

FILED

DEC 23 1982

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

CLERK, U. S. DISTRICT COURT  
DISTRICT OF NEVADA  
BY \_\_\_\_\_ DEPUTY

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In the Matter of  
The Adoption of Rule 118 to  
the Bankruptcy Rules of the  
Local Rules of this Court.

Special Order No. 35

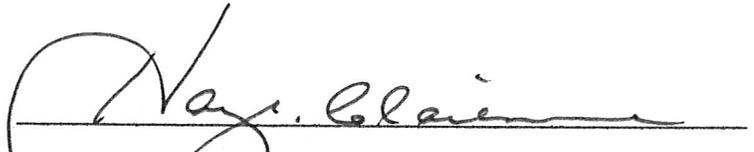
On June 28, 1982, the United States Supreme Court entered its decision in the case of Northern Pipeline Construction Co. v. Marathon Pipe Line Co., \_\_\_\_\_ U.S. \_\_\_\_\_, 102 S.Ct. 2858 (1982) holding the broad grant of jurisdiction given the bankruptcy courts under the Bankruptcy Reform Act of 1978 to have been in violation of Article III of the United States Constitution. The Court, however, applied its decision prospectively and stayed its judgment until October 4, 1982. This stay was thereafter extended until December 24, 1982. Nevertheless, since the entry of the Court's opinion in the Marathon Pipe Line case, no new legislation has been passed into law to remedy the shortcomings found in that case and no further stay has been issued by the Court to prevent the entry of its judgment therein.

This Court finding that an interim measure must be adopted to continue the uninterrupted processing of bankruptcy cases and proceedings in the District of Nevada; this Court further finding that the Emergency Rule recently proposed by the Circuit Judicial Council of the Ninth Circuit, attached hereto as Exhibit "A",

1 will satisfy this need; and pursuant of the authority stated in  
2 subsection (a) of that Rule; It is hereby

3 ORDERED that the "Rule" attached hereto as Exhibit "A" be,  
4 and the same hereby is, adopted as Rule 118 of the Bankruptcy  
5 Rules of the Rules of Practice of the United States District  
6 Court for the District of Nevada, pending further order of this  
7 Court.

8 DATED this 22 day of December, 1982.

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13 HARRY E. SLATBORNE  
14 CHIEF U.S. DISTRICT COURT JUDGE

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17 EDWARD C. REED  
18 U.S. DISTRICT COURT JUDGE  
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EXHIBIT "A"

R U L E

(a) Emergency Resolution

The purpose of this rule is to supplement existing law and rules in respect to the authority of 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; (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 in 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 court of bankruptcy constituted by § 404 of the Bankruptcy Act of 1978 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 of 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 at any time by the district court 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

1 unless a specific stay is issued by the district court. If a  
2 reference is withdrawn, the district court may retain the entire  
3 matter, may refer part of the matter back to the bankruptcy  
4 judge, or may refer the entire matter back to the bankruptcy  
5 judge with instructions specifying the powers and functions that  
6 the bankruptcy judge may exercise. Any matter in which the  
7 reference is withdrawn shall be reassigned to a district judge  
8 in accordance with the court's usual system for assigning civil  
9 cases.

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

13 (d) Powers of Bankruptcy Judges

14 (1) The bankruptcy judges may perform in referred bankruptcy  
15 cases and proceedings all acts and duties necessary for the  
16 handling of those cases and proceedings except that the  
17 bankruptcy judges may not conduct:

- 18 (A) a proceeding to enjoin a court;
- 19 (B) a proceeding to punish a criminal contempt--
  - 20 (i) not committed in the bankruptcy judge's
  - 21 actual presence; or
  - 22 (ii) warranting a punishment of imprisonment;
- 23 (C) an appeal from a judgment, order, decree, or
- 24 decision of a United States bankruptcy judge; or
- 25 (D) jury trials.

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

28 (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; proceed-  
ings to lift the automatic stay; counterclaims by the estate in  
whatever amount against persons filing claims against the estate;  
proceedings to set aside preferences and fraudulent conveyances;  
order to turn over property of the estate; order authorizing  
use of cash collateral; orders approving the sale of property of  
the estate free and clear of liens; allowance or denial of  
discharge; proceedings to determine the dischargeability of a  
debt; proceedings regarding the confirmation of a plan; and  
similar matters. A proceeding is not a related proceeding

1 merely because the outcome will be affected by state law.

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

6 (e) District Court Review

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

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

- 15 (i) an order or final judgment entered under section  
16 (d)(2) if a timely notice of appeal has been  
17 filed or if a timely application for leave to  
18 appeal has been granted;
- 19 (ii) an order or final judgment entered under section  
20 (d)(2) if the bankruptcy judge certifies that  
21 circumstances require that the order or judgment  
22 be approved by a district judge, whether or not  
23 the matter was controverted before the  
24 bankruptcy judge or any notice of appeal or  
25 application for leave to appeal was filed; and
- 26 (iii) a proposed order or judgment lodged under  
27 section (d)(3), whether or not any notice of  
28 appeal or application for leave to appeal has  
29 been filed.

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

28 (3) When the bankruptcy judge certifies that circumstances

1 require immediate review by a district judge of any matter  
2 subject to review under section (e)(2), the district judge  
3 shall review the matter and enter an order or judgment as soon  
4 as possible.

5 (4) It shall be the burden of the parties to raise prior  
6 to the time of the entry of the order or judgment of the  
7 district judge after review the issue whether the bankruptcy  
8 judge should have entered a proposed judgment or order under  
9 section (d)(3) rather than an order under section (d)(2).

10 (f) Local Rules

11 In proceedings before a bankruptcy judge, the local rules  
12 of the bankruptcy court shall apply. In proceedings before a  
13 district judge, the local rules of the district court shall  
14 apply.

15 (g) Bankruptcy Rules and Title IV of the Bankruptcy Act

16 Courts of bankruptcy and procedure in bankruptcy shall  
17 continue to be governed by Title IV of the Bankruptcy Act of  
18 1978, as amended, and by the Bankruptcy Rules prescribed by the  
19 Supreme Court of the United States pursuant to 28 U.S.C. § 2075  
20 and limited by section 405(d) of the Act, to the extent that  
21 such Title and Rules are not inconsistent with this rule and the  
22 holding of Northern Pipeline Construction Co. v. Marathon Pipe  
23 Line Co., \_\_\_\_\_ U.S. \_\_\_\_\_, 102 S.Ct. 2858 (1982).

24 (h) Effective Date and Pending Cases

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