# FLORIDA LEGISLATURE OVERHAULS ASSIGNMENT FOR THE BENEFIT OF CREDITORS

Ask any dozen attorneys that you know if they know how an Assignment for the Benefit of Creditor works. Most of them will probably understand that it provides a means to liquidate an insolvent business' assets. Someone might suggest to you that an assignment is very much like probating the estate of a company that has died. The most frequent response that you are likely to get is that an Assignment for the Benefit of Creditors is very much like a state court version of a bankruptcy proceeding. On June 19, 2007, the Governor approved Chapter 2007-185 of the laws of Florida'. The short title of the Bill is "An Act Relating to Debts and Debtors."[2] The long title indicates that it amends Fla.Stat.§ 222.25, concerning certain exemption of personal property from legal process; Fla.Stat. § 702.035, concerning publication of foreclosure notices; and a number of different portions of Chapter 727 Fla. Stat., that concerns itself with Assignments for the Benefit of Creditors.

## Overview of Assignment for the Benefit of Creditors

An Assignment for the Benefit of Creditors, generally speaking, is analogous to a Chapter 7 bankruptcy liquidation of a business entity.[3] An Assignment proceeding is commenced with the execution of an irrevocable Assignment in writing, in compliance with the statutory form which is provided.'

Once the Assignment is executed, the next step is to record the original in the Public Records in the county where the Assignor had its principal place of business and a certified copy in each county where assets of the estate are situated.' In addition, the Assignee must file a petition with the Clerk of the Court commencing an assignment proceeding. The Assignee must also file a motion asking the court to fix the appropriate amount of the Assignee's bond.[6]

The Assignee's duties are directly congruent with those of a bankruptcy trustee. They include collection of the assets of the estate and reducing them to money; conducting an initial examination of the Assignor under oath within thirty (30) days; giving notice to creditors; conducting the business of the Assignor for limited periods, if appropriate; paying administrative expenses of the estate to the extent that they are reasonable and necessary; keeping regular accounts and furnishing

information concerning the estate to parties-in-interest; examining the validity and priority of all claims against the estate; abandoning assets to perfected lien creditors where the estate has no equity; accounting; hiring professionals as necessary; paying dividends as appropriate; and submitting a Final Report.'

Unlike bankruptcy cases, there is no general automatic stay, such as federal law provides in 11 U.S.C. § 362(a). Instead, a holder of a consensual lien may foreclose upon its collateral without leave of court. Like the Bankruptcy Code, there is a specific provision that allows governmental entities to enforce police or regulatory powers.[8]

Significantly, one of the powers of the court is to allow the Assignee to operate the business of the Assignor for limited periods, if it is in the best interest of the estate to do so.' This enables the Assignee the opportunity to sell the business as a going concern, in order to obtain more value for the creditors, as there is generally a substantial incremental "going concern value" component to an ongoing business, even if it is insolvent.

After six (6) months, the Assignee is required to file an Interim Report. [10] At the close of the administration, when the Assignee is ready to make a final distribution, the Assignee must file a Final Report of all receipts and disbursements and request approval from the Court.[11] Upon approval of the Assignee's Final Report, the Court shall discharge the Assignee and release the Assignee's bond.'?

## The Changes Made By Laws of Florida, Chap. 2007-185

Prior to the revisions enacted in 2007, Chapter 727, Fla.Stats. had received little attention from the Legislature since 1987, when it was enacted.' The Legislature had addressed the commencement of proceedings and the form of the Assignment in 1989"; in 1991[15]; in 1997'; and in 1998'[7]. Other than that particular section of the Assignment Chapter, the last time the Legislature had addressed any portion of it was in 1997.[18] Some of the current changes are intended for efficiency; some are to clear up or clarify legal issues that have arisen as a result of case law, and some are to create more conformity with the Bankruptcy Code. We will address the significant changes *seriatim.*

The definition of "asset" in Fla.Stat. § 727.103(1) has been expanded. It now includes "claims and causes of action, whether arising by contract or in tort." There had previously been a

controversy over whether an Assignee for the Benefit of Creditors is the direct successor of the Assignor, with respect to a claim against Assignor's former counsel for legal malpractice. In *Cowan Lebowitz & Latman, PC v. Kaplan,* 902 So.2d 755 (Fla. 2005), the Florida Supreme Court affirmed the reinstatement of a legal malpractice claim which had been dismissed by the trial court on the basis that it had been commenced by an Assignee for the Benefit of Creditors. The trial court had concluded that legal malpractice choses in action are personal, and therefore not assignable. The District Court of Appeals reversed the dismissal. The Supreme Court affirmed the DCA, concluding that, only in cases where the public was misled, a legal malpractice cause of action was appropriately assignable to an Assignee for the Benefit of Creditors, as liquidator of the Assignor.

The new definition of "asset" provided under Fla.Stat. § 727.103(1) clearly acknowledges the result in *Cowan, supra.* It goes considerably farther, however, by including all claims and causes of action, whether arising by contract or in tort, and whether the public is generally affected or not. Under the terms of the Assignment' the Assignor conveys to the Assignee all of its *assets* (as defined in § 727.103(1)), except such assets as are exempt by law from levy and sale under an execution. Collectively, the assets create an "Estate." The Assignee, in turn, is required to take possession of, protect and preserve, and liquidate the *assets* of the Estate and to convert the Estate into money. [20]

In the standard Assignment form under Schedule B - List of Assets, item number 8 specifically includes "choses in action."

Section 727.103 also adds two new terms to the definitions: The first is "claims bar date," which means the date one-hundred twenty (120) days following the date upon which the Petition for Commencement of the Assignment case is filed with the Court. This gives a clear, "bright line" claims bar.

The other new term is "consensual lien holder[21]." A "consensual lien holder" is:

> "a creditor that has been granted a security interest or lien in personal property or real property of the assignor prior to the date on which a petition is filed with the court and whose security interest or lien has been perfected in accordance with applicable law."

The importance of the new definition is found later in the new law, at Fla.Stat. § 727.105, which is entitled "proceedings against Assignee." Here, in a limited version of the bankruptcy "automatic stay[22] " the statute now provides that:

> proceedings may not be commenced against the assignee except as provided in this Chapter, but nothing contained in this Chapter affects any action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power. Except in the case of a consensual lien holder enforcing its right in personal property or real property collateral, there shall be no levy, execution, attachment or the like in respect of any judgment against assets of the estate in the possession, custody, or control of the assignee.'

In short, this clarifies that a consensual lien holder maintains the right to foreclose on its collateral, even in the face of an Assignment for the Benefit of Creditors, as a consensual lien holder is not subjected to any stay. As for other creditors, while there is no "automatic stay" that would prevent them from suing or proceeding to judgment, they are barred from enforcement of any judgment against assets of the estate.

Fla. Stat. § 727.108 is entitled "Duties of Assignee." Subsection (1) now includes, along with the duty to collect the assets of the estate and reduce them to money, the duty of prosecuting any tort claims or causes of action which were previously held by the Assignor, *regardless of any generally applicable law concerning the nonassignability of tort claims or causes of action.* This reinforces and clarifies the new definition of "assets' and, as previously noted *supra,* expands the holding in *Cowan, supra.*

In another major departure, the Legislature has added Sections 727.108(1)(a)and(b).

These new sections amplify the new language in Section 727.108(1), which direct the Assignee to prosecute any tort claims previously held by Assignor, regardless of whether they would otherwise had been assignable.

> a. With respect to the estate's claims and causes of action, the assignee may prosecute such claims or causes of action as provided in this Section, or sell and assign, in whole or in part, such claims or causes of action to another person or entity on the terms that the assignee determines are in the best interest of the estate under s.727.111(4); and
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> b. In an action in any court by the assignee or the first immediate transferee of the assignee, other than an affiliate or insider of the assignor, against

> a defendant to assert a claim or chose in action of the estate, the claim is not subject to, and any remedy may not be limited by, a defense based on the assignor's acquiescence, cooperation or participation in the wrongful act by the defendant which forms the basis of the claim or chose in action?'

In other words, the Legislature has eliminated the potential for a defense against the claim brought by an Assignee for the Benefit of Creditors or by *his* initial assignee, based upon the concept of *in pari delicto.*[26] The *in pari delicto defense* will apply "where the fault of the parties is mutual, simultaneous and relatively equal, and where the plaintiff is an active essential and knowing participant in the unlawful activity."[27] Because agency principles attribute the actions of an officer or employee of a corporation to the corporation itself, acts of the officers or directors alleged in a complaint are attributable to the company.[28] In other words, the net result of any successful *in pari delicto* defense is that "the law will leave [the parties] where it finds them."[29] *In part delicto* defenses are regularly raised against receivers, bankruptcy trustees, and assignees. Generally speaking, the defendant will assert that the corporate entity being liquidated was an active participant in the wrongdoing at issue. Since the bankruptcy trustee or Assignee for the Benefit of Creditors, as the case may be, took over title to the property of the insolvent estate in question' subject to all defenses that would have been interposed against the Assignor, the defense is more than merely colorable. It is a subject worthy of separate articles, of which there have been many." The recent case of *Official Committee of Unsecured Creditors of PSA, Inc. v. Edwards* held that the doctrine of *in pari delicto* barred a bankruptcy trustee's claims on behalf of the bankrupt debtor for violations of the RICO Statutes.' Absent the intervention of the Florida Legislature, one would expect the same principles to be applied in Florida cases. The recent case of *Official Committee of Unsecured Creditors of PSA, Inc. v. Edwards*[33] , was a Chapter 11 bankruptcy case where the trustee of a creditor's trust filed suit alleging that the defendants, including outside counsel and their law firm, aided and abated Edwards, a controlling shareholder, in breaching his fiduciary duty to the bankrupt debtor; breached their own fiduciary duty to the debtor; received property from the debtor via fraudulent transfer or preference; and violated the RICO statutes. The defendants responded that a bankruptcy trustee stands in the shoes of the debtor, and thus is subject to the *in part delicto* defense, just as the debtor would have been, had there been no bankruptcy. The Eleventh Circuit accepted

that position, holding that the doctrine of *in pari delicto* barred the creditor trustee's claims in behalf of the bankrupt debtor for violations of RICO.

Fla.Stat. §727.108(1)(b), *supra,* appears to directly counteract the effect of the holding in the *Edwards* case.

Section 727.108(4) had previously authorized the Assignee to conduct the business of the Assignor for limited periods. The updated version of the statute allows conduct of the business for a period of fourteen (14) calendar days, or for a longer period on notice and until such time as an objection, if any, is sustained by the Court. An Assignee may not operate the business of the Assignor for longer than forty-five (45) days without a specific Court Order to that effect, however.

The purpose of this amendment is to standardize the current, fairly haphazard procedure, whereby an Assignor may elect to operate the business while he offers it for sale, sometimes for very extended periods. Frequently, the highest and best disposition of the assets is the sale as a going concern. The amendment will help to standardize the process, as well as give objectors an opportunity to be heard within a fixed time frame.

New Section 727.108(5) authorizes the Assignee to reject an unexpired Lease of nonresidential real property or of personal property under which the Assignor is the Lessee. This is the functional equivalent of 11 U.S.C. § 365(a), which authorizes the Trustee, subject to Court approval, to reject any executory contract or unexpired lease to which the debtor had been a party. Florida has no state court precedent upon which to base the interpretation of this new portion of the Statute. The federal courts, in contrast, have developed a substantial body of precedent with respect to the issues surrounding rejection of unexpired leases. It is perhaps reasonable to assume, then, that state courts, faced with disputes between parties under this new section, will look to federal precedent for guidance.

To further the objective of new Section 727.108(5), which authorizes the rejection of leases, a new Section 727.112(6) has been added to the chapter which concerns itself with proofs of claim. In a similar, but not exact corollary to 11 U.S.C. § 502(b)(6), a claim for damages resulting from the Assignee's rejection of a lease of real property is "capped" or limited to the rent reserved under the remainder of the lease, without acceleration, for the greater of either one year or 15% of the remaining term, plus any unpaid pre-rejection rent, plus attorneys' fees and costs incurred by the

lessor, and his reasonable costs incurred in reletting the premises. This roughly corresponds to the Bankruptcy Code, with the exception that it adds Fla. Stat. § 727.112(6)(b)(2)and (3), which provide for attorneys' fees and costs, as well as reletting expenses; these items are not allowed by the corresponding Bankruptcy Code provision.

Section 727.112 also adds a new subpart (7) concerning proofs of claim for damages resulting from termination of employment contracts. Such claims are limited to the compensation provided by the contract, without acceleration, for one year following either the date of the Assignment or the date upon which the employee was terminated, whichever came first, plus any unpaid compensation due to the date of Assignment or termination as the case might be. Again, these are analogous to the equivalent Bankruptcy Code provision. In fact, they are virtually identical.'

Section 727.109, which deals with "power of the court," has been modified at subsection (4) in order to allow the Court to set a bar date for filing all claims against the Assignment Estate which arose on or after the petition for assignment. The Court must allow at least thirty (30) days from the date of notice of the "postpetition" bar date, for claims to be filed. This is analogous to the Bankruptcy Code, which allows claims engendered by rejection of leases and executory contracts to be filed within thirty (30) days after such rejection.'

New Section 727.109(7) provides that the court may hear and determine a motion brought by the Assignee for approval of a proposed sale of assets of the Estate outside the ordinary course of business, or a compromise of a settlement of a controversy and enter an order notwithstanding the lack of objection thereto. This coordinates with new revised Section 727.111, regarding notice requirements. Generally speaking, Section 727.111(4) requires twenty (20) days notice by mail to all creditors and the Assignor of any proposed sale of assets other than in the ordinary course of business, Assignee's operation of the business for more than fourteen (14) calendar days, compromise or settlement of controversies and payment of fees to professionals.[36] A specific deadline is provided for objections, not less than three (3) days before the date of the proposed action. If no objections are timely filed and served, the Assignee may proceed without necessity of a Court Order, or may obtain an Order from the Court granting the Motion, even if there was no objection.

This implements the "negative notice" process with which bankruptcy practitioners are familiar.[37]

Fla.Stat. §727.113 is entitled "Objections to Claims." Previously, it simply provided that at any time prior to an Order approving the Assignee's Final Report, objections to claims could be filed on at least twenty (20) days notice. Now, modified Section 727.113(1) makes it clear that one creditor may object to the claim of another creditor. In order to facilitate the claims objection process, new Section 727.113(2) provides that:

> Following expiration of the claims bar date, the assignee shall create a register of all creditors that have filed claims against the assignor's estate, and shall make the register available upon request of any creditor or other party-in-interest.
>
> 1 The assignee, as well as any creditor or party-in-interest, has standing to challenge the validity, extent or priority of any claim filed by a creditor against the assignor's estate.
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> 4. A creditor whose claim is secured by a lien against property of the estate has sixty (60) days following the sale or disposition of the property securing his or her claim to file a claim for an unsecured deficiency, notwithstanding the passage of the last date in which a Proof of Claim may be served upon an assignee as set forth in S.727.112(2). If such a creditor fails to file with the assignee a deficiency claim within ten (10) days after the filing and service by mail of the assignee's final report of all receipts and disbursements, the creditor's deficiency claim shall be disallowed as untimely, and the creditor is not entitled to share in any distribution made to holders of unsecured claim under S.727.114(1)(f) on account of its deficiency claim.

Thus, the new portions of the statute reinforce the concept that any creditor has standing to object to the claim of any other creditor. Moreover, a secured creditor has a special time period within which to file a deficiency claim. That time period is closed, however, by the filing and service of the Assignee's proposed Final Report of Receipts and Disbursements. The Assignee must give twenty (20) days' notice prior to a hearing for approval of its Final Report, and since the deadline for a secured creditor with a deficiency claim is ten (10) days after filing and service of the Final Report, it is clear that, in effect, such a deficiency claim would be a *de facto* objection to the assignee's Final Report. It would thus be cause either for an amendment to the Final Report, or in some cases, would trigger an objection to the deficiency claim.

Section 727.114 is entitled "priority of claims." There are a number of amendments, most of which bring the practice under state law closer to current bankruptcy practice. They include the following:

Section 727.114(1)(a) has been amended to provide for the possibility of a deficiency claim, the substance of which we have already discussed *supra.* A secured creditors' claims are expressly subject to surcharge for reasonable and necessary expenses of preserving and disposing of their collateral, to the extent of any benefit to such creditor.

Otherwise, administrative expenses are governed by Section 727.114(1)(b). An amendment specifically includes rent incurred by the Assignee in occupying any premises in which the assets of the Assignment estate are located or the business is conducted, until the lease is rejected or otherwise terminated. This clears up and clarifies a long-standing dispute over whether the Assignee must pay the contractual rent, or simply the "reasonable value" of storing the assets pending disposition.

Section 727.114(1)(c) now grants the next priority after administrative expense to unsecured claims of governmental units for taxes which accrued within three (3) years before the filing date of the Petition. Previously, there had been no limit on the unsecured tax priority - the claim could have been ten (10) years old or more. The modification brings the priority closer to the tax priority set forth in the Bankruptcy Code."

Section 727.114(1)(d) concerns itself with claims for wages, salaries or commissions. It has been updated to provide a priority for those sums earned by employees of the Assignor within the one hundred-eight (180) days before the filing date of cessation of business, whichever occurs first, up to a maximum of $10,000 per individual employee.'

Section 727.114(1)(e) previously had granted a priority to the extent of $900 for consumer deposits held by the Assignor, Following the Bankruptcy Code and inflation, that amount has been raised to $2,225.[40]

Two new sections have been added Fla.Stat. § 727,114. Subsection (2) now provides that a subordination agreement is enforceable in an Assignment case, to the same extent that it is enforceable under applicable law.'

New Section 727.114(3) explains that a claim arising from rescission of a purchase or sale of a security of the Assignor or of an affiliate of the Assignor for damages arising from the purchase

or sale of the security or for reimbursement or contribution on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal to the claim or interest represented by such security, except that if the security is common stock, the claim has the same priority as common stock.' Generally speaking, this subordinates creditors whose claims arise under the security laws from their alleged damage by reason of having purchased securities of the debtor, to the same priority as the securities themselves would hold against other creditors. Thus, someone whose complaint concerns the purchase of common stock, has a claim at the level of "equity" and thus is subordinate of claims of trade creditors, who have general unsecured claims.

## CONCLUSION

This short survey demonstrates that the Legislature has covered significant ground in its effort to modernize and clarify the Assignments for the Benefit of Creditors, as well as its effort to bring the statute into a form more closely analogous to the Bankruptcy Code.

The major changes with respect to assignability of tort claims in insolvency cases, and the prohibition of *in pall delicto* defenses as against an Assignee for the Benefit of Creditors and his initial assignee' will no doubt be the subject of future litigation and more scholarly articles.

Generally speaking, the Assignment for the Benefit of Creditors is an efficient, relatively economical, and faster means for the administration of insolvent estates within the State of Florida, and remains a viable alternative to liquidation under the Bankruptcy Code.

***Footnotes***

1. The final form was a Committee substitute for Senate Bill No. 2118.

2. Florida Laws, Chapter 2007-185.

3. Fla.Stat. § 727.101 (2007) explains that:

   > "The intent of this Chapter is to provide a uniform procedure for the administration of insolvent estates, and to ensure full reporting to creditors and equal distribution of assets according to priorities as established under this Chapter."

4. Fla.Stat. § 727.104(1)(a) (2007) provides that:

   > "An irrevocable Assignment and Schedules shall be made in writing, containing the name and address of the Assignor and Assignee and providing for an equal distribution of the estate according to the priorities set forth S 727.114."

   Fla.Stat. § 727.104(1)(b) (2007) sets out the form of the Assignment document.

5. Fla.Stat. § 727.104(2)(a) (2007).

6. Fla.Stat. § 727.104(2)(b) (2007).

7. Fla.Stat. § 727.108 (2007).

8. Fla.Stat. § 727.105 (2007); 11 U.S.C. §362(b)(1) (2006).

9. Fla.Stat. § 727.109(3) (2007).

10. Fla.Stat. § 727.108(8) (2007).

11. Fla.Stat. § 727.108(12) (2007); Fla.Stat. § 727.116 (2007).

12. Fla.Stat. § 726.116(3)(4) (2007).

13. 1987 Fla. Laws. ch. 87.

14. 1989 Fla. Laws. ch. 54.

15, 1991 Fla. Laws. ch. 110.

16. 1997 Fla. Laws. ch. 102.

17. 1998 Fla. Laws. ch. 246.

18. 1997 Fla. Laws. ch. 102.

19. Fla.Stat.§ 727.104(1)(b) (2007).

*20. Id.*

21. Fla.Stat. § 727.103(6) (2007).

*22. See 11* U.S.C. §362(a) (2006).

23. Fla.Stat. § 727.105 (2007).

24. Fla.Stat. § 727.103(1) (2007).

25. Fla.Stat § 727.108(1)(a)(b).

26.

*In Official Committee of Unsecured Creditors of PSA, Inc. v. Edwards,* 437 F.3d 1145, 1152 (11th Cir. 2006), *cert. den. sub nom Laddin v. Reliance Trust Co.,* 2006 U.S. Lexis 5711 (U.S., Oct. 2, 2006). (The court provided an excellent summation of the concept:

> "The doctrine of *in pari delicto* is an equitable doctrine that states: a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing. *Black's Law Dictionary 794* (7 ed. 1999). This common law defense "derives from the latin *in pari delicto potion est conditio defendentis:* 'In a case of equal of mutual fault ... the position of the [defending] party . . . is the better *one.'Bateman Eichler Hill Richards, Inc. v. Berner,* 472 U.S. 299, 306, 105 S.Ct. 2622, 2626, 86 L.Ed.2d, 215 (1985). The doctrine of *in pari delicto* is based on the policy: "courts should not lend their good offices to mediating disputes among wrongdoers" and "denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality". *Id.)*

*27.* *Silverberg v. Paine Webber Jackson & Curtis, Inc.,* 710 F.2d 678, 691 (11th Cir. 1983).

*28.* *United States v. Hadley,* 678 F.2d•961 (11th Cir. 1982), *overruled on other grounds United States v. Goldin Indus.,* 219 F.3d 1268 (11th Cir. 2000).

*29.* *Baker v. Nason,* 236 F.2d 483, 489 (5th Cir. 1956); *See also Whitelock v. Geiger,* 368 So.2d 372 (Fla. 3rd D.C.A. 1979) ("when both parties are *in pari delicto* the court will leave them to settle their disputes without the aid of the court").

*30.* *See 11 U .S.C. §* 541 (a) (1) (2007) (providing that the debtor's estate includes "all legal or equitable interest of the debtor in property as of the commencement of the case." This includes any causes of action the debtor may have possessed); *See also Official Committee of Unsecured Creditors v.R.F. Lafferty & Co.,* 267 F.3d 340, 356 (3rd Cir. 2001).

A trustee, as the representative of the estate, succeeds to the rights of the debtor in bankruptcy, and has standing to bring any suit that the debtor corporation could have brought, had there been no

bankruptcy. *See* 11 U.S.C. § 323; *O'Halloran v. First Union National Bank,* 350 F.3d 1197, 1202 (11th Cir. 2003). With the new amendments to Fla.Stat. § 727.108(1), it is clear that an Assignee for the Benefit of Creditors in Florida likewise is the direct successor to the debtor and may (and must) prosecute its choses in action, if valid.

*31.* *See generally* Drew Moratzka, *Eighth Circuit Refuses to Conflate Constitutional Standing Doctrine With In Pari Delecto Defense,* 26-5 A.B.I.J. 18 (June 2007); Jeffrey Davis, *Ending the Nonsense - The In Pari Delecto Defense Has Nothing To Do With What is Section 541 Property of the Bankruptcy Estate,* 21 Bankr. Dev. J. 519 (2005); Karl Rubinstein, *The Legal Standing of an Insurance Insolvency Receiver: When The Shoe Doesn't Fit,* 10 Conn. Ins. L.J. 309 (Winter 2003 / 2004).

*32.* *Official Committee of Unsecured Creditors of PSA, Inc. v. Edwards,* 437 F. 3d 1145 (11th Cir. 2006).

33. 437 F.3d 1145 (11th Circuit 2006).

*34.* *See* 11 U.S.C. § 502(b)(7).

35. Fed.R.Bankr.P. 3002(c)(4) provides that a claim arising from rejection of an unexpired lease or other executory contract shall be filed "within such time as the court may direct." Local Rule 3003-1(C) of the U.S. Bankruptcy Court for the Southern District of Florida prescribes 30 days.

36. This corresponds to Fed.R.Bankr.P. 2002.

*37.* *See, e.g* Local Rule 9013-1(D) of the U.S. Bankruptcy Court for the Southern District of Florida, explains the "negative notice" practice.

38. See 11 U.S.C. § 507(a)(8)(A)(i) (2006). Which grants eighth priority for income or gross receipts taxes for which a return was last due within three (3) years before the date of the Petition.

39. This corresponds to 11 U.S.C. § 507(a)(4)and(5) (2006), which deal with unsecured claims for wages, salaries and commissions, and employee benefit contributions, respectively.

40. This corresponds to 11 U.S.C. § 507(a)(7).

41. This follows 11 U.S.C. § 510(a) (2006), concerning subordination.

42. This is a direct paraphrase of 11 U.S.C. § 510(b) (2006).

43. Other than insiders.