisdiction of the other court;
- (3) Submissions or applications by the representative of any party should be made only to the court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other court to make submissions to it;
- (4) Subject to paragraph (f)(2), the court may communicate with the foreign court in advance of a joint hearing, with or without counsel being present, to establish guidelines for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing;
- (5) Subject to paragraph (f)(2), the court, subsequent to the joint hearing, may

communicate with the foreign court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

(l) The court may, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the foreign jurisdiction without the need for further proof or exemplification thereof.

(j) The court may, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders.

(k) The court may coordinate proceedings before it with proceedings in another State by establishing a service list that may include parties that are entitled to receive notice of proceedings before the court in the other State ("non-resident parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to also be provided to or served on the non-resident parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court.

(l) The foreign administrator or a representative of creditors in the proceedings in the other State or an authorized representative of the court in the other State may appear and be heard by the court without thereby becoming subject to the jurisdiction of the court.

(m) The court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the court, not apply to applications or motions brought by such parties before the other court or that relief be granted to permit such parties to bring such applications or motions before the other court on such terms and conditions as it considers appropriate. Court-to-court communications in accordance with paragraphs (e) and (f) hereof may take place if an application or motion brought before the court affects or might affect issues or proceedings in the court in the other State.

(n) A court may communicate with a foreign court or with an authorized representative of such court in the manner prescribed by this rule for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the foreign court wherever there is commonality among the issues and/or the parties in the proceedings.

(o) Directions issued by the court under this rule are subject to such amendments, modifications, and extensions as may be appropriate for the purposes described in this rule and to reflect the changes and developments from time to time in the proceedings before it and before the foreign court. Any directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both courts. If either court intends to supplement, change, or abrogate directions issued under this rule in the absence of joint approval by both courts, the court shall give the foreign courts involved reasonable notice of its intention to do so.

(p) Arrangements contemplated under this rule do not constitute a compromise or waiver by the court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the court or before the foreign court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the orders made by the court or the foreign court.