**Mediated Settlements and the Impact of Rule 9019 Requirements**

Moller / Foltz American Inn of Court Presentation—Team 5

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**Some Helpful (and Perhaps Not-So-Helpful) Rules, Articles, and Citations**

**Southern District Local Rule 16.4** [incorporated by Local Bankr. Rule 1001-1(b)]:

16.4.A ***ADR Methods Available***. The Court approves the use of the following ADR methods in civil cases pending before district, magistrate, and bankruptcy judges: mediation, early neutral evaluation, mini-trial, summary jury trial, and, if the parties consent, non-binding arbitration pursuant to 28 U.S.C. §654 (1998) (collectively, “ADR”). A judge may approve any other ADR method the parties suggest and the judge finds appropriate for a case. …

16.4.I. ***Confidentiality, Privileges and Immunities***. All communications made during ADR proceedings (other than communications concerning scheduling, a final agreement, or ADR provider fees) are confidential, are protected from disclosure, and may not be disclosed to anyone, including the Court …

**S. D. Tex. ADR Provider List**: <http://www.txs.uscourts.gov/adr>

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**Mediation: Whither and Whether** [Bankruptcy Bench Bar 2015]

<http://statebaroftexasbankruptcy.com/wp-content/uploads/2015/05/2-Mediation-Whither-and-Whether.pdf>

**Integrating “Alternative” Dispute Resolution into Bankruptcy: As Simple (and Pure) as Motherhood and Apple Pie?** 11 Nev. Law J. 397 (2011)

<http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1165&context=nlj>

***In re Smith***, 524 B.R. 689 (Bkrtcy. S.D.Tex. 2015) [Judge Bohm]

[issue of payment of any professional fees from estate funds should be decided prior to any mediation, to ensure compliance with 11 U.S.C. §327(a), and Rule 2014(a)]

***In re Interstate Cigar Co., Inc***., 240 B.R. 816 (Bankr. E.D. N.Y.)

[ruling on motion to approve mediated settlement — motion denied — Court must consider the interests of the creditors and give proper deference to their reasonable views]

***In re American Eagle Energy Corp*.**, Case No. 15-15073 (Bankr. Colo. 2015)

[Dkt. Nos. 577 and 597] [motion to approve mediated settlement and objection thereto — motion denied]

***In re Brizinova***, 2017 WL 878443 (Bankr. E.D. N.Y. 2017)

[Trustee moved for sanctions against debtors’ attorneys for alleged violation of local rule on confidentiality of mediation — motion denied: facts do not become confidential merely because they have been disclosed during mediation]

***Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson***,

390 U.S. 414 (1968) [Rule 9019 standards by which courts should evaluate a settlement]

***Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp.*** *(In re Foster Mortgage Corp.*), 68 F.3d 914, 918 (5th Cir. 1995) [added other factors to Rule 9019 standards]

***Cadle Co. v. Mims (In re Moore)***, 608 F.3d 253, 255 (5th Cir. 2010)

[“… a bankruptcy court is obliged to consider, as part of the ‘fair and equitable’ analysis, whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale”]

***Cosoff v. Rodman*** *(In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2nd Cir. 1983, *cert. den.*, 464 U.S. 822 (1983) [bankruptcy court is charged with canvassing the issues to determine whether a settlement falls below the lowest point in the range of reasonableness]

***In re Aweco, Inc*.**, 725 F.2d 293, at 299, cert denied, 469 U.S. 880 (1984)

[In approving compromises “ … the court must act independently, out of its own initiative, for the benefit of all creditors … even where the creditors are silent”]

***In re Cajun Elec. Power Coop*.**, 119 F.3d 349, 356 (5th Cir. 1997)

[when determining probability of ultimate success under Rule 9019, the bankruptcy court need not conduct a “mini-trial”]

***In re Emerald Oil Co*.**, 807 F.2d 1234, 1239 (5th Cir. 1987)

[“ … standard for reviewing a bankruptcy court's approval of a compromise is a high one, and such decisions should not be disturbed except for an abuse of discretion. A bankruptcy court is ordinarily in the best position … to determine whether a compromise is in the best interest of the estate and ‘fair and equitable.’ ”

***In re SunEdison, Inc.***, Case No. 16-10992 (Bankr. S.D.N.Y]

[Dkt. No. 2795 — motion compelling multi-party mediation and appointing mediator]

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