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Allan G. Sweig

Gerald F. Munitz

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BANKRUPTCY RULES PRACTICE AND PROCEDURE IN CHAPTER XI

ALLAN G. SWEIG* AND GERALD F. MUNITZ**

PRACTICE AND PROCEDURE in cases filed under Chapter XI of the Bankruptcy Act¹ was materially changed on July 1, 1974, when the new Chapter XI Rules and Official Chapter XI Forms became effective.² The rules supersede any inconsistent provisions of the Act

* Member of the firm of Nachman, Munitz & Sweig, Ltd.; member of the Illinois Bar; J.D., Northwestern University.

** Member of the firm of Nachman, Munitz & Sweig, Ltd.; member of the Illinois Bar; J.D., University of Chicago.

1. 11 U.S.C. § 1 *et seq.* (1970). The sections of the United States Code pertaining to Chapter XI are sections 301-399 of the Act. 11 U.S.C. §§ 701-799 (1970).

2. The Chapter XI Rules and Forms were enacted pursuant to 28 U.S.C. § 2075 and were promulgated by order of the Supreme Court of the United States dated March 18, 1974. The Chapter XI Rules and Forms apply to pending cases except to the extent that their application would not be feasible or would work injustice. No Chapter XI Rule may abridge, enlarge or modify any substantive right or extend or limit the subject matter jurisdiction of the Chapter XI court. 28 U.S.C. § 2075 (1970); *United States v. Sherwood*, 312 U.S. 584 (1944).

The Chapter XI Rules contain only those which would be distinctive to a Chapter XI case and adopt by reference the Bankruptcy Rules which are not inconsistent and do not conflict with the Chapter XI Rules. The bankruptcy rules governing the practice and procedure in cases filed under Chapters I-VII of the Act ("straight" bankruptcy cases) became effective October 1, 1973 pursuant to order of the Supreme Court of the United States, dated April 24, 1973.

The bankruptcy rules are divided into nine parts and follow the sequence of the administration of a case, for example, Part I deals with the initiation of a case and Part VIII the procedure for appealing an adverse order. Part IX contains general provisions.

The purpose of the rules, as stated in bankruptcy rule 903, is "to secure the expeditious and economical administration of every bankrupt estate and the just, speedy and inexpensive determination of every proceeding in bankruptcy". This goal is achieved by:

- a. Facilitating the administration of no-asset cases.
- b. The application of the Federal Rules of Civil Procedure to adversary proceedings and, where advisable, to contested matters, thereby establishing a uniform practice for the administration of all bankruptcy estates.
- c. The authorization for nationwide service of process and the abolition of ancillary receiverships.
- d. The protection of the estate and the bankrupt by the entry of automatic stays of in personam and in rem actions upon the filing of a petition.

Ablly prepared articles analyzing the rules and their effect upon bankruptcy practice are Treister, *A Practicing Lawyer's Primer on The Proposed New Bankruptcy Rules*, 45 AM. BANKR. L.J. 343 (1971); Herzog, *The Impact of the Proposed Bankruptcy Rules on the Court*, 45 AM. BANKR. L.J. 363 (1971) and Kennedy, *The New Bankruptcy Rules*, THE PRACTICAL LAWYER, Vol. 20 No. 4 (April, 1974). George Treister, Esq. and Bankruptcy Judge Herzog were members of the Advisory Committee on Bankruptcy Rules and Professor Kennedy, its principal reporter.

or General Orders in Bankruptcy. Since many of the sections of Chapter XI dealt with procedural matters, many of the provisions of Chapter XI have been superseded by the adoption of the Chapter XI Rules.

NATURE OF CHAPTER XI

Chapter XI is intended to permit the financial rehabilitation of the worthy debtor, whether individual, partnership or corporation, through the extension or composition, or both, of the debtor's unsecured debts.³ It provides a particularly effective form of relief for the debtor engaged in business because: (a) the debtor may be retained in possession of his assets and authorized to continue to operate his business in the usual and regular course during the administration of the case;⁴ (b) the enforcement of liens, whether contractual or statutory, may be stayed;⁵ (c) burdensome, unprofitable executory contracts may be rejected with the liabilities therefrom becoming general unsecured claims affected by the plan;⁶ and, (d) the debtor may be authorized to issue certificates of indebtedness to borrow funds or obtain property for operating purposes. The certificates can grant the holder priority over the holders of existing obligations, thereby enabling the debtor to borrow funds which were unavailable prior to filing the Chapter XI case.⁷

VENUE

The venue and transfer provisions of bankruptcy rule 116 are incorporated into Chapter XI by rule 11-13. Proper venue for a natural person is the district where he has had his principal business, residence or domicile for a longer portion of the preceding six months than in any other district.⁸ Venue for a corporation is in the district where its principal place of business or its principal assets have been located for the longer portion of the preceding six months than in any other district or, if there is no such district, then in any district where the debtor

3. 11 U.S.C. § 706(1) (1970).

4. 11 U.S.C. § 742 (1970).

5. 11 U.S.C. § 714 (1970); rule 11-44.

6. 11 U.S.C. §§ 713(1), 353 (1970); rule 11-53. In the case of the rejection of long-term leases, the debtor's liability as lessee is limited to an amount not exceeding three years rent, without acceleration, plus unpaid accrued rent. 11 U.S.C. § 353 (1970).

7. 11 U.S.C. § 744 (1970). The priority of the certificate may extend to other Chapter XI administrative expenses but must be subordinate to administrative expenses of a superseding bankruptcy case. *White Chemical Company v. Moradian*, 417 F.2d 1015 (9th Cir. 1969).

8. Bankruptcy rule 116(a)(1).

has property.⁹ The corporate venue rule is particularly important to Chapter XI cases in that it now provides for proper venue where the corporate debtor's principal assets are found rather than only in its state of incorporation or in the district where its corporate headquarters is located. The bankruptcy court, even though venue is proper, may, in the interests of justice and for the convenience of the parties, transfer any case to another district.¹⁰

A significant beneficial change in practice was effected by bankruptcy rule 901(3) and rule 11-13(a)(3)¹¹ which now authorize an "affiliate" of the debtor¹¹ to file a Chapter XI case in the district in which a Chapter XI case is pending involving the affiliated entity. This may now be done even though venue over the later filing "affiliate" would have been improper. The rules thereby facilitate and expedite the administration of complex bankruptcy cases involving corporate conglomerates and other related business entities and avoid the potentially disruptive effects which could result from having two or more bankruptcy courts administering different aspects of related cases.

Bankruptcy rule 116(b) (2), applicable to Chapter XI, authorizes the bankruptcy court to transfer a Chapter XI case filed in the wrong district to the bankruptcy court where venue is proper. Rule 116(b) (2) thereby eliminates the confusion which previously existed by reason of the statutory reference to the jurisdiction of the bankruptcy court and clarifies the rule that venue is not a jurisdictional requirement which would demand dismissal of the case for improper venue. A bankruptcy case or a case under Chapter XII or XIII can be converted into a Chapter XI case only in the court in which such prior case is pending.

FILING THE CHAPTER XI CASE

A Chapter XI case is a voluntary proceeding only and can be filed by any person, natural or corporate, except a municipal, railroad, insurance or banking corporation or a building and loan association.¹² The petition can be filed as an original petition¹³ or in a pending bankruptcy case or Chapter XII or XIII case either before or after adjudication.¹⁴

9. Bankruptcy rule 116(a)(2).

10. Bankruptcy rule 116(b)(1).

11. The term "affiliate" is defined in bankruptcy rule 901(3) and includes subsidiary and parent corporations and a variety of persons having connections with the debtor.

12. 11 U.S.C. §§ 22a, 706(3) (1970).

13. 11 U.S.C. § 722 (1970), rule 11-6, form 11-F1.

14. 11 U.S.C. § 721 (1970), rule 11-7, form 11-F2.

No change in these provisions was effected by the rules. The jurisdiction, power and duties of the court and its officers are identical whether the petition is filed under rule 11-6 or 11-7.¹⁵

SCHEDULES AND RELATED DOCUMENTS

The petition may be accompanied by the debtor's schedules, statement of affairs and statement of executory contracts and the plan and may be filed only if accompanied by a list of the names and addresses of all of the debtor's creditors.¹⁶ By granting the debtor the absolute right to file a petition without schedules and related documents, rule 11-11 recognizes that Chapter XI cases are frequently filed under emergency, crisis conditions demanding immediate relief and, therefore, eliminates the delays which may be encountered in obtaining prior leave of court.¹⁷

If the schedules and related documents are not filed with the petition, they may be filed fifteen days thereafter. The court, upon application, may grant an additional 30 day extension for the filing of these documents. Any further extension can be granted only for cause shown upon such notice as the court may direct.¹⁸ The rules also now require for the first time that a Chapter XI debtor must file supplemental schedules which disclose any property interests vesting in the debtor after the filing of the case, but before confirmation of the plan.¹⁹

REFERENCE OF THE CASE

Upon the filing of an original petition under Chapter XI, the Clerk of the Court refers the case to a bankruptcy judge²⁰ or, if a local rule so provides, to more than one bankruptcy judge concurrently.²¹

15. 11 U.S.C. § 741 (1970).

16. Rule 11-11(b).

17. Under prior practice, the lack of standards for determining whether an emergency existed warranting the granting of permission to file the Chapter XI case without schedules could produce inconsistent results prejudicial to the debtor in need of immediate relief.

18. Rule 11-11(b). The forms for schedules and statement of affairs are those prescribed for straight bankruptcy cases, that is, form No. 6 and either forms Nos. 7 or 8 depending on whether or not the debtor is engaged in business. The new forms are more complete and more easily understood than the prior forms.

19. Rule 11-11(d), bankruptcy rule 108(e).

20. 11 U.S.C. § 731 (1970). A Chapter XI case converted under rule 11-7 from a straight bankruptcy case would have been assigned to a bankruptcy judge upon the filing of the voluntary or involuntary petition commencing the preceding bankruptcy case.

21. Rule 11-5, bankruptcy rule 102. Since many Chapter XI cases involve complicated factual situations, it appears to the authors that the use of concurrent references

Virtually all proceedings, with specified exceptions,²² are thereafter conducted before the bankruptcy judge. The rules eliminate the practice which prevailed in some districts of assigning the Chapter XI case to a district judge who then might refer the case to a bankruptcy judge and who thereafter would hear all appeals from orders entered by the bankruptcy judge.²³ The bankruptcy judge is therefore granted greater independence in performing his duties. Where appropriate for the convenience of the parties or for other cause, the case may be reassigned, in whole or in part, to another bankruptcy judge or it may be assigned to a district judge.²⁴ Thus, the district court retains the right and power to supervise the administration of Chapter XI cases.

AUTOMATIC STAY

The filing of the petition initiating the Chapter XI case now automatically stays the commencement or the continuation of any action against the debtor, the enforcement of a judgement against him or of any act or the commencement of any proceeding to enforce any lien against the property of the debtor.²⁵

Under section 314 of the Act, the debtor had the burden of seeking the stay and, in connection with the stay of an act or proceeding to enforce a lien, was required to give notice to the lien creditor and to show cause for the need of the stay. The procedural requirement under section 314 of prior notice to secured creditors could result in the disruption of the debtor's operation when, immediately upon the filing of the case and prior to the entry of a stay order, secured creditors repossessed property or placed tenants or account debtors on notice of assignments of rents or accounts. Rule 11-44 eliminates this danger and thereby enhances the opportunities for the debtor's rehabilitation.²⁶

would deprive the parties and the court of the useful knowledge about the case that a single bankruptcy judge acquires through his supervision of the entire case.

22. See 11 U.S.C. §§ 11a(15) and 71c (1970); bankruptcy rules 102(b), 115(b), and 920.

23. The judges of the Northern District of Illinois adopted this practice in 1966.

24. In the Northern District of Illinois, a party seeking reassignment of the Chapter XI case should address his application to the Chief Judge of the Court in his capacity as head of the Executive Committee. No. D. Ill. R. 1A1. The executive committee of judges may also reassign any Chapter XI case on its own initiative. Rule 11-5; bankruptcy rule 102(b), No. D. Ill. General R. 1A1.

25. Rule 11-44. The automatic stay under rule 11-44 applies also to actions on nondischargeable debts which actions would not be automatically stayed by bankruptcy rule 401. The automatic stay under rule 11-44 would not, however, stay the administration of an earlier filed Chapter X case. Rule 11-44(a).

26. Under prior practice, to avoid the consequences of such unilateral action by

Any party may file a complaint for the modification of the automatic stay to permit the commencement or continuance of actions against the debtor or his property. Although the movant has the burden of going forward with the evidence at the hearing on such a complaint, the debtor continues to bear the burden of proof, i.e., the risk of persuasion, of establishing good cause for the continuance of the stay.²⁷ Ex parte relief from the automatic stay is also available upon a clear and convincing showing of immediate and irreparable injury.²⁸

Under rule 11-44, a debtor converting a pending bankruptcy case into a Chapter XI case now obtains an automatic stay of the administration of the bankruptcy case including the stay of any scheduled sale of the bankrupt's property. The debtor is thereby given an opportunity to use that property in seeking his rehabilitation under Chapter XI. This stay, however, can be modified, terminated or conditioned for cause shown.²⁹

APPOINTMENT OF RECEIVER; CONTINUANCE OF
TRUSTEE OR DEBTOR IN POSSESSION;
OPERATION OF DEBTOR'S BUSINESS

As under prior practice, the Chapter XI rules provide that the debtor shall be continued in possession of his property unless a trustee had qualified in a prior bankruptcy case.³⁰ The retention of the debtor in possession of his property, however, is not an authorization for the debtor to continue the operation of his business. The court may authorize the debtor in possession to continue the operation of the debtor's business³¹ and, where such operation is authorized, the debtor in possession must file monthly reports reflecting the results of such operation and the payment of applicable withholding and social security taxes.³²

secured creditors, debtors invoked the general jurisdiction of the court under section 2a(15) of the Act to obtain temporary restraining orders without prior notice to the parties involved. See *In re Haines Lumber & Millwork Co.*, 144 F. Supp. 108 (E.D. Pa. 1956); 8 COLLIER ON BANKRUPTCY, ¶ 3.22[2] at 272 (Rev. ed. 1974).

27. 11 U.S.C. § 714 (1970), rule 11-44(d).

28. Rule 11-44(e).

29. Rule 11-7.

30. 11 U.S.C. § 742 (1970), rule 11-18.

31. Rule 11-23.

32. Rule 11-30. The local rules adopted in the Northern District of Illinois govern many aspects of the debtor's operation: (a) A named individual must be designated as the person responsible for the operations of the corporate debtor (rule XI-3); (b) No compensation shall be paid to the debtor or the partners or officers of the debtor, unless an order has been entered approving such compensation (rule XI-4); (c) Weekly reports of cash receipts and disbursements must be filed with proof of the payment of federal

Any party in interest may, for cause, move for the appointment of a receiver.³³ Generally, such motions are made when interested parties are not satisfied with the debtor's business ability or integrity. Any person eligible to serve as a trustee under rule 209(d) may act as a receiver in a Chapter XI case.

An attorney or an accountant for a trustee, receiver or debtor in possession (as distinguished from the debtor) can be paid only if employed pursuant to an order of the court.³⁴ The rules now prohibit the sharing of compensation with a forwarding attorney, although previously authorized by the Act.³⁵

HEARING ON INDEMNITY

The court may require the debtor to post a bond to protect the debtor's estate against loss or diminution resulting from a stay of administration of the bankrupt estate³⁶ or from the continued operation of the business of the debtor.³⁷ The failure to post such an indemnity bond will result in the dismissal of the case or the adjudication of the debtor as a bankrupt.³⁸

Experience has established that it is virtually impossible for a debtor to post an indemnity bond should it be required. The rules retain the indemnity bond requirement in order to permit the court and the creditors promptly to terminate a Chapter XI case of dubious merit.

ADMINISTRATION OF ESTATE

The administration of a Chapter XI case requires that court approval be obtained for any transaction not in the usual and ordinary course of the debtor's business and that the court hear and determine

withholding and social security taxes (rule XI-6(1) and (3)); (d) Monthly profit and loss statements must be filed together with detailed opening and closing inventories and the amount of unpaid liabilities of the debtor in possession (rule XI-6(2)); and (e) The debtor in possession must maintain its bank deposits in duly authorized depositories (11 U.S.C. § 101 (1970), bankruptcy rule 512(a) and No. D. Ill. Bankruptcy R. 11D).

33. Rule 11-18. The practice in certain districts of automatically appointing a receiver in Chapter XI cases is clearly contrary to the Chapter XI Rules.

34. Rule 11-22, bankruptcy 215(a). An attorney or accountant engaged as a salaried employee by the person operating the debtor's business is not subject to bankruptcy rule 215(a). Bankruptcy rule 215(d).

35. 11 U.S.C. § 102C (1970), bankruptcy rule 219(d).

36. 11 U.S.C. § 725 (1970), rule 11-20(d).

37. 11U.S.C. § 726 (1970), rule 11-20(d).

38. 11 U.S.C. § 727 (1970). Bankruptcy rule XI-5(a) of the Northern District of Illinois provides that a hearing on indemnity shall be held as soon as possible after filing of the case, upon five days written notice to the ten largest creditors of the debtor.

any objections to the allowance of claims.³⁹ With the exception of adversary proceedings discussed below, such relief may be sought as in general civil litigation, that is, by giving notice personally or by mail of the presentation of an application or objection to all parties entitled thereto. Care must be taken to comply with the requirements of due process.

ADVERSARY PROCEEDINGS IN CHAPTER XI CASES

The bankruptcy rules governing the conduct of adversary proceedings apply to Chapter XI.⁴⁰ The seven categories of adversary proceedings in a Chapter XI case are: (1) actions to recover money or property (other than excessive compensation paid to the debtor's attorney and the surcharge of pre-bankruptcy receiver or assignee); (2) adjudication of the validity, priority or extent of liens; (3) sale of property free of liens; (4) requests for injunctions; (5) requests for relief from the automatic stays provided by Rule 11-44; (6) objections to the dischargeability of debts; and (7) objections to confirmation of a plan based upon the debtor's commission of an act or his failure to perform any duty which would bar the discharge of a bankrupt.⁴¹

An adversary proceeding is commenced by the filing of a complaint containing a short statement showing that the plaintiff is entitled to relief and a demand for judgment.⁴² To expedite the disposition of an adversary proceeding, a trial date is set in advance of service of process.⁴³

Unlike practice under the Federal Rules of Civil Procedure service of the complaint can be made anywhere in the United States personally or by any form of mail requiring a signed receipt.⁴⁴ Service

39. Bankruptcy rule 306(c).

40. Rule 11-61(a). The adversary rules contained in Part VII of the Bankruptcy Rules are numbered from 701 to 782, but not consecutively. The numbers correspond to those of the Federal Rules of Civil Procedure. The rules contained in Part VII are either an adaptation of the Federal Rules of Civil Procedure (compare bankruptcy rule 703 with FED. R. CIV. PRO. 3) or state that a particular Federal Rule of Civil Procedure is applicable to an adversary proceeding, e.g., bankruptcy rule 709. Where a Federal Rule of Civil Procedure is not applicable, there is no adversary rule; for example, FED. R. CIV. PRO. 2 being inapplicable, there is no bankruptcy rule 702. Certain of the Federal Rules of Civil Procedure, however, are found in Part IX of the bankruptcy rules. An example is the computation of time provisions of FED. R. CIV. PRO. 6 which is found in bankruptcy rule 906.

41. Rule 11-61(a).

42. Bankruptcy rule 703, bankruptcy rule 708.

43. Bankruptcy rule 704(a).

44. Bankruptcy rule 704(b)(c) and (f). The Chapter XI court has jurisdiction

by mail is complete upon mailing.⁴⁵ Personal service or service by mail must be made within three days after issuance of the summons.⁴⁶ If service is not effected within three days after the issuance of the summons, a new summons must be obtained and a new trial date set.⁴⁷ Service by mail does not extend or affect the time for filing a responsive motion or answer or the date fixed for trial.

The rules contain a significant departure from the Federal Rules of Civil Procedure in that a person sued by a receiver, trustee or debtor in possession is not required to assert even a compulsory counterclaim which he may have against the bankrupt, his property or the estate.⁴⁸ A receiver, trustee or debtor in possession failing to assert a counterclaim through oversight, inadvertance or excusable neglect, or when justice requires, may do so by amendment or by commencing a new adversary proceeding or a plenary suit.⁴⁹

The territorial limits on the service of a subpoena imposed by rule 45 of the Federal Rules of Civil Procedure are incorporated in rule 704(f) (3) and rule 916.

OBJECTIONS TO SUMMARY JURISDICTION

The failure to object to the summary jurisdiction of the bankruptcy court by a timely motion or answer constitutes a waiver of the objection.⁵⁰ Where the objection is sustained, the bankruptcy court is now authorized to transfer the hearing on the adversary proceeding or contested matter to the civil docket of the district court or to dismiss the matter.⁵¹

CREDITORS AND CLAIMS

No specific time period is set for the filing of claims in Chapter XI cases. Claims must be filed prior to confirmation except that if a claim is scheduled by the debtor, the creditor may file a claim within 30 days after the date of the mailing of notice of confirmation but, in such circumstance, the claim may not be allowed for an amount

over all persons claiming any interest in the property in the actual or constructive possession of the court. 11 U.S.C. § 311 (1970).

45. Bankruptcy rules 704(e) and 906(e).

46. Bankruptcy rule 704(e).

47. Bankruptcy rule 704(c).

48. Bankruptcy rule 713.

49. Bankruptcy rule 713.

50. 11 U.S.C. § 11a(7) (1970), bankruptcy rule 915(a).

51. Bankruptcy rule 915(b).

in excess of that scheduled by the debtor.⁵² Claims arising out of the rejection of an executory contract and certain tax claims of the United States, a state or its subdivisions, may be filed within such time as the court directs.⁵³

The Plan

The Chapter XI plan is the debtor's written proposal for the settlement, satisfaction and discharge of his unsecured debts through the extension for time of their payment, the reduction in their amount, or both.⁵⁴ If a plan has not been filed with the petition or prior to the first meeting of creditors, the court, at the first meeting or at a time thereafter, shall fix a date for filing the plan.⁵⁵

If the plan is to become effective and bind all unsecured creditors, it must be accepted by at least a simple majority in number and dollar amount of the affected creditors⁵⁶ who have filed claims with the court prior to the conclusion of the first meeting of creditors.⁵⁷ The acceptance must be made in a signed writing which identifies the plan⁵⁸ and can be obtained either before or after the filing of the petition.⁵⁹

The solicitation of proxies and voting of claims is governed by severe detailed restrictions and disclosure requirements.⁶⁰ The purpose of these rules is to assure creditor participation and control in Chapter XI cases and to prevent control from being usurped by professionals interested in collecting fees rather than representing the interests of the creditors.

Statutory Creditors' Committee

The statutory creditors' committee represents and protects the in-

52. Rule 11-33(b)(2). The form, manner and place of filing of proofs of claim set forth in bankruptcy rules 301 and 302 are incorporated into Chapter XI by rule 11-33(a) and (b). See also form No. 15.

53. Rule 11-33(b)(3).

54. Unsecured debts having a priority status under 11 U.S.C. § 104 (1970), may not be affected by the plan unless the priority creditor has waived its claim or has consented thereto. 11 U.S.C. § 737(2) (1970), rule 11-38.

55. Rule 11-36(b).

56. Any creditor who is to be bound by the plan to extend the time for payment of his debt or to accept less than full payment of his debt is deemed "affected" by the plan. 11 U.S.C. § 708 (1970).

57. 11 U.S.C. § 762(1) (1970), rule 11-37(a).

58. Rule 11-37(b).

59. Rule 11-37(a). It is customary in out of court settlement agreements to provide that if a similar plan is proposed in a subsequently filed Chapter XI case, an acceptance of the out of court proposal constitutes an acceptance of the Chapter XI plan.

60. Rule 11-28, bankruptcy rule 208. For a detailed discussion of the restrictions and disclosure requirements, see the articles cited note 2, *supra*.

terests of the entire body of unsecured creditors. It is charged with the responsibility of investigating into the acts, conduct and property of the debtor, reviewing and investigating all acts during the administration of the Chapter XI case, negotiating the plan and soliciting and filing acceptances to an approved plan.⁶¹ If a statutory creditors' committee was not elected in a preceding bankruptcy case, a committee consisting of not less than three nor more than eleven members may be elected by the creditors at the first meeting of creditors or at a special meeting called for that purpose.⁶²

The Chapter XI rules abrogate section 339(a) of the Act which made confirmation of the plan a condition precedent to the allowance of compensation to the committee's agents, e.g., its attorney and secretary. Such services may now be compensated even without confirmation to the extent deemed reasonable and necessary by the court.⁶³ Elected members of the committee may also now be reimbursed for their actual expenses incurred after the filing of the Chapter XI case whether or not the plan is confirmed.⁶⁴ This salutary rule enlarging the opportunity for compensation and reimbursement of expenses to the members of the statutory creditors' committee and its agents should encourage greater participation in the Chapter XI case by creditors and greater objectivity on the part of the committee agents and employees, who may now expect compensation even if they recommend rejection of the plan.

OBJECTIONS TO CONFIRMATION OF A PLAN

The substantive law regarding objections to confirmation of a plan is contained in section 366 of the Act. The Chapter XI rules do not change the grounds upon which objections can be made but do alter the procedure for filing an objection to the confirmation of a plan.

The court must give at least ten days notice by mail to each creditor of the time for filing objections to confirmation of a plan.⁶⁵ A creditor who is listed in the debtor's schedules or who has filed a claim bears the risk of non-delivery of the notice.⁶⁶ Objecting creditors must

61. 11 U.S.C. § 739 (1970), rule 11-29.

62. Rule 11-27(a). A creditors' committee elected in a preceding straight bankruptcy case, as well as a trustee elected in such a case, would continue to act in the superseding Chapter XI case. Rule 11-27(a).

63. Rule 11-29(c).

64. Rule 11-29(c).

65. Rule 11-24(a)(4).

66. *In re Clark*, 257 F. Supp. 761 (E.D. Va. 1966); *In re Knepper*, 12 F. Supp. 989 (N.D. N.Y. 1935), 3 COLLIER ON BANKRUPTCY, ¶ 58.05[5] at 493-494 (Rev. ed. 1974).

file their written objections to confirmation and serve copies thereof upon the debtor and the statutory creditors' committee, if any, prior to confirmation or by such earlier date as the court may have fixed.⁶⁷

An objection to confirmation on the ground that the debtor committed an act, or failed to perform a duty, which would bar the discharge of a bankrupt commences an adversary proceeding.⁶⁸ Any other objection to confirmation constitutes a "contested matter" to which the court may direct that additional Adversary Proceeding Rules shall apply.⁶⁹

The hearing on confirmation may be held at any time after the conclusion of the first meeting of creditors. If no objection to confirmation is timely filed, the court, without taking evidence, may find: (a) that the debtor has not committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt; and, (b) that the plan has been proposed and its acceptance procured in good faith and not by any means, promises or acts forbidden by law.⁷⁰ Even if there is no objection to confirmation, proof must be adduced that the plan is in the best interests of creditors and is feasible.⁷¹ The Chapter XI rules do not change the practice in conducting the hearing on confirmation.

NONDISCHARGEABLE DEBTS

The Chapter XI court is vested with exclusive jurisdiction to determine the dischargeability of debts within sections 17a(2), (4) and (8) of the Act and concurrent jurisdiction to determine the dischargeability of other debts.⁷²

The Bankruptcy Rules governing the procedure for the determination of the dischargeability of a debt are applicable to Chapter XI.⁷³ The court may, but is not required to, fix a time for filing "mandatory

67. Rule 11-38(c).

68. Rule 11-61(a)(6).

69. Bankruptcy rule 914.

70. Rule 11-38(d).

71. *United Properties, Inc. v. Emporium Department Stores, Inc.*, 379 F.2d 55 (8th Cir. 1967).

72. Rules 11-48 and 11-61. No application to determine dischargeability need be filed for liabilities alleged to result from the debtor's willful and malicious conduct if a right to trial by jury exists in a pending civil action and a timely jury demand has been made or if any party to such action submits a signed statement to the bankruptcy court of an intention to make such jury demand. 11 U.S.C. § 35c(2) (1970). See Countryman, *The New Dischargeability Law*, 45 AM. BANKR. L.J. at 54.

73. Rule 11-48, bankruptcy rule 409.

complaints" under section 17c(2) of the Act.⁷⁴ At least 30 days notice of the time so fixed must be given to all creditors.⁷⁵ The time for filing a "mandatory complaint" may be extended for cause either on the court's own initiative or upon application made by a party in interest.⁷⁶ If an order is not made, a "mandatory complaint" may be filed at any time.⁷⁷ An "optional complaint", a debt over which the Chapter XI court exercises concurrent jurisdiction to determine its dischargeability, may also be filed at any time.⁷⁸ A Chapter XI case can be reopened without the payment of a fee for the filing of either a "mandatory" or "optional" complaint.⁷⁹

If an order is made fixing the time for filing "mandatory complaints", the failure to file such a complaint, with the jury trial exception, results in the discharge of such debt,⁸⁰ even if an action on the same debt and transaction is pending in another court.⁸¹

The filing of a complaint to declare any debt nondischargeable commences an adversary proceeding.⁸² If a claim has not been reduced to judgment prior to the filing of the complaint, the creditor must include a demand for judgment on the debt in his complaint.⁸³

There is no right to a jury trial on the issue of the dischargeability of a debt.⁸⁴ However, if the debt is determined to be nondischargeable, the parties are entitled to a jury trial for the determination of the amount of the indebtedness.⁸⁵ The jury demand must specify the issues to be presented to the jury and must be filed with the complaint or not later than ten days after the service of the last pleading directed to such issue.⁸⁶

APPEALS

The procedure for appealing a judgment⁸⁷ of the bankruptcy

74. Rule 11-48.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. 11 U.S.C. § 35c(6) (1970).

80. 11 U.S.C. §§ 35(2), 371 (1970).

81. 11 U.S.C. § 35c(4) (1970).

82. Rule 11-61(a).

83. 11 U.S.C. § 35c(3) (1970), bankruptcy rule 409(b), rule 11-48.

84. *In re Swope*, 466 F.2d 936 (7th Cir. 1972), *cert. denied*, 409 U.S. 1114 (1973).

85. *Id.*

86. Bankruptcy rule 409(c).

87. A judgment includes any order appealable to the district court. Bankruptcy rule 902(5).

judge (but not a district judge sitting in lieu of the bankruptcy judge) is set forth in Part VIII of the Bankruptcy Rules which are applicable to Chapter XI.⁸⁸ The Part VIII rules effect a substantial change in prior procedure and substantially adopt the provisions of the Federal Rules of Appellate Procedure.

The bankruptcy judge must give notice of the entry of a judgment upon any person opposing such judgment.⁸⁹ The failure to give such notice, however, does not affect the time for appeal.⁹⁰ The appellant must file his notice of appeal with the bankruptcy judge within 10 days after the entry of the judgment.⁹¹ The time for filing an appeal may be extended for an additional 20 days (the maximum appeal time is 30 days after the entry of the judgment) if the extension is requested within ten days after the entry of the judgment.⁹² Except where the judgment (i) authorizes the sale of real estate (ii) confirms a plan, (iii) dismisses the Chapter XI case or (iv) converts the Chapter XI into a bankruptcy case, the bankruptcy judge, upon a showing of excusable neglect, may grant an extension of time for filing a notice of appeal after the lapse of the initial ten day period, provided that such extension cannot be to a date more than 30 days after the entry of the judgment.⁹³

The "clearly erroneous" rule is the standard against which the bankruptcy judge's findings of fact are to be measured on appeal.⁹⁴ Under the Bankruptcy Rules, the district judge is now precluded from taking additional evidence, whereas he previously had that right under superseded General Order 47.⁹⁵ The rules governing the compilation and composition of the record on appeal, the time for filing briefs and the taxation of costs conform to the Federal Rules of Appellate Procedure.⁹⁶

CONVERSION TO CHAPTER X—AN IMPORTANT CHANGE FOR THE PUBLICLY OWNED DEBTOR

An increasing number of publicly held corporations have sought

88. Rule 11-62.

89. Bankruptcy rule 922(a).

90. *Id.*

91. Bankruptcy rule 802(a).

92. Rule 11-62.

93. *Id.*

94. Bankruptcy rules 810, and 752(a).

95. Bankruptcy rule 810.

96. Those rules are contained in bankruptcy rules 806, 808 and 811.

relief under Chapter XI in order to avoid reorganization under Chapter X of the Act and the accompanying "absolute priority" rule requiring the elimination of stockholder interests if the debtor is insolvent.⁹⁷ Under prior practice, upon motion of the Securities and Exchange Commission (SEC) or any party in interest, the district judge was required to conduct a hearing to determine whether the case should have been brought under Chapter X.⁹⁸ If the judge found that the case properly belonged in Chapter X, he entered an order dismissing the Chapter XI case unless a petition complying with provisions of Chapter X was filed.⁹⁹ No time limit existed for the filing of such a motion.¹⁰⁰ Occasionally, the SEC filed such a motion after the plan had been accepted by creditors. Inconvenience, delay and loss to the creditors resulted.

Rule 11-15 now governs the conversion of a Chapter XI case to Chapter X. Although there is no time limit fixed within which the debtor may voluntarily file a motion to convert its own proceeding to Chapter X,¹⁰¹ any other party must file such a motion within 120 days after the first date set for the first meeting of creditors in the Chapter XI case, unless additional time is granted for cause shown.¹⁰²

The motion to convert must now be addressed to the bankruptcy judge rather than to the district judge¹⁰³ and must contain the allegations required for an original Chapter X petition.¹⁰⁴ Upon the filing of such motion, the court must fix a hearing thereon upon not less than 30 days' notice in writing to the parties in interest, including the SEC.¹⁰⁵ Answers to the motion may be filed at least 10 days prior to the conduct of the hearing.¹⁰⁶ If the motion to convert to Chapter X is granted, the order is deemed to constitute the approval of a petition under Chapter X.¹⁰⁷ The procedure contained in the Rule 11-15 not only minimizes the consequences of delay but smoothes the transition to Chapter X when required.

97. Compare 11 U.S.C. § 221(2) (1970) with 11 U.S.C. § 766(4) (1970). See *Northern Pacific Railway Co. v. Boyd*, 228 U.S. 482 (1913) and *Case v. Los Angeles Lumber Products Co., Ltd.*, 308 U.S. 106 (1939).

98. 11 U.S.C. § 728 (1970).

99. *Id.*

100. *Id.*

101. Rule 11-15(a).

102. Rule 11-15(b).

103. Rule 11-15.

104. Rule 11-15(c).

105. *Id.*

106. *Id.*

107. Rule 11-15(d).

CONCLUSION

The rules effect many important changes in the practice and procedure in Chapter XI cases. Those changes are intended to and should improve the administration of Chapter XI cases while assuring greater protection of the rights of all parties to the case.