

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

CM/ECF USERS' ADVISORY GROUP

SEPTEMBER 12, 2002, MEETING

MINUTES

A meeting of the CM/ECF Users' Advisory Group (UAG) was held on Thursday, September 12, 2002. The meeting, which was held via video teleconference at the Court's Alexandria, Norfolk and Richmond facilities, commenced at 2:10 P.M. and concluded at 3:00 P.M. The following persons were in attendance at the meeting: Robert Coulter, Bob Weed, Roy Lasris, Barry Spear, Charles Krumbein, Judge Adams, Chuck Miller, Steve Kopacki, Peggy Grivetti, Karin Doggett, Michael Johnson, Dick Napoli and Bill Redden.

Approval of Minutes from Last Meeting and Opening Comments (*Bill Redden*)

Bill Redden asked for comments and suggestions for changes to the proposed minutes from the last UAG meeting. There being no comments or suggestions for changes, the minutes from the June 20, 2002, UAG meeting were approved and will be posted in final form to the Court's CM/ECF Home Page.

Bill commented on the status of the Fiscal Year (FY) 2003 appropriations process for the federal judiciary. Bill noted that the appropriations process for FY 2003 has moved forward very slowly and that it was unlikely there would be enacted appropriations legislation for the judiciary by the start of the new fiscal year on October 1st. Absent such enacted appropriations legislation, it is likely that the judiciary and other government agencies will be under one or more Continuing Resolutions for an indeterminate period of time. It may be necessary for Congress to return to a congressional lame duck session this fall following the November 5 elections.¹

Bill briefly commented on the recent U.S. Airways Chapter 11 filing in the Court's Alexandria Division. He advised that the Court's order providing omnibus hearing dates, notice, case management and administrative procedures has been placed on the Court's Internet and CM/ECF home pages. In addition, Bill indicated that a link to the U.S. Airways electronic docket also had been placed on the Court's Internet Home Page and also was accessible through the "Mega Cases" link located on both home pages. The initial U.S. Airways filing consisted of eight separate chapter 11 cases. As of the date of the UAG meeting, the electronic docket contained in excess of 460 entries.

¹With extensive debates predicted on domestic security, appropriations bills and on a resolution authorizing action against Iraq, it is becoming more certain that Congress will not be able to complete its work before the scheduled October 4th adjournment, which may well be extended another week to October 11th.

1. Current Status and Information of Interest

a. CM/ECF Statistical Information (*Bill Redden*)

Bill commented on several statistical information handouts. The first handout is a snapshot of bankruptcy case and adversary proceeding filings for CY 2002 through August 31, 2002. Through that date, 20,278 petitions have been filed in the VAEB (Alexandria Division: 4,350 or 21.4 percent; Norfolk Division: 5,912 or 29.2 percent; Richmond Division: 7,477 or 36.9 percent; and Newport News Division: 2,539 or 12.5 percent).²

Bill also commented on the snapshot of bankruptcy case and adversary proceeding filings for the month of September (through September 11).³ He noted that the rate of petition filings suggested such filings for this month could be significantly higher than in the previous two years.

Bill next referenced a set of statistical filings maintained by the Administrative Office of the United States Courts (AO). For the month of August, statistical information was provided for a total of 36 bankruptcy courts, including the VAEB. With last month's migration of NIBS e-docket data to the CM/ECF system, 329,000 cases were being managed in the latter system (totals through August 31, 2002). The VAEB ranked first in this category. VAEB also ranked: (1) first in the total number of docket entries in CM/ECF (5,213,000); (2) fifth (1,212) in the number of external users who have registered to docket in the CM/ECF system; and (3) fourth (750) in the number of non-court users who have effected filings in the CM/ECF system.

b. CM/ECF Wave Courts Implementation Schedule – VAWB Designated as a Wave 11 Implementation Court (*Bill Redden*)

Bill commented on the snapshot of the August 2002 "CM/ECF Implementation Status" schedule prepared by the AO. This schedule shows Bankruptcy CM/ECF underway in 71 of the 90 bankruptcy courts and operational in 35 bankruptcy courts. In the Fourth Circuit, Bankruptcy CM/ECF Version 1 currently is operational in two bankruptcy courts (VAEB and NCWB). Actual implementation of Bankruptcy CM/ECF has commenced in six bankruptcy courts (MDB, NCEB, NCMB, SCB, WVNB and WWSB). Scheduled implementation is scheduled to commence in November 2002 in VAWB. This means that commencing this November, in addition to the

² A total of 99 Chapter 11 cases have been filed during this period. A large majority of Chapter 11 cases continue to be filed in the Alexandria Division (Alexandria Division: 62 or 62.6 percent; Norfolk Division: 17 or 17.2 percent; Richmond Division: 15 or 15.2 percent; and Newport News: 5 or 5.0 percent). A significant number of adversary proceedings were filed in the Richmond Division's Heilig-Meyers Company Chapter 11 case in July and August – nearly 800. These filings were undertaken entirely by electronic means via the Internet in ECF, were completed successfully.

³ For the month of September 2002 (through September 11), a total of 835 petitions had been filed (Alexandria Division: 199 or 23.8 percent; Norfolk Division: 185 or 22.2 percent; Richmond Division: 337 or 40.3 percent; and Newport News Division: 114 or 13.7 percent.)

VAEB and NCWB, the seven remaining Fourth Circuit bankruptcy courts will be proceeding to implement Bankruptcy CM/ECF.

c. Bankruptcy Version 2 Update (*Bill Redden*)

Bill provided an update on the release status of Bankruptcy CM/ECF Version 2. Bankruptcy Version 2 testing recently was completed by the AO and was released to the CM/ECF courts on August 30, 2002. The AO has advised that each court will need install, analyze, configure and test Version 2. According to the AO, this process could take up to six months.⁴ The VAEB is looking to migrate from Version 1 to Version 2 in spring 2003. Once the migration implementation process begins, additional information will be provided to internal and external ECF users.

Bill also commented briefly on the status of Bankruptcy CM/ECF Release 3, which will replace Version 2 of Bankruptcy CM/ECF. Bill indicated that while a number of feature enhancements have been identified for incorporation into Release 3, a number of factors may come into play that could require the AO to adjust or change features (*e.g.*, new features required by provisions contained in the conference report to the bankruptcy reform legislation – see Agenda Item 1.d. below; unmet Version 2 requirements, emergency modification requests, etc.).

d. Bankruptcy Reform Legislation – Potential Impact on Case Management and Case Administration – CM/ECF (*Bill Redden*)

Bill commented on the status of the bankruptcy reform legislation. The media is reporting that the House Republican leadership has decided not to bring the conference report to the House floor for a vote on the rule⁵ and then for passage over the objections of those members of the majority party who disagree with compromise language agreed to by Representative Hyde and Senator Schumer.

⁴ The AO is creating a package of materials to assist CM/ECF courts live on Bankruptcy CM/ECF Version 1 to migrate to Version 2. The package will include a six-month Microsoft Project Plan listing suggested tasks and corresponding reference material for each task. In addition, the AO is preparing a series of short training videos focusing on specific Version 2 features. The package should be made available to the courts by early October. Version 2 upgrades will include: (1) several new quality control reports and enhancements to six existing reports; (2) greater text editing for court users; (3) automatic assignment of judge, trustee and § 341 meeting; (4) automatic discharge and case closing; (5) archiving; (6) automatic docketing of cash register receipts; (7) mass transfer of cases to new judge/trustee/attorney; (8) Federal records Center/records Management System; (9) overriding assigned document numbers; (10) expanded number of conditional tests that check the case for specific characteristics to trigger docket processing functions automatically based on defined conditions of the case; (11) data validation checks; and (12) noticing forms generation. Some of these features only will be available to internal users. Separate from Version 2, the AO is developing an on-line credit card module that will be Version 2 compliant.

⁵ The “rule” is a mechanism established by the Rules of the House of Representatives that determines how a measure will be considered on the floor of the House. The rule is brought up for a vote by resolution.

Bill noted that the AO had completed a draft analysis of the bankruptcy reform legislation's impact on the judiciary case management systems. Bill highlighted some of the report's provisions, as follows: (1) Bill Sec. 102 Dismissal or Conversion – new language for the Sec. 341 notices would be required if the presumption of abuse is triggered, which would require the Court to provide a copy of the statement to all creditors when the U.S. Trustee files the required statement; (2) Bill Sec. 102 Presumption of Abuse – the clerk's office would be required to compute the threshold of debts; (3) Bill Sec. 105 Credit Counseling –the clerk would be required to maintain a publicly available list of credit counseling agencies and instructional courses concerning personal financial management; (3) Bill Sec. 315 Filing of Tax Returns Privacy -- CM/ECF would need to track the filing of Federal tax returns, evidence of employer payments received, monthly net income projections and anticipated income or expenditure increases; (4) Bill Sec. 703 Tax Filing Address List – the clerk's office would need to maintain tax litigation service addresses; (5) Bill Sec. 716 Chapter 13 Tax Return Filing Guidelines – for Chapter 13s, CM/ECF would need to track debtor's filing of necessary tax returns; and (6) Bill Sec. 1104 Appointment of Health Care Ombudsman –there may be a need for CM/ECF to track the appointment of the ombudsman.

e. Conversion of NIBS E-Docket Data to CM/ECF System (*Karin Doggett*)

Karin Doggett reported to the UAG on the recent conversion of NIBS e-docket data to the CM/ECF system. She noted that the conversion effort began on August 1 and concluded at 12:00 Noon on August 6. The conversion process concluded successfully with e-docket data in about 300,000 NIBS cases involved in the conversion process. Some minor post-conversion data issues did arise and to date largely have been resolved.

f. Status of Proposed FRBP and Bankruptcy Official Forms Changes – Implementing JCUS Privacy/Public Access Policy (*Bill Redden*)

Bill noted that the judiciary maintains an Internet web site that provides access to much useful information including Federal Rulemaking – www.uscourts.gov. Bill reported that on June 10-11, 2002, the Judicial Conference Committee on Rules of Practice and Procedure approved recommendations made by the Advisory Committee on Bankruptcy Rules that the following proposed amendments and revisions be transmitted to the Judicial Conference with recommendations that they be approved and transmitted to the Supreme Court for consideration: Bankruptcy Rules 1005, 1007, 2002, 2003, 2009, 2016 and new Rule 7007.1. In addition, it was recommended that the following Bankruptcy Official Forms be approved by

the Judicial Conference, effective December 1, 2003: Bankruptcy Official Forms 1, 2, 5 6, 7, 8, 9, 10, 16A, 16C, 17 and 19.⁶

Upon approval by the Judicial Conference, the rules package (designated rules for the Class of December 2003) will be transmitted to the Supreme Court for review and approval by May 1, 2003. The rules package then will be transmitted to Congress for review and any modifications or disapprovals by December 1, 2003. Barring any changes to the rules package, the rules and the official forms all will take effect on December 1, 2003. (Since the official forms are dependant upon the rule changes, they too will not take effect until the rules do.)

Bill commented on proposed FRBP 1007. The proposed rule has been amended to direct the debtor to “submit” to the court the debtor’s complete SSN or, in lieu thereof, submit a verified statement that the debtor does not have a SSN. The rule, as amended, would require that the SSN be part of the case file. The use of the word “submit” in lieu of the word “file” is designed to bring the rule provision outside the strict requirement of 11 U.S.C. § 107(a). Bill also commented on proposed Rule 2002. This rule, as amended, would direct the clerk to include the complete SSN on the Sec. 341 meeting of creditors notice, which is to be sent to creditors, the trustee (if any) and to the U.S. trustee. The rule further would require that the copy of the notice placed in the case file (or electronically in the database) be redacted to show only the last four digits of the SSN.

Bill indicated that he would be reporting to the Judges on the status of the rule and official forms changes when the Judges meet in fall 2002.

g. BOPS Update (*Karin Doggett and Bill Redden*)

Karin and Michael Johnson provided a BOPS update. They noted that some order transmittal issues had been resolved. Proponents of proposed orders now are receiving e-mail confirmations without incident. Since it became fully operationally in the VAEB on July 1st, BOPS functionality has been enhanced so that it can process a higher volume of proposed orders. Michael indicated that BOPS can be used by all attorneys and trustees who register to make use of BOPS. Bill noted that the planned BNC order notice of entry function will be developed and made Bankruptcy CM/ECF Version 2 compatible. In the interim, the requirements set forth in Standing Order No. 02-2 for submitting a hardcopy of the proposed order and the requisite number of stamped self-addressed envelopes for notice recipients who are not ECF full registered participants must be continued.

⁶ The rule and form recommendations will be considered by the Judicial Conference when it meets in session on September 24, 2002.

2. Technical Questions

No technical questions were presented for discussion at the meeting or raised during the meeting.

3. Communications and Training Issues

a. Requests from Bankruptcy Courts to Visit VAEB to Review CM/ECF (*Dick Napoli*)

Dick Napoli commented on the handout on “Schedule of Court Visits to VAEB.” Since the last UAG meeting, the VAEB received visitors from the Massachusetts Bankruptcy Court (Wave 7) on July 9 and Indiana Northern Bankruptcy Court (Wave 6) on July 22. One additional visit has been scheduled. The California Northern Bankruptcy Court (Wave 7) will visit on September 16. For the first time, a video-teleconference visit has been arranged. The Texas Northern Bankruptcy Court (Wave 7) will meet concerning courtroom deputy usage of CM/ECF. This video-teleconference is scheduled for September 16 as well. Pending but as yet unscheduled visits include the: Florida Middle Bankruptcy Court (Wave 7); Maryland Bankruptcy Court (Wave 6); Virginia Western Bankruptcy Court (Wave 11); and Alabama Northern Bankruptcy Court (Wave 11).

b. Planned Expansion of Information Provided to ECF Users Who Receive Daily Summary E-Mail Notices – Update (*Bill Redden*)

Bill advised that AO staff members have met with staff from the Department of Justice’s Electronic Litigation File (ELF) Program Office. Bill indicated that both the AO and the ELF Program Office are moving forward to change the ECF daily summary e-mail notices to include docket text. This additional text will provide more information to e-mail recipients as to the contents of any attached documentation. The software modification will be released to the CM/ECF courts in a patch update (in the form of an emergency modification release) with the release hopefully occurring in November 2002. Bill noted that he would continue to monitor this matter.

c. CM/ECF Help Desk (*Michael Johnson*)

Michael Johnson, a member of the Clerk’s Office’s ACC Team, was present at the meeting to answer help desk and related questions from the meeting participants. No questions were asked of Michael.

4. Handout Materials (*at meeting sites*)

Bill noted the handout materials provided to the meeting participants, which had been identified earlier in the meeting.

5. Other Issues of Interest

Bill asked if there were other items of interest that the meeting participants would like to address. Roy Lasris commented that for some time the UAG meetings had become increasing informational in nature for the meeting participants and that the participants were raising few if any technical questions or substantive issues for consideration and resolution. He further commented that as the non-court members were not charged with specific reporting responsibilities, perhaps, all told, the need for a CM/ECF Users' Advisory Group had come to a conclusion.⁷ Roy suggested that since the inception of the UAG, the Court had been moving through a transition process that largely had concluded with the upgrade to and stability of CM/ECF Version 1 and with last month's migration of the NIBS e-docket data to the CM/ECF system. He indicated his feeling that "we're really here." Bob Weed seconded Roy's comments and he too felt the purpose of the UAG had come to a successful conclusion. Judge Adams noted that he and the meeting participants had learned much about CM/ECF and especially benefited from the comments and suggestions made by the meeting participants for the benefit of all end users.

Comments were made that the Court's three bankruptcy bar local liaison committees are well established and each contain a good cross section of bar, trustee and US trustee office representatives. Clerk's Office representatives also attend the meetings of these advisory groups. These groups, individually and collectively, are suitably placed to raise issues and ask questions that are CM/ECF-related. Since the Court's data now is entirely in the CM/ECF system, all procedural and substantive issues can be raised and considered in the context of a CM/ECF case management system work environment. Comments were made that use of the CM/ECF system had become incredibly easy and perhaps even "hum-drum" and well within the external users' community's collective comfort zone.

Bill noted that since the UAG had been established by the Court to act in an advisory capacity, the Court would need to decide whether the UAG should be dissolved as an advisory group to the Court. Bill indicated that the Judges would be meeting in fall 2002 and that he would prepare a recommendation to the Court

⁷ As set out at the Court's CM/ECF Home Page, the purpose of the CM/ECF Users' Advisory Group (UAG) is:

- To provide input to the Court's representative with information about the users' concerns and problems in using the CM/ECF system
- To make comments, suggestions, criticisms and complaints about the operation and development of the CM/ECF system
- To receive comments from users, convey information of interest to the Users' Advisory group and disseminate information to users concerning the CM/ECF system [.]

The UAG first met on January 21, 2000, and has met a total of 16 times. Minutes from all UAG meetings have been posted to the Court's CM/ECF Home Page. In addition, links to the clerk's Internet e-mail address and that of the external members have been placed on the CM/ECF Home Page as well to facilitate communication between the UAG and external users.

that the UAG felt its mission [as described in footnote 7 below] had been completed successfully. Judge Adams indicated that he would make the presentation to the other Judges at the Judges' upcoming meeting.

6. Next Meeting Date, Location(s) and Time

In light of the UAG's recommendation that it be dissolved by the Court, no next meeting date, location or time was set.

The meeting adjourned at 3:00 P.M.

Respectfully submitted,

William C. Redden