

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 97-3

Date: January 30, 1997

TO: All Regional Directors, Officers-in-Charge, Resident Officers
and Compliance Officers

FROM: Fred Feinstein, General Counsel

SUBJECT: Bankruptcy Referrals to Headquarters' Offices

As part of the Agency's effort to reinvent compliance (see GC Memorandum 97-2), make better use of Agency resources at Headquarters and in the Field, and to more proactively pursue collection against respondents who have filed for bankruptcy, the Contempt Litigation and Compliance Branch will be assuming responsibility for assisting the Regions in handling the Agency's "offensive" litigation in Bankruptcy Court. The Special Litigation Branch will continue to handle "defensive" litigation. The following is a list of the division of responsibilities of new bankruptcy matters between the Contempt Litigation and Compliance Branch and the Special Litigation Branch, which will take effect immediately with respect to cases not already referred:

CONTEMPT LITIGATION AND COMPLIANCE BRANCH

1. Section 363 "free and clear" sales.¹
2. All asset-hiding cases including piercing the corporate veil, objections to discharge under Sections 523, 727 and other Code sections, discovery involving alter egos/single employers, sources of backpay, and objections to the homestead exemption.
3. Issues concerning voluntary or involuntary conversion from Chapter 11 to Chapter 7.
4. Issues that involve requiring the debtor to make proper distributions under the bankruptcy plan.
5. Objections to disclosure statements and plans based on financial criteria (e.g., inadequate financial data, challenge to feasibility of plan, inequitable distributions in plan).
6. Offensive use of equitable subordination under Section 510.

¹ All "Section" references are to the Bankruptcy Code, 11 U.S.C. 101, *et seq.*

SPECIAL LITIGATION BRANCH

1. Injunctions/stays of unfair labor practice and representation cases (e.g., Section 362 automatic stay; Section 105 “inherent power” injunction).
2. Section 1113 rejection of collective bargaining agreement issues that involve Board jurisdiction (e.g., retroactive rejection).
3. Objections to the Board’s claim.
4. Estimation proceedings under Section 502(c).
5. Section 503 and Section 507 claim priority issues.
6. Objections to disclosure statements and plans which implicate the Board’s jurisdiction (e.g., where a plan or disclosure statement effectively determines liability under the NLRA and liquidates the Board’s claim).

If you have any questions regarding which office should receive a bankruptcy case referral, please feel free to call Gary Shinnors ((202) 273-3737) or Margery Lieber ((202) 273-2940).

F. F.

cc: NLRBU

MEMORANDUM GC 97-3