FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DEC 29 1982

BRUCE RIFKIN, Clerk
By_____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE:	)
	) GENERAL ORDER
EMERGENCY BANKRUPTCY RULE	)
	)

(a) Emergency Resolution

The purpose of this rule is to supplement existing law and rules in respect to the authority of the bankruptcy judges of this district to act in bankruptcy cases and proceedings until Congress enacts appropriate remedial legislation in response to the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., _____ U. S. _____, 102 S. Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of the Bankruptcy Act of 1978 [~~Public Law 95-598~~]; (2) the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

Therefore, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Filing of Bankruptcy Papers

The bankruptcy court constituted by §404 of the Bankruptcy Act of 1978 [Public-Law-95-598] shall continue to be known as the United States Bankruptcy Court of this district. The Clerk of the Bankruptcy Court is hereby designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases or proceedings arising under or related to Title 11 shall be filed with the Clerk of the Bankruptcy Court regardless of whether the case or proceeding is before a bankruptcy judge or a judge of the district court, except that a judgment by the district judge shall be filed in accordance with Rule 921 of the Bankruptcy Rules.

(c) Reference to Bankruptcy Judges

(1) All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn by the district court at any time on its own motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy judge, or may refer the entire matter back to the bankruptcy judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system for assigning civil cases.

(3) Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

(d) Powers of Bankruptcy Judges

(1) The bankruptcy judges may perform in referred bankruptcy cases and proceedings all acts and duties necessary for

the handling of those cases and proceedings except that the bankruptcy judges may not conduct:

(A) A proceeding to enjoin a court;

(B) A proceeding to punish a criminal contempt --

(i) not committed in the bankruptcy judge's actual presence; or

(ii) warranting a punishment of imprisonment.

(C) An appeal from a judgment, order, decree or decision of a United States bankruptcy judge; or

(D) Jury trials.

Those matters which may not be performed by a bankruptcy judge shall be transferred to a district judge.

(2) Except as provided in (d)(3), orders and judgments of bankruptcy judges shall be effective upon entry by the Clerk of the Bankruptcy Court, unless stayed by the bankruptcy judge or a district judge.

(3) (A) Related proceedings are those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court. Related proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate. Related proceedings do not include: Contested and uncontested matters concerning the administration of the estate; allowance of and objection to claims against the estate; counterclaims by the estate in whatever amount against persons filing claims against the estate; [~~orders in respect to obtaining filing claims against the estate~~]; [~~orders in respect to obtaining credit~~;] orders authorizing the use of cash collateral; orders to turn over property of the estate; proceedings to set aside preferences and fraudulent conveyances; proceedings in respect to lifting of the automatic stay; proceedings to determine

dischargeability of [particular] a debt[s]; [proceedings to object to the discharge;] proceedings in respect to the confirmation of a plan[s]; orders approving the sale of property of the estate free and clear of liens; [where not arising from proceedings resulting from claims brought by the estate against the parties who have not filed claims against the estate;] allowance or denial of discharge; and similar matters. A proceeding is not a related proceeding merely because the outcome will be affected by state law.

(B) In related proceedings, and wherever the bankruptcy judge determines that circumstances require that a judgment or order be entered by a district judge, the bankruptcy judge shall [may] not enter a judgment or dispositive order, but shall submit findings, conclusions and a proposed judgment or order to the district judge, unless the parties to the proceeding consent to entry of judgment or order by the bankruptcy judge.

(e) District Court Review

(1) A notice of appeal from a final order or judgment or proposed order or judgment of a bankruptcy judge or an application for leave to appeal an interlocutory order of a bankruptcy judge, shall be filed within 10 days of the date of entry of the judgment or order or of the lodgment of the proposed judgment or order. As modified by sections (e)2(A) and (e)2(B) of this rule, the procedures set forth in Part VIII of the Bankruptcy Rules apply to appeals of bankruptcy judges' judgments and orders, and the procedures set forth in Bankruptcy Interim Rule 8004 apply to applications for leave to appeal interlocutory orders of bankruptcy judges. Modification by the district judge or the bankruptcy judge of time for appeal is governed by Rule 802 of the Bankruptcy Rules.

(2) (A) A district judge shall review:

(i) an order or final judgment entered under section [paragraph] (d)(2) if a timely

notice of appeal has been filed or if a timely application for leave to appeal has been granted;

(ii) an order or final judgment entered under section [paragraph] (d)(2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any notice of appeal or application for leave to appeal was filed; and

(iii) a proposed order or judgment lodged under section [paragraph] (d)(3), whether or not any notice of appeal or application for leave to appeal has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as appropriate and may accept, reject or modify, in whole or in part, the order or judgment or proposed order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order or judgment.

(3) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under section [paragraph](e)({d})(2), the district judge shall review the matter and enter an order or judgment as soon as possible.

(4) It shall be the burden of the parties to raise prior to the time of the entry of the order or judgment of the district judgment after review the issue [of] whether the bankruptcy judge should have entered a proposed judgment or order

under section (d)(3) rather than an order under section (d)(2). [any-proceeding-is-a-related-proceeding-prior-to-the-time-of-the entry-of-the-order-of-judgment-of-the-district-judge-after review.]

(f) Local Rules

In proceedings before a bankruptcy judge, the local rules of the bankruptcy court shall apply. In proceedings before a district judge, [of-the-district-court,] the local rules of the district court shall apply.

(g) Bankruptcy Rules and Title IV of the Bankruptcy Act [Public-Law-95-598]

Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of the Bankruptcy Act of 1978 [Public-Law-95-598] as amended and by the bankruptcy rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. §2075 and limited by section [SEC.] 405(d) of the Act, to the extent that such Title and Rules are not inconsistent with this rule and the holding of Northern Pipeline Construction Co. v. Marathon Pipe Line Co., _____ U. S. _____, 102 S. Ct. 2858 (1982).

(h) Effective Date and Pending Cases

This rule shall become effective December 25, 1982, and shall apply to all bankruptcy cases and proceedings not governed by the Bankruptcy Act of 1898 as amended, and filed on or after October 1, 1979. Any bankruptcy matters pending before a bankruptcy judge on December 25, 1982, shall be deemed referred to that judge.

DATED this 29th day of December, 1982.

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE