

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: :  
: :  
Application for Exemption from the : General Order M-373  
Electronic Public Access Fees by Michelle :  
M. Harner :  
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This matter is before the Court upon the application and request by Michelle M. Harner (the "Applicant") for exemption from the fees imposed by the Electronic Public Access Fee Schedule adopted by the Judicial Conference of the United States Courts.

The Court finds, based upon the attached letter from the Applicant, dated March 10, 2009, that the Applicant has demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information. SMB

Accordingly, the Applicant shall be exempt from the payment of fees for access via PACER to the electronic case files maintained in this Court, to the extent such use is incurred in connection with the project described in the attached letter. The Applicant shall not be exempt from the payment of fees incurred in connection with other uses of the PACER system in this Court.

Additionally, the following limitations apply:

1. This fee exemption applies only to the Applicant, and is valid only for the purposes stated above.
2. This fee exemption applies only to the electronic case files of this Court that are available through the PACER system.
3. By accepting this exemption, the Applicant agrees on behalf of the Applicant and the Applicant's research assistants not to sell for profit any data obtained as a result of receiving this exemption.
4. This exemption is valid from the date of this order through March 31, 2010.

This exemption may be revoked at the discretion of the Court at any time. A copy of this Order shall be sent to the PACER Service Center.

Dated: New York, New York  
March 19, 2009

/s/ Stuart M. Bernstein  
STUART M. BERNSTEIN  
Chief United States Bankruptcy Judge

March 10, 2009

Chief Judge Stuart M. Bernstein  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, NY 10004-1408

**Re: Request for Waiver of PACER Fees for Academic Research**

Dear Chief Judge Bernstein:

I am an Assistant Professor of Law at the University of Nebraska College of Law, and I am conducting an empirical study of the role of creditors' committees in chapter 11 cases. Specifically, the study will analyze the activities of creditors' committees in relation to those of other chapter 11 constituencies, including debtors, secured creditors, equity holders and other committees; disposition of the chapter 11 case (e.g., section 363 sale, plan of reorganization, liquidating plan, conversion); and ultimate recoveries to creditors. The study will employ a review of both quantitative information collected from courts' dockets and qualitative information collected from an extensive survey of chapter 11 professionals and former committee members.

The study will be funded in part from a grant from the American Bankruptcy Institute Endowment. The grant primarily will cover the costs of the survey (e.g., designing the survey, identifying and contacting survey participants, distributing the survey and collecting and coding survey results); research assistants (i.e., law students working on the project); and the professional statistical bureau that will assist me with analyzing and validating the research results. The grant is not sufficient to cover costs associated with selecting cases for the study and building a database with information about these cases. Accordingly, I am writing to request a waiver of PACER fees to allow me and my three research assistants (Joseph Fox, Mary Jo Lang and John Lentz) to access the information necessary to build the case study database.

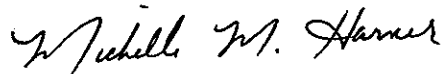
The PACER fee guidelines suggest that a waiver may be appropriate "to avoid unreasonable burdens and to promote public access to such information." I believe that my request for a waiver meets both requirements.

Other than the ABI grant, which has been earmarked for other purposes, I have no designated funding for this study or for building the case study database. Without access to PACER, I will not be able complete a meaningful study. The study itself will gather

extensive quantitative and qualitative information about committee activities in chapter 11 cases. This information in turn will be available to courts, practitioners, academics and others through the report of my research results, which I plan to publish in an academic journal. I will use my waiver of PACER fees only for academic purposes to facilitate this study and the subsequent report. I also will ensure that my research assistants do the same.

I have enclosed a summary of my empirical study. Please do not hesitate to contact me if I can provide any additional information or answer any questions.

Very truly yours,

A handwritten signature in black ink that reads "Michelle M. Harner". The signature is written in a cursive style with a large initial "M".

Michelle M. Harner

Enclosure

cc: Vito Genna, Clerk of Court

## **SUMMARY OF EMPIRICAL STUDY**

**Project Title:** The Role of Creditors' Committees in Chapter 11

**Primary Investigator/Project Director:**

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University of Nebraska College of Law  
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**Summary:**

This study evaluates the role of creditors' committees in chapter 11 cases and whether those committees are effective fiduciaries for their constituents or the bankruptcy estate. Section 1103 of the Bankruptcy Code permits creditors' committees, among other things, to investigate matters "relevant to the case or to the formulation of a plan" and to "perform such other services as are in the interest of those represented." Applicable case law designates creditors' committees as fiduciaries for the creditors whom they represent. Some cases and commentary suggest, however, that committees often represent the interests of only one or a few members and not necessarily the interests of all represented creditors or the bankruptcy estate. This study is designed to collect and analyze data regarding committee activities in, and their impact on, chapter 11 cases.

The primary investigator currently plans to perform an initial study on companies that commenced cases under chapter 11 between January 1, 2002 and December 31, 2006. She selected this five-year period in order to evaluate any changes from the last economic downturn to the current cycle. The period also reflects a starting date that corresponds to the availability of online docket images for many jurisdictions.

At present, the primary investigator intends to create a database of 150 companies through a random-selection process. The process would target companies that commenced chapter 11 cases in three different judicial districts. The primary investigator currently intends to use the Southern District of New York as one of the selected jurisdictions. She further intends to select randomly ten cases from each district for each year within the study period. Accordingly, the database should include public and private companies of varying asset and revenue sizes from three different districts.

In addition, the primary investigator intends to survey professionals and committee members involved in the cases included in the database. The professionals and committee members will be selected through a random-selection process, and an Internet

survey will be the primary method for collecting data from these participants. The survey will seek information from each participant regarding his or her general involvement with chapter 11 debtors and committees.<sup>1</sup> The survey will be conducted on an anonymous basis to encourage full and complete disclosure.

The primary investigator will work with the Bureau of Sociological Research at the University of Nebraska to design and administer the survey and to analyze survey results. The Bureau also will adopt appropriate procedures to maintain the confidentiality of the data.

The primary investigator will use the survey data to test and evaluate the quantitative data collected from the case dockets. She also will independently analyze the survey data to identify similarities, discrepancies and associations among data collected from various types of professionals and that collected from committee members. She believes that the combination of survey and docket data will create a comprehensive and meaningful picture of the role and effectiveness of committees in chapter 11 cases.

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<sup>1</sup> The survey will not ask questions specific or limited to database cases given potential issues with the attorney-client privilege and confidentiality agreements/obligations.