

**FORMATION OF OFFICIAL COMMITTEES**

**UNDER 11 U.S.C. § 1102:**

***COMPOSITION, APPOINTMENT & STANDARD OF REVIEW***

2003 ABA Spring Meeting, Business Law Section

Subcommittee on Administration, US Trustee, Jurisdiction & Venue and Courts

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## **FORMATION OF OFFICIAL COMMITTEES UNDER 11 U.S.C. § 1102**

### ***COMPOSITION, APPOINTMENT & STANDARD OF REVIEW***

#### **I. COMPOSITION OF CREDITORS' COMMITTEE**

##### **A. Statutory Authority: 11 U.S.C. § 1102(b)**

1. Section 1102(b)(1) of the Bankruptcy Code provides that the creditors' committee "shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee . . . ." 11 U.S.C. § 1102(b).

##### **B. Legislative History**

1. The general purpose of a committee is to "represent the various classes of creditors . . . from which they are selected." H.R. Rep. No. 95-595 (1977).
2. The rationale for appointing the largest unsecured creditors is that committees "will be the primary negotiating bodies for the formulation of the plan of reorganization." H. Rep. No. 95-595 (1977).

##### **C. Relationship To Other Bankruptcy Code Provisions**

1. Section 1126 of the Bankruptcy Code provides that creditors holding 2/3 of the total dollar amount of claims in each class must vote in favor of the plan in order to permit confirmation, subject to the cramdown exception under section 1129(b). Thus, in order to promote the successful formulation and negotiation of a plan, the Bankruptcy Code contemplates that the committee will be comprised of the creditors with the largest vote, and the largest economic stake, in the outcome of the case.

##### **D. Committee May Consist Of More Or Less Than 7 Members**

1. *Generally:* While the creditors' committee ordinarily consists of the holders of the seven largest unsecured claims, the committee may consist of more or less. 7 *Collier on Bankruptcy* ¶1102.02[2][b].
2. *In a small case,* a committee of three or four may be sufficient and is likely to reduce the cost and expense of the committee. *In re M.H. Corp.* 30 B.R. 266 (Bankr. S.D. Ohio 1983) (committee of one insufficient).
3. *In larger cases,* committees of more than ten are not uncommon, but should be limited so as not to impact the committee's ability to function

effectively. *In re Enron*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002) (13-member committee); *In re McLean Indus., Inc.*, 70 B.R. 852 (Bankr. S.D.N.Y. 1987) (19-member committee).

E. Must the Committee “Adequately Represent” The Various Creditor Groups?

1. *“Adequate Representation” Not Found In Bankruptcy Code*

- a) After section 1102(c) was repealed in 1986, there is no requirement in the Bankruptcy Code that creditors be adequately represented on the committee. However, the vestiges of 1102(c) remain and current case law continues to require committees to adequately represent the various creditor groups. *E.g., Chrysler Corp. v. U.S. Trustee (In re Doehler-Jarvis, Inc.)*, 1997 WL 827396 (D. Del. Oct. 7, 1997).

2. *What is Adequate Representation?*

- a) There is no clear-cut standard for determining whether a committee is representative. *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002) (“no framework provided in the Bankruptcy Code for this Court to determine adequate representation.”).
- b) Adequate representation found to exist when diversified interests of various creditor groups are represented and participate in the committee. *In re Doehler-Jarvis, Inc.*, 1997 WL 827396 (D. Del. Oct. 7, 1997).

3. *Remedy For Lack Of Adequate Representation*

- a) The statutory remedy for lack of adequate representation under section 1102(a)(2) is for the court to order the trustee to appoint an additional committee. *See discussion infra* Section II. The composition of an additional committee is determined by the trustee.

F. Unsettled Case Law: Does A Creditor With One Of The Seven Largest Claims Have An Absolute Right To Serve on the Committee?

1. *Some Courts Hold No Absolute Right To Appointment*

- a) The holder of one of the seven largest claims does not have an absolute right to serve on the committee. *In re Gates Eng’g, Co.*, 104 B.R. 653 (Bankr. D. Del. 1989) (“Code does not give any creditor the right to serve on a committee.”).

- b) “Official committees are not designed to provide a speaker’s platform for a particular creditor.” *In re Trans World Airlines, Inc.*, 1992 WL 168152 (Bankr. D. Del. Mar. 20, 1992).

2. *Others Find Abuse Of Discretion Not To Include Seven Largest*

- a) “While appointment pursuant to section 1102(c) [since repealed], which allows for appointment of members ‘representative of the different kinds of claims or interests to be represented’ is within the discretion of the court, section 1102(b) allows no such discretion. It states that the committee ‘shall ordinarily consist of the persons, will to serve that hold the seven largest claims against the debtor of the kinds represented on such committee.’ Under the facts of this case, any refusal to appoint the [second largest unsecured creditor] to the creditor’s committee would be an abuse of discretion.” *In re Altair Airlines*, 727 F.2d 88 (3d Cir. 1984).

G. Pre-Petition Committees

- 1. Trustee may appoint to the committee the members of a committee organized by creditors before the commencement of the chapter 11 case only if such prepetition committee was “fairly chosen” and is “representative of the different kinds of claims.” 11 U.S.C. § 1102(b)(1).

H. Small Business Debtor

- 1. In a case in which the debtor is a small business, the court may order that a committee of creditors not be appointed upon request of a party in interest and for cause. 11 U.S.C. § 1102(a)(3).

**II. APPOINTMENT OF ADDITIONAL COMMITTEES**

A. Statutory Authority: 11 U.S.C. § 1102(a)(2)

- 1. “On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.” 11 U.S.C. § 1102(a)(2)

B. Composition of Additional Committee of Equity Security Holders

- 1. “A committee of equity security holders appointed under subsection (a)(2) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest amounts of equity securities of the debtor of the kinds represented on such committee.” 11 U.S.C. § 1102(b)(2)

C. Trustee's Discretionary Power To Appoint Additional Committees

1. Trustee is authorized to appoint additional committees of creditors and to appoint one or more committees of equity security holders "as the United States trustee deems appropriate." 11 U.S.C. § 1102(a)(1); 7 *Collier on Bankruptcy* ¶1102.02[4].

D. Burden On Party Seeking Additional Committee

1. The party seeking an additional committee will have the burden of proving that the existing committee does not adequately represent the interests of creditors. *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).
2. A single committee for unsecured creditors is the norm and creation of additional committees is an extraordinary remedy. *In re Sharon Steel Corp.*, 100 B.R. 767 (Bankr. W.D. Pa. 1989).

E. "Adequate Representation" Standard Applied To Trustee's Discretion

1. "Adequate representation" standard set forth in section 1102(a)(2) provides some guidance of standard to be applied to trustee's discretion of whether to appoint additional committees.
  - a) The trustee should appoint additional committees only if necessary to assure "adequate representation" of creditors. *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).
  - b) The United States Trustee is not required to make formal findings in determining whether to appoint an additional committee. *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).

F. Judicial Review Of Trustee's Decision

1. *Court Cannot Appoint Particular Creditors, But May Refer Matter Back To Trustee To Correct, Or May Appoint Additional Committee*
  - a) "[W]hen ordering the appointment of additional committees, a court acting under § 1102(a)(2) may not order that particular creditors be appointed to such additional committees." *In re Value Merchs.*, 202 B.R. 280 (E.D. Wis. 1996).
  - b) Courts do not have the authority to order the United States Trustee to appoint a particular entity to an official committee of unsecured creditors. Rather, if the Court finds that a committee does not adequately represent an unsecured interest, the court can refer the matter back to the trustee for corrective action or, in the alternative, the court may appoint an additional committee. *In re*

*Doehler-Jarvis, Inc.*, 1997 WL 827396 (D. Del. Oct. 7, 1997)  
(court is without authority to appoint trade creditor to committee as a full voting member or as an *ex officio* member).

- c) Bankruptcy courts also authorized to order additional committees be appointed after reviewing the trustee's decisions regarding fairness and adequate representation. 11 U.S.C. § 1102(a)(2); *In re Voluntary Purchasing Groups, Inc.*, 1997 WL 155407 (E.D. Tex. Mar. 21, 1997).
- d) “[O]rdering the appointment of additional committees, particularly given that the matter is often first reviewed and addressed by the U.S. Trustee, is an extraordinary remedy.” *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).
- e) “If the bankruptcy court finds that additional committees are needed in order to assure adequate representation of creditors, then the United States Trustee is mandated to appoint the committee, not the bankruptcy court.” *In re Dow Corning Corp.*, 212 B.R. 258 (E.D. Mich. 1997).

2. *Courts Also Have The Power To Dissolve Committee*

- a) “The bankruptcy court determined that “it is not limited to ordering appointment of an additional committee . . . . Having determined that it had the authority to review the committee's composition, it then dissolved it, observing that, because there is no statutory authority for a blended committee consisting of creditors and equity holders, the trustee lacked the power to appoint such a committee under § 1102(a).” *Bodenstein v. Lentz (In re Mercury Fin. Co.)*, 240 B.R. 270 (N.D. Ill. 1999).

3. *Courts Consider Multiple Factors In Analyzing Whether Additional Committee Is Warranted*

a) **Enron Factors:**

- (1) “[C]ourts have generally applied a similar set of factors in analyzing the adequacy of representation. Such factors are: (1) The ability of the committee to function; (2) The nature of the case; and (3) The standing and desires of the various constituencies.” *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).
- (2) Other considerations include the ability for creditors to participate in the case even without an official committee

and the potential to recover expenses pursuant to § 503(b); whether different classes may be treated differently under a plan and need representation; the motivation of the movants; the cost incurred by the appointment of additional committees; and the tasks that a committee or separate committee is to perform. *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).

(3) “Some courts have found it appropriate to divide its consideration into two components. First, the court must determine whether the appointment of an additional committee is necessary to assure the movants are adequately represented. Second, if the answer to the first question is yes, then the court must decide whether it should exercise its discretion and order the appointment.” Such discretionary considerations include: “(1) The cost associated with the appointment; (2) The time of the application; (3) The potential for added complexity; and (4) The presence of other avenues for creditor participation.” *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).

- b) **Divided Committee:** “A committee that is hopelessly divided, unable to take a position on important matters and ineffective would clearly support an argument for a separate committee.” *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).
- c) **Joint Administration:** For joint administration of multiple cases, multiple committees may be more appropriate. *In re White Motor Credit Corp.*, 18 B.R. 720 (Bankr. N.D. Ohio 1980) (separate committee for each of five related cases).
- d) **Cost Not A Factor:** The added cost of an additional committee is not sufficient in itself to deprive creditors if additional committee is appropriate. *In re Hills Stores*, 137 B.R. 4 (Bankr. S.D.N.Y. 1992).
- e) **Separate Treatment of Creditors:** Additional committee should not be appointed unless there is an indication that creditor groups will be treated separately under a plan. *In re Drexel Burnham Lambert Group, Inc.*, 118 B.R. 209 (Bankr. S.D.N.Y. 1990).
- f) **Committee Gridlock:** Another consideration is whether having differently situated creditors on a single committee will create gridlock that would effectively render the committee unable to play a meaningful role in the bankruptcy case, particularly in

negotiating a plan of reorganization. 7 *Collier on Bankruptcy* ¶1102.02[4][b].

- g) **Insolvency of Debtor:** If a debtor is “hopelessly insolvent”, an equity committee is not generally warranted. *In re Williams Comms. Group, Inc.*, 281 B.R. 216 (Bankr. S.D.N.Y. 2002).

### III. EXCLUSION OF CERTAIN CREDITORS

#### A. Court Has Power To Remove Creditors Or Dissolve Committee

1. *Removal:* Although the court lacks power to appoint, the court may remove committee members. *In re Fas Mart Convenience Stores, Inc.*, 265 B.R. 427 (Bankr. E.D. Va. 2001) (granting motion to strike creditor from committee upon showing of creditor’s overwhelming conflict of interest with other members of the committee); *In re Microboard Processing, Inc.*, 95 B.R. 283 (Bankr. D. Conn. 1989) (“Courts should not remove a member from a creditors’ committee in the absence of specific evidence which supports a finding that the member has breached or is likely to breach a fiduciary duty to, or has an actual impermissible conflict of interest with, the class of creditors represented by that member.”).
2. *Dissolution:*
  - a) Courts may dissolve a committee when the existence of such committee does not comport with the Bankruptcy Code. *Bodenstein v. Lentz (In re Mercury Fin. Co.)*, 240 B.R. 270 (N.D. Ill. 1999) (dissolving committee consisting of creditors and equity holders).
  - b) Unmanageable and divisive committees have also been dissolved by courts. *In re Beard*, 811 F.2d 818 (4th Cir. 1987) (dissolving claimants’ committee in A.H. Robins bankruptcy finding that the committee was “unmanageable” and that division within the committee resulted in “near paralysis.”).

#### B. No Per Se Exclusion Of The Following Types Of Creditors:

1. *Creditors holding disputed claims.* *In re Laclede Cab Co.*, 145 B.R. 308 (Bankr. E.D. Mo. 1992).
2. *Creditors holding contingent claims.* *In re Barney’s, Inc.*, 197 B.R. 431 (Bankr. S.D.N.Y. 1996).
3. *Creditors with both secured and unsecured claims.* *In re Seascope Cruises, Ltd.*, 131 B.R. 241 (Bankr. S.D. Fla. 1991) (Code does not preclude holders of secured and unsecured claims from serving on

committee); *In re Walat Farms*, 64 B.R. 65 (Bankr. E.D. Mich. 1986) (court authorized appointment of undersecured creditor).

4. *Creditors who oppose the debtor's reorganization. In re Laclede Cab Co.*, 145 B.R. 308 (Bankr. E.D. Mo. 1992); *In re M.H. Corp.*, 30 B.R. 266 (Bankr. S.D. Ohio 1983) (“There is nothing in the statute which would prevent service of the creditors committee of a creditor unsympathetic to the efforts of the debtor to reorganize.”).
5. *Creditors in litigation with the debtor. In re Vermont Real Estate Inv. Trust*, 20 B.R. 33 (Bankr. D. Vt. 1982) (creditor required not to participate in any discussion by the committee concerning the litigation against her); 7 *Collier on Bankruptcy* ¶1102.02[2][a][ii].
6. *Third-party representatives on behalf of persons they represent. In re First RepublicBank Corp.*, 95 B.R. 58 (Bankr. N.D. Tex. 1988) (committee can include individual holder of claim or representative of holder).
7. *Attorney representative, but may only represent a single entity. In re M.H. Corp.*, 30 B.R. 266 (Bankr. S.D. Ohio 1983).
  - a) “[I]t is our policy to encourage creditors to designate persons engaged in their businesses to serve on a creditors committee, our thought being that such persons have greater insight into business affairs and this will be more useful in fulfilling the function of a creditors committee. We do not, however, bar the service on a creditors committee of an attorney if a creditor, aware of the just stated policy suggestion of the court, wishes that such a person be its representative.” *In re M.H. Corp.*, 30 B.R. 266 (Bankr. S.D. Ohio 1983).
  - b) There is a potential for conflicting fiduciary duties when attorneys on creditors’ committee represent more than one claimant. *In re Celotex Corp.*, 123 B.R. 917 (Bankr. M.D. Fla. 1991); *In re Dow Corning Corp.*, 212 B.R. 258 (E.D. Mich. 1997) (reversing bankruptcy court order removing attorneys from committee).
8. *Indenture trustees on behalf of debt instruments that are widely held. In re McLean Indus., Inc.*, 70 B.R. 852 (Bankr. S.D.N.Y. 1987).
  - a) They are sometimes non-voting members because they do not hold an actual claim. *Cf. In re Value Merchs., Inc.*, 202 B.R. 280 (E.D. Wis. 1996) (affirming bankruptcy court’s decision that trustee acted arbitrarily and capriciously in excluding indentured trustee *per se* from voting membership on official unsecured creditors’

committee where bondholders' aggregate claims dwarfed those of other unsecured creditors).

9. *Unions. In re Plabell Rubber Prods.*, 140 B.R. 179 (Bankr. N.D. Ohio 1992).

C. Creditors At Risk Of Exclusion

1. *Postpetition Claims Purchasers*

- a) No *per se* barred, but are often excluded out of fear that they will obtain inside information that they will use to buy or sell additional claims. 7 *Collier on Bankruptcy* ¶1102.02[2][a][iv].

2. *Competitors*

- a) Not *per se* barred, but are often excluded because of the non-public information that may be disclosed that may harm the debtor. *In re Map Int'l, Inc.*, 105 B.R. 5 (Bankr. E.D. Pa. 1989).

3. *Insiders* (As defined by section 101 of the Bankruptcy Code)

- a) Not *per se* barred from serving on committees, but examined on a case by case basis. Compare *In re Nyack Autopartstores Holding Co.*, 98 B.R. 659 (Bankr. S.D.N.Y. 1989) (insiders not *per se* excluded; cousin of chief operating officer allowed to serve); with *In re Glendale Woods Apts., Ltd.*, 25 B.R. 414 (Bankr. D. Md. 1982) (insiders removed from committee based on confidentiality concerns).

4. *DIP Financing Lenders*

- a) *In re Conxus Communications, Inc.*, Ch. 11 Case No. 99-01147-MFW (Bankr. D. Del. June 14, 1999) (converted to Ch. 7 Aug. 17, 1999) (order denying motion to appoint to the creditors' committee creditor who was also DIP Lender).

D. Bar of Most Governmental Entities

1. *Government Not "Person"*: Most governmental holders of claims are barred from committees because section 1102(b)(1) allows for the appointment of "persons" which generally excludes governmental entities. H. Rep. No. 95-595 (1977).

2. *“Person” Amended To Include Certain Government Units*
  - a) **1984 Amendment:** The definition of “person,” set forth in section 101(41) of the Bankruptcy Code, was amended in 1984 to include a governmental unit that acquires an asset from a person as a result of the operation of a loan guarantee agreement or as the receiver or liquidation agent of a person. This amendment authorizes the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Small Business Administration, and Farmers Home Administration to become members of a committee under the enumerated circumstances. 7 *Collier on Bankruptcy* ¶1102.02[2][a][viii].
  - b) **1994 Amendment:** The definition of person was further amended under the Bankruptcy Reform Act of 1994 to expand the list of governmental units considered persons for purposes of section 1102 to include (1) guarantors of pension benefits payable on behalf of the debtor or an affiliate; and (2) governmental units that become the legal or beneficial owner of an asset of certain employee pension benefit and deferred compensation plans. This amendment allows the Pension Benefit Guaranty Corporation and state pension funds to serve on a creditors' committee. 7 *Collier on Bankruptcy* ¶1102.02[2][a][viii].

#### IV. STANDARD OF REVIEW

##### A. History and Scope of Judicial Review

1. *Prior to 1986, Court Had Power To Change Committee Composition*
  - a) Section 1102(c) stated that “On request of a party in interest and after notice and a hearing, the court may change the membership or the size of a committee if the membership of such committee is not representative of the different kinds of claims or interests to be represented.” *In re Salant Corp.*, 53 B.R. 158 (Bankr. S.D.N.Y. 1985).
2. *After 1986, Appointment Power Rests Solely With Trustee*
  - a) When section 1102(c) was repealed, appointive power was placed in the hands of U.S. trustees under § 1102(a). *In re Altair Airlines, Inc.*, 727 F.2d 88 (3d Cir. 1984); *In re Mission Health*, 242 B.R. 527 (Bankr. M.D. Fla. 1999) (“The authority to appoint an unsecured creditors’ committee lies exclusively with the United States Trustee.”).

- b) “By revising Section 1102, Congress purposely removed administrative responsibility from the bankruptcy courts and placed it in the hands of the United States Trustee to allow the courts to make decisions ‘untainted by knowledge of administrative matters unnecessary and perhaps prejudicial to an impartial judicial determination.’” *In re Mission Health*, 242 B.R. 527 (Bankr. M.D. Fla. 1999), quoting H.R. Rep. No. 99-764 (1986).

B. Are The Trustee’s Decisions Reviewable?

1. *Courts Are Divided*: “As a result [of the repeal of section 1102(c)], courts are divided as to the extent to which the court may alter or modify a committee and review decisions made by the U.S. trustee.” *In re Fas Mart Convenience Stores, Inc.*, 265 B.R. 427 (Bankr. E.D. Va. 2001).
2. *Majority Position Favors Review*: The majority of courts hold that the authority to review a trustee’s decisions on committee appointments is found in Rules 2007 and 2020 of the Federal Rules of Bankruptcy Procedure and sections 1102(b)(1) and 105(a) of the Bankruptcy Code.
  - a) The Advisory Committee Note to Rule 2020 states that this rule provides a procedure for judicial review of the trustee’s acts or failure to act in connection with the administration of the case. *In re Pierce*, 237 B.R. 748 (Bankr. E.D. Cal. 1999).
  - b) Rule 2007(a) allows a court to determine, on motion of a party in interest, whether a committee appointed by the trustee pursuant to section 1102(a) consisting of the members of a committee organized by creditors before the commencement of the bankruptcy case satisfies the requirements of section 1102(b)(1). *In re Pierce*, 237 B.R. 748 (Bankr. E.D. Cal. 1999).
  - c) Section 1102(b)(1) provides a “meaningful standard” under which to review the trustee’s decisions regarding committee composition. Section 1102(b)(1) “in no way . . . provides the entire standard to be used. Rather, the Court views it as a non-exclusive list of factors for consideration.” *In re Voluntary Purchasing Groups, Inc.*, 1997 WL 155407 (E.D. Tex. Mar. 21, 1997).
  - d) “Although section 105(a) may not be used to create substantive rights that are not provided for in the code, section 105(a) can be and should be used to assure that the trustee does not act in an arbitrary or capricious manner.” *In re Voluntary Purchasing Groups, Inc.*, 1997 WL 155407 (E.D. Tex. Mar. 21, 1997).

3. *Minority Position Finds No Review Power:* A minority of courts hold that they have no power to overrule decisions of the trustee because section 1102 does not provide express authority for such review. *Compare Smith v. Wheeler Tech., Inc. (In re Wheeler Tech., Inc.)*, 139 B.R. 235 (B.A.P. 9th Cir. 1992) and *In re Drexel Burnham Lambert Group, Inc.*, 118 B.R. 209 (Bankr. S.D.N.Y. 1990) (committee appointments not reviewable) with *In re Columbia Gas Sys. Inc.*, 133 B.R. 174 (Bankr. D. Del. 1991) (committee appointments reviewable).
4. *Standing To Request Review:* A party in interest must move for review of the trustee's appointment decision. *In re Voluntary Purchasing Groups, Inc.*, 1997 WL 155407 (E.D. Tex. Mar. 21, 1997).

C. Courts Are Divided Over Applicable Standard of Review To Committee Composition

1. *Generally:* Court's apply a variety of standards in reviewing the trustee's appointment decisions. This area of the law has generated considerable controversy. *In re Voluntary Purchasing Groups, Inc.*, 1997 WL 155407 (E.D. Tex. Mar. 21, 1997) ("there is sharp conflict among courts regarding the issue of reviewability").
2. *De Novo Review*
  - a) Some courts review the trustee's appointment decisions *de novo*. *In re Sharon Steel Corp.*, 100 B.R. 767 (Bankr. W.D. Pa. 1989); *In re Texaco*, 79 B.R. 560 (Bankr. S.D.N.Y. 1987).
3. *Arbitrary and Capricious*
  - a) Some courts overturn a trustee's decision only if it is arbitrary and capricious. *In re Voluntary Purchasing Groups, Inc.*, 1997 WL 155407 (E.D. Tex. Mar. 21, 1997); *In re Barney's, Inc.*, 197 B.R. 431 (Bankr. S.D.N.Y. 1996).
4. *Abuse of Discretion*
  - a) Others apply an abuse of discretion standard. *In re Fas Mart Convenience Stores, Inc.*, 265 B.R. 427 (Bankr. E.D. Va. 2001) ("Put simply, a trustee abuses his discretion when he acts arbitrarily and capriciously."); *Bodenstein v. Lentz (In re Mercury Fin. Co.)*, 240 B.R. 270 (N.D. Ill. 1999); *In re Pierce*, 237 B.R. 748 (Bankr. E.D. Cal. 1999); *In re Voluntary Purchasing Groups, Inc.*, 1997 WL 155407 (E.D. Tex. Mar. 21, 1997).

5. *Clearly Erroneous*

- a) Appellate courts apply clearly erroneous standard to review lower court decision regarding trustee appointments to committee. *Van Arsdale v. Clemo*, 825 F.2d 794 (4th Cir. 1987).

D. Courts Also Divided Over Applicable Standard Of Review To Trustee's Decision To Appoint Or Not Appoint Additional Committees

1. *No Review*. Some courts hold that the appointment of additional committee is not subject to review. *In re Life Fellowship, Inc.*, 202 B.R. 994 (Bankr. W.D. Okla. 1996).
2. *De Novo Review*. Other courts hold that the trustee's decision is reviewed on a *de novo* basis. *In re Enron Corp.*, 279 B.R. 671 (Bankr. S.D.N.Y. 2002).