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No. 78774-3

SUPREME COURT
OF THE STATE OF WASHINGTON

TODD SHIPYARDS CORPORATION,

Petitioner,

v.

EDWIN HERRING, for himself and as
Personal Representative of the Estate of ROGER HERRING,

Respondent.

SUPPLEMENTAL BRIEF OF
TODD SHIPYARDS CORPORATION

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii-iii
A. INTRODUCTION	1
B. ISSUES PRESENTED FOR REVIEW	3
C. STATEMENT OF THE CASE.....	3
D. ARGUMENT	5
(1) <u>The Manner and Effect of Notice to Known/Unknown Todd Creditors Is an Issue of Law Controlled by Federal Authority and the Bankruptcy Court’s Orders</u>	5
(2) <u>Federal Law Only Requires Actual Notice to Known Creditors and Neither the AWU Nor Herring Was a Known Creditor</u>	9
E. CONCLUSION.....	19
Appendix	

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>Table of Cases</u>	
 <u>Washington Cases</u>	
<i>American States Ins. Co. v. Symes of Silverdale, Inc.</i> , 150 Wn.2d 462, 78 P.3d 1266 (2003).....	7
<i>Cent. Puget Sound Reg'l Transit Auth. v. Miller</i> , 156 Wn.2d 403, 128 P.3d 588 (2006).....	5
<i>Kirkpatrick v. Cheff</i> , 118 Wn. App. 772, 76 P.3d 1211 (2003).....	8
 <u>Federal Cases</u>	
<i>Brown v. Seaman Furniture Co., Inc.</i> , 171 B.R. 26 (E.D. Pa. 1994).....	9
<i>Chemetron Corp. v. Jones</i> , 72 F.3d 341 (3d Cir. 1995), <i>cert. denied</i> , 517 U.S. 1137 (1996).....	10, 11, 14, 15
<i>Fogel v. Zell</i> , 221 F.3d 955 (7 th Cir. 2000).....	17
<i>Gruntz v. County of Los Angeles</i> , 202 F.3d 1074 (9 th Cir. 2000).....	6
<i>In re Birting Fisheries, Inc.</i> , 300 B.R. 489 (9 th Cir. BAP 2003).....	6
<i>In re Brooks Fashion Stores, Inc.</i> , 124 B.R. 436 (Bankr. S.D.N.Y. 1991).....	18
<i>In re Careau Group</i> , 923 F.2d 710 (9 th Cir. 1991).....	7
<i>In re Chicago, Rock Island & Pacific R.R. Co.</i> , 90 B.R. 329 (N.D. Ill. 1987).....	11, 16
<i>In re Crystal Oil Co.</i> , 158 F.3d 291 (5 th Cir. 1998).....	16
<i>In re Edge</i> , 60 B.R. 690 (Bankr. M.D. Tenn. 1986).....	4
<i>In re Envirodyne Indus., Inc.</i> , 214 B.R. 338 (N.D. Ill. 1997).....	16, 17
<i>In re Fairchild Aircraft Corp.</i> , 184 B.R. 910 (W.D. Tex. 1995).....	4
<i>In re McGhan</i> , 288 F.3d 1172 (9 th Cir. 2002).....	6
<i>In re Texaco Inc.</i> , 182 B.R. 937 (Bankr. S.D.N.Y. 1995).....	11, 18
<i>In re The Charter Co.</i> , 113 B.R. 725 (M.D. Fla. 1990).....	11
<i>In re The Charter Co.</i> , 113 B.R. 725 (M.D. Fla. 1990), 125 B.R. 650 (M.D. Fla. 1991).....	11, 13, 14

<i>In re Trump Taj Mahal Assocs.</i> , 156 B.R. 928 (Bankr. D.N.J. 1993), <i>aff'd sub. nom.</i> <i>Trump Taj Mahal Assocs. v. O'Hara</i> , 1993 U.S. Dist. LEXIS 17827 (D.N.J. 1993)	11, 16
<i>In re Union Hosp. Ass'n of The Bronx</i> , 226 B.R. 134 (Bankr. S.D.N.Y. 1998)	18
<i>In re U.S.H. Corp. of N.Y.</i> , 223 B.R. 654 (S.D.N.Y. 1998)	18
<i>In re XO Communications, Inc.</i> , 301 B.R. 782 (S.D.N.Y. 2003)	18
<i>International Shoe Co. v. Pinkus</i> , 278 U.S. 261, 49 S. Ct. 108, 73 L.Ed. 318 (1929)	7
<i>Matter of Brady</i> , 936 F.2d 212 (5 th Cir.), <i>cert. denied</i> , 502 U.S. 1013 (1991)	8
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865 (1950)	12, 19
<i>Solow Bldg. Co., LLC v. ATC Assocs., Inc.</i> , 175 F. Supp. 2d 465 (E.D.N.Y. 2001)	18
<i>Tulsa Professional Collection Services, Inc. v. Pope</i> , 485 U.S. 478, 108 S. Ct. 1340 (1988)	10

Statutes

11 U.S.C. §§ 101(5), 1141(d)(1)(A)(i)	4
---	---

Other Authorities

H.R. Rep. No. 595, 95th Cong., 1st Sess. 309 (1977)	6
S. Rep. No. 989, 95th Cong., 2d Sess. 21-1 (1978), <i>reprinted in</i> , 1978 U.S.C.C.A.N. 6866	7

A. INTRODUCTION

Bankruptcy policy provides that debtors in bankruptcy are entitled to a fresh start. They should receive relief from claims that could have been addressed in the bankruptcy. The Court of Appeals decision strips the certainty of relief from such claims with which debtors now emerge from bankruptcy given that it would impose post hoc requirements upon debtors neither required by the bankruptcy court nor heretofore required under bankruptcy law.

Bankruptcy law requires a debtor seeking the protection of bankruptcy to make reasonably diligent efforts to identify its creditors and to give them notice of the impending bankruptcy proceedings. The debtor must canvass its own books and records and send notice to the persons and entities identified in such a search; the debtor is not obliged to ferret out persons whose potential claims against the debtor are unknown, conjectural or speculative, and to invite such persons to assert claims against it. Persons whose identities or claims are not discerned by a search of the debtor's books and records are unknown claimants who are entitled only to publication notice of bankruptcy proceedings.

At the time Todd filed for bankruptcy protection in 1987, Roger Herring¹ was an unknown creditor of Todd. He had an asbestos-related injury in 1986. He received publication notice of Todd's bankruptcy pursuant to the bankruptcy court's March 8, 1988 order and Todd was discharged from any liability to creditors on December 14, 1990. A bankruptcy court's orders regarding notice to creditors and discharge are core federal bankruptcy proceedings in which federal jurisdiction is exclusive and they carry preclusive effect.

If the Court goes beyond the bankruptcy court's orders here, Todd gave appropriate notice to creditors identified in its books and records; it was not obligated to give actual notice to creditors not identified in a diligent search of its records. Roger Herring was never a Todd employee. Some 20 years before Todd's bankruptcy, Herring worked occasionally at Todd Shipyards for a Todd subcontractor. In 1989, Herring filed a lawsuit claiming exposure to asbestos on the job, but he did not sue Todd. Under federal bankruptcy law, Todd is not obliged to give actual notice to employees of subcontractors, who, at one point or another, worked on its premises, or to their unions, if such persons and entities are not known creditors. No federal case law supports such a rule, and no court has ever

¹ Roger Herring originally brought the action below in his own name. He later passed away and the matter was pursued by Edwin Herring, his brother and the personal representative of his estate. All references herein to Herring are to Roger Herring.

held that a debtor was required to give actual notice to a non-creditor, such as Herring's union, in an effort to identify other potential creditors. Rather, the established federal law is that only known creditors are entitled to actual notice, and unknown creditors, such as Herring, are entitled only to publication notice.

B. ISSUES PRESENTED FOR REVIEW

1. Did the New Jersey bankruptcy court have exclusive authority to decide issues governing notice and discharge, core federal bankruptcy proceedings in a Chapter 11 proceeding?

2. Where Todd sought the protection of Chapter 11 bankruptcy reorganization and diligently sought to identify its known creditors, did the bankruptcy court order stating Todd was not obliged to give actual notice of the bankruptcy proceedings to unknown creditors, such as an employee of one of its subcontractors, carry preclusive effect?

3. Was Todd required to give actual notice of its bankruptcy to a non-creditor union as part of an effort to identify potential creditors?

C. STATEMENT OF THE CASE

The facts relevant to the federal court's orders issued in the course of Todd's bankruptcy are undisputed.

Todd filed its voluntary petition for Chapter 11 reorganization on August 17, 1987, in the United States Bankruptcy Court for the District of

New Jersey. CP 46. The bar date for filing proofs of claims was June 6, 1988. CP 207. Herring's complaint stated that he first learned in August 1986 that he had an asbestos-related disease caused by asbestos exposure. CP 112-13. Therefore, Herring had a pre-petition claim, dischargeable in Todd's bankruptcy. See 11 U.S.C. §§ 101(5), 1141(d)(1)(A)(i); *In re Fairchild Aircraft Corp.*, 184 B.R. 910, 921-34 (W.D. Tex. 1995); *In re Edge*, 60 B.R. 690, 699 (Bankr. M.D. Tenn. 1986).

The New Jersey bankruptcy court's March 8, 1988 Order (i) Reconfirming Bar Date for the Filing of Proofs of Claim or Interest and (ii) Providing for Supplemental Notice Thereof specifically listed the creditors to whom notice had to be sent; neither the Asbestos Workers Union Local 7 (Herring's union) nor Herring was listed as a creditor. CP 210-11. A copy of that order is in the Appendix.

The bankruptcy court's December 14, 1990 Order Confirming Debtors' Third Amended Joint Plan of Reorganization included the court's discharge order which discharged Todd from claims based on any act or omission occurring prior to the confirmation date and restrained any creditor from commencing a future action on such debts. CP 65, 67-68, 71-72.² A copy of this order is in the Appendix.

² See also CP 96-97, Debtors' Third Amended Joint Plan of Reorganization at A-19 to A-20, ¶ 6.12.

Herring was never an employee of Todd or any of its affiliates. CP 48. Todd did not learn of Herring and his claims against it until Todd was named in this action in 2003. CP 49. Herring was a member of the Asbestos Workers Union (“AWU”), Local No. 7. CP 341. It is undisputed that members of the AWU were not Todd employees, but worked at Todd as employees of subcontractors. It further is not disputed that the AWU was not a creditor in Todd’s bankruptcy.

The trial court, the Honorable Linda Lau of the King County Superior Court, granted Todd’s summary judgment motion finding Herring’s claim to have been discharged in bankruptcy. CP 641-42. In a published split decision filed on April 17, 2006, the Court of Appeals reversed the trial court’s order.

D. ARGUMENT³

(1) The Manner and Effect of Notice to Known/Unknown Todd Creditors Is an Issue of Law Controlled by Federal Authority and the Bankruptcy Court’s Orders.

In general, a state court may not question a bankruptcy court’s order setting out in fact and form the publication notice required for unknown claimants such as Herring, and, in this case, determining that

³ Under Washington law, issues relating to notice are ordinarily considered matters of procedure and are reviewed as questions of law. *Cent. Puget Sound Reg’l Transit Auth. v. Miller*, 156 Wn.2d 403, 412-13, 128 P.3d 588 (2006). The Court of Appeals majority plainly considered the issue of notice a matter for the trier of fact (Op. at 7) and this was error.

Todd's publication notice was sufficient to discharge the claims of unknown claimants. Because this issue is particularly a matter for the federal courts, state courts are constrained in their ability to adjudicate the adequacy of notice to a creditor or to modify a bankruptcy court's discharge order; both relate to core bankruptcy proceedings. *In re McGhan*, 288 F.3d 1172, 1179-80 (9th Cir. 2002); *Gruntz v. County of Los Angeles*, 202 F.3d 1074 (9th Cir. 2000); *In re Birting Fisheries, Inc.*, 300 B.R. 489 (9th Cir. BAP 2003).

However, the Court of Appeals majority believed it could circumvent the bankruptcy court's orders and effectively adopt new notice requirements for the Todd bankruptcy not required by federal law. But the notice issue before this Court is indisputably governed by federal bankruptcy statutes and case law, which have dictated the type of notice required in bankruptcy cases and to whom it is provided, and which set forth a rule that is directly contrary to the majority's belief that it could impose post hoc conditions on Todd's bankruptcy.

A state court cannot impose an additional layer of notice upon a debtor in bankruptcy; such an added requirement flies in the face of the Bankruptcy Code, which ensures that "all legal obligations of the debtor, *no matter how remote or contingent*, will be able to be dealt with in the bankruptcy case," (H.R. Rep. No. 595, 95th Cong., 1st Sess. 309 (1977));

S. Rep. No. 989, 95th Cong., 2d Sess. 21-1 (1978), *reprinted in*, 1978 U.S.C.C.A.N. 6866; 5787, 5807-08 (emphasis added)), and represents a radical departure from well-established federal law. “[S]tate courts have no authority to depart from federal bankruptcy law based on a disagreement as to appropriate public policy.” *American States Ins. Co. v. Symes of Silverdale, Inc.*, 150 Wn.2d 462, 469, 78 P.3d 1266 (2003) (citing *International Shoe Co. v. Pinkus*, 278 U.S. 261, 263-64, 49 S. Ct. 108, 73 L.Ed. 318 (1929)). “States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations.” *International Shoe*, 278 U.S. at 265. The effect of this rule is evident in that no *state* appellate court has ever held that notice ordered by a bankruptcy court was defective. A state court cannot overrule a federal court under the Supremacy Clause of the U.S. Constitution. *See In re Careau Group*, 923 F.2d 710, 712 (9th Cir. 1991).

In its March 8, 1988 order, the New Jersey bankruptcy court, consistent with longstanding bankruptcy law, determined that publication notice was sufficient to discharge the unscheduled claims of unknown claimants, such as Herring. Known stockholders and note holders, as well as scheduled creditors, were to receive mailed notice. The order provided for publication notice to all other creditors and deemed the combined notice “good and sufficient notice of the Bar Date.” CP 210–11.

The bankruptcy court's December 14, 1990 order discharged Todd from "any and all Claims of the Debtors' creditors" and provided "full and final satisfaction, settlement, release and discharge as against the Debtors, of any debt that arose before the Confirmation Date," and enjoined such creditors from bringing any action on such debts against Todd. CP 65, 67-68, 71-72. That discharge order precluded Herring's claim against Todd. *Kirkpatrick v. Cheff*, 118 Wn. App. 772, 779, 76 P.3d 1211 (2003) (postpetition purchasers of property from debtor did not have actual notice of bankruptcy but were aware of it; they were required to file claim with bankruptcy court before purchase and sale was discharged in reorganization plan).

As the New Jersey bankruptcy court itself determined that its notice requirements and Todd's compliance with it were sufficient to discharge the claims of unknown claimants such as Herring, that order had preclusive effect in this state court proceeding. *See, e.g., Matter of Brady*, 936 F.2d 212, 215 (5th Cir.), *cert. denied*, 502 U.S. 1013 (1991).

Herring, an unknown creditor, had legal and effective notice of Todd's bankruptcy pursuant to the bankruptcy court's March 8, 1988 order. That order and the court's subsequent discharge order are conclusive. As such, they may not be modified or otherwise disturbed by a state court. Todd provided the requisite notice to unknown creditors

such as Herring, which the bankruptcy court directed and held was sufficient, and the bankruptcy court discharged Herring's claim.

(2) Federal Law Only Requires Actual Notice to Known Creditors and Neither the AWU Nor Herring Was a Known Creditor

To the extent, if any, that the effectiveness of Todd's notice with respect to Herring is subject to review by this Court, federal law establishes that Herring, as an unknown creditor, was entitled only to publication notice of Todd's bankruptcy. For unknown creditors, the bankruptcy court's discharge order will bar a creditor's claim if two conditions are met: (1) the creditor had a "claim," as defined in the Bankruptcy Code, which arose prior to confirmation; and (2) the creditor was given sufficient notice of the bankruptcy proceeding. If these conditions are met, the "order confirming a reorganization plan operates to discharge all unsecured debts and liabilities, even those of tort victims who were unaware of the debtor's bankruptcy." *Brown v. Seaman Furniture Co., Inc.*, 171 B.R. 26, 26-27 (E.D. Pa. 1994).

The Court of Appeals majority here adopted a definition of "known creditor" for purposes of notice in bankruptcy cases that has never been adopted by the federal courts:

The central issue here is whether Herring's union, Local 7, was a known or unknown creditor. If it was a known creditor, it was entitled to actual

notice of the bankruptcy proceedings; if it was an unknown creditor, notice by publication was sufficient to satisfy due process, and the trial court properly barred Herring's claims against Todd.

Op. at 4–5. There is absolutely no dispute in this case that the AWU was *not* a creditor in Todd's bankruptcy. By identifying Herring as someone Todd should have sought out and invited to file a claim against it, the Court of Appeals majority transformed the AWU into a "known creditor" so that it could serve as a conduit for effective notice to Herring. However, as a non-creditor, the union was not entitled to any notice at all.⁴

Well-established federal law holds that a debtor is required to provide actual notice of its bankruptcy only to known creditors. *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 489–90, 108 S. Ct. 1340, 1347 (1988). Further, a debtor is only required to conduct a diligent search of its own books and records to ascertain creditors. *Chemetron Corp. v. Jones*, 72 F.3d 341 (3d Cir. 1995), *cert. denied*, 517 U.S. 1137 (1996). In this case, it is undisputed that a diligent search of Todd's books and records would not have revealed that Herring was a creditor or Herring's identity, as the Court of Appeals majority readily concedes. Op. at 6. Thus, as the federal courts have consistently held,

⁴ At best, the AWU was an unknown creditor because it had no claim known to Todd. As an unknown creditor, as the Court of Appeals majority acknowledged, notice by publication to the AWU was sufficient to satisfy due process, and would have barred its claim (derivatively Herring's) against Todd. Op. at 4-5.

Herring – as an unknown creditor — was entitled only to publication notice. And no court has ever held that publication notice ordered by the bankruptcy court and provided by the debtor was constitutionally insufficient to discharge the claim of an unknown claimant. *See, e.g., In re The Charter Co.*, 113 B.R. 725, 728 (M.D. Fla. 1990); *In re Texaco Inc.*, 182 B.R. 937, 955, 957 (S.D.N.Y. 1995).

Chemetron, Texaco, In re Trump Taj Mahal Assocs., 156 B.R. 928 (Bankr. D.N.J. 1993), *aff'd sub. nom. Trump Taj Mahal Assocs. v. O'Hara*, 1993 U.S. Dist. LEXIS 17827 (D.N.J. 1993), *In re Chicago, Rock Island & Pacific R.R. Co.*, 90 B.R. 329 (N.D. Ill. 1987), and *In re The Charter Co.*, 113 B.R. 725, 728 (M.D. Fla. 1990), 125 B.R. 650, 655–56 (M.D. Fla. 1991), all make clear that a debtor in bankruptcy has no obligation to search out each possible creditor. No federal court has ever held that a debtor in bankruptcy is required to provide actual notice of its bankruptcy to a non-creditor on the chance that such notice might then filter down to potential creditors, though they be unknown to the debtor. Rather, the debtor need only find those creditors that are reasonably ascertainable from a review of the debtor's own records. It was precisely for this reason the *Chemetron* court rejected a “reasonably foreseeable” creditor test in favor of the “reasonably ascertainable” test. *Chemetron*, 72

F.3d at 347.⁵

Persons not entitled to actual notice are those whose “interests are either conjectural or future *or*, although they *could be* discovered upon investigation, do not *in the due course of business* come to the knowledge of the [debtor].” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317, 70 S. Ct. 652, 659, 94 L.Ed. 865 (1950) (emphasis added). Although noting that, to be required to give actual notice to a “potential creditor,” “the debtor must have in his or her possession some specific information suggesting both the claim for which and the entity to which it would be liable,” Op. at 1-2, the Court of Appeals held that Todd was required to seek out such information when it was not in its possession.

Herring was an “unknown creditor” entitled only to publication notice because his identity would not have, and did not, come to the

⁵ See Dissent at 1-2, 4:

in holding that the union was entitled to actual notice because Todd knew that members of the AWU Local No. 7 “could reasonably be expected to suffer asbestos-related diseases for which they would file tort claims,” the majority applies the “reasonably foreseeable” test rejected in *Chemetron* and fails to faithfully apply the reasonably ascertainable test articulated in the case law.

* * * *

Here, the majority fails to properly apply the reasonably ascertainable test. The majority’s analysis turns on its finding that Todd “knew that members of the Asbestos Workers Union Local No. 7 (Local 7) who had worked at Todd *could reasonably be expected* to suffer asbestos-related diseases for which they *would* file tort claims.” This “could reasonably be expected” test applied by the majority is no different than the “reasonably foreseeable” test rejected in *Chemetron* and is not the “reasonably ascertainable” test which the majority purports to apply.

knowledge of Todd “in the due course of business” and because his claim against Todd was “conjectural.” *See In re The Charter Co.*, 125 B.R. at 654-55 n.2 (noting, in part, that a claim is conjectural if the debtor would have been required to engage in “conjecture or speculation” about whether a particular entity had a claim at the time the debtor compiled its list of creditors). “While the debtor does have a duty to give notice to known creditors of the bar date, it is not the debtor’s duty to search out each conceivable or possible creditor and urge that person or entity to make a claim against it.” *Id.* at 655.

As noted, the Court of Appeals majority decision ultimately rested on its determination that “[t]he central issue here is whether Herring’s union, Local 7, was a known or unknown creditor.” *Op.* at 4. Although the majority determined Todd was required to give notice to the AWU local, this was the wrong inquiry.⁶ Herring’s union was not a *creditor* in Todd’s bankruptcy; at most, AWU represented employees of contractors that occasionally worked at Todd. *Op.* at 5. As such, Todd was not required to give *any* notice of its bankruptcy to the union.

The Court of Appeals majority’s contrary ruling not only effects a change in bankruptcy law, by determining a non-creditor to be a “known

⁶ “Even if the issue turned on whether the union was a known creditor, there is nothing in the record to support the contention that the union was a known creditor,

creditor” entitled to actual notice, but also effectively imposes upon debtors in bankruptcy an additional duty to take steps to identify potential creditors that are not required under established federal law.

[The steps taken by Todd] are enough under these circumstances to constitute reasonable diligence on the part of Todd, and this court should not impose the additional requirement that Todd provide notice to a noncreditor (the union) in the hope that it would identify a potential creditor (Herring) whose identity and potential claim were unknown to Todd. Such a requirement is inconsistent with existing case law defining when a potential claim is reasonably ascertainable. As the case law holds, the appropriate test of whether a potential claim is reasonably ascertainable is determined based on the information the debtor has in its possession at the time of the bankruptcy proceedings and not on a factual finding as to what might have happened had the debtor notified a noncreditor.

Dissent at 2–3.

While the Court of Appeals majority found that Herring’s claim was “reasonably ascertainable” because he might have come forward if Todd had provided actual notice to his union, such efforts are precisely what the federal courts have said are *not* required. *Charter*, 125 B.R. at 655; *Chemetron*, 72 F.3d at 346. Although the Court of Appeals majority asserted that it would have been easy for Todd to provide notice to the union, the rule imposed by the majority makes nothing “easy.”

because there is nothing in the record showing that the AWU Local No. 7 had any existing or potential claims against Todd Shipyards.” Dissent at 1 n.1.

Determining the additional parties, besides Herring's union, to which Todd (and other debtors) would be required to give notice is just the sort of "Scylla of causational difficulties and Charybdis of practical concerns" that the *Chemetron* court admonished against.

What the Court of Appeals lost sight of is that its ruling does not stop with a requirement that Todd provide a single notice to a single union. Herring's situation cannot be so easily separated from those of other unknown, yet potential, creditors. Notice calculated to reach or potentially reach all such unknown creditors would be far from easy for an employer such as Todd with multiple facilities where thousands of employees of subcontractors — members of an untold number of unions — worked on occasion, which were visited by myriad others, and which were near where thousands of people lived. A debtor "cannot be required to provide actual notice to anyone who potentially could have been affected by [its] actions; such a requirement would completely vitiate the important goal of prompt and effectual administration and settlement of debtors' estates." *Chemetron Corp.*, 72 F.3d at 348. Publication notice to an unknown creditor such as Herring is all that is and was required here by federal law.

There is no shortage of cases in which it would have been easy for the debtor to identify potential claimants — including the particular

claimant at issue seeking to maintain his or her claim — and to provide them with notice of its bankruptcy. The Court of Appeals majority attempted to distinguish two of these — *Trump* and *Chicago, Rock Island*, in addition to *Chemetron* — but it is precisely these cases and others that provide the applicable rule: despite knowledge even of specific *potential* claims and claimants, a debtor is not required to provide actual notice in such cases unless it is aware of both the *existence* of a claim and the identity of the claimant. *See also In re Envirodyne Indus., Inc.*, 214 B.R. 338, 348 (N.D. Ill. 1997), which states:

Clear Shield's records showed that appellant St. Cloud did not owe Clear Shield any money nor did Clear Shield owe St. Cloud any money. Accordingly, there was no reason for appellee Clear Shield to have to give actual notice to appellant St. Cloud since it was not a creditor. Appellee Clear Shield used reasonably diligent efforts to determine who constituted their known creditors. There was no reason for appellee Clear Shield to have had to search out appellants and create reasons for appellants to make a claim against it."

Todd did not have in its possession "some specific information suggesting both the claim for which and the entity to which it would be liable." Op. at 1–2. *See In re Crystal Oil Co.*, 158 F.3d 291, 297 (5th Cir. 1998). As noted by Judge Grosse, there was no information in Todd's books and records regarding Herring's asbestos-related disease claim, *i.e.*, "the claim for which ... it would be held liable," or regarding Herring, *i.e.*,

“the entity to whom it would be liable.” Dissent at 1, 3. Turning the basic requirement of bankruptcy law — which it cited — on its head, the Court of Appeals found that, because Todd knew of other, similar claims (but not Herring’s) and knew of an entity against whom it would *not* be liable (Local 7), “it therefore should have given Local 7 actual notice of Todd’s bankruptcy.” Op. at 2.

As *Envirodyne* demonstrates, the Court of Appeals majority’s reliance on *Fogel v. Zell*, 221 F.3d 955 (7th Cir. 2000), in this respect is misplaced. The City and County of Denver — the party that the court held should have received actual notice of the debtor’s bankruptcy — was, in fact, a creditor; the union here was not. Moreover, as the Court of Appeals majority itself noted, “Denver’s identity and potential claim were reasonably ascertainable because the debtor need only look to its own books and records” to discover it. Op. at 12. In short, Denver — a large, known customer of the debtor — was a creditor whose claim was ascertainable from a review of the debtor’s books and records and, therefore, entitled to actual notice. Here, Herring was a creditor, but he could not be identified from a review of Todd’s books and records; and although the union was known to Todd, it was not a creditor. Strictly applying *Fogel* to the facts of this case demonstrates that neither Herring nor his union was entitled to actual notice of Todd’s bankruptcy.

Solow Bldg. Co., LLC v. ATC Assocs., Inc., 175 F. Supp. 2d 465 (E.D.N.Y. 2001), also relied upon by the Court of Appeals majority, is to the same effect because, as the majority itself determined:

the court found that a building management group, Solow, was a known creditor because the debtor renovation company, ATC, had in its possession *at the time of filing for bankruptcy* letters from Solow threatening legal action for damages caused by their alleged improper asbestos abatement practices.

Op. at 13 (emphasis added).

Solow, in particular, should be carefully compared with other cases out of the Southern District of New York — which includes New York City and where the vast bulk of the state’s bankruptcies are filed — that have consistently held that, under scenarios similar to the facts in this case, actual notice was not required. *See In re Texaco Inc.*, 182 B.R. 937, 955 (Bankr. S.D.N.Y. 1995) (“Although a debtor is obligated to ascertain reasonably the identity of its creditors by reviewing its own books and records, ‘a debtor is not required to search elsewhere for those who might have been injured.’”); *In re Brooks Fashion Stores, Inc.*, 124 B.R. 436 (Bankr. S.D.N.Y. 1991); *In re U.S.H. Corp. of N.Y.*, 223 B.R. 654 (S.D.N.Y. 1998); *In re Union Hosp. Ass’n of The Bronx*, 226 B.R. 134 (Bankr. S.D.N.Y. 1998); *In re XO Communications, Inc.*, 301 B.R. 782 (S.D.N.Y. 2003).

Two inconsistencies in the Court of Appeals opinion also point to error. First, notice to Todd's subcontractors, including Herring's employer, would be sufficient notice under the Court of Appeals' interpretation. *See Op.* at 6-7 n.11. Notice to employers is reasonably calculated to reach potential claimants such as Herring. Second, it is only speculation that the publication notice the union might have provided its members would have been any more effective than the publication notice required by the bankruptcy court. *Id.* at 5.

Federal law requires that actual notice in bankruptcy proceedings should be given only to *actual, known creditors* of the debtor; discovered from a reasonable search of the debtor's books and records. Publication notice is sufficient as to any unknown claimants. *Mullane*, 339 U.S. at 317-18. This Court should adhere to this clear and simple formulation and reject the approach taken by the Court of Appeals.

E. CONCLUSION

The determination of notice to creditors and discharge are core bankruptcy proceedings, which a state court may not disturb.

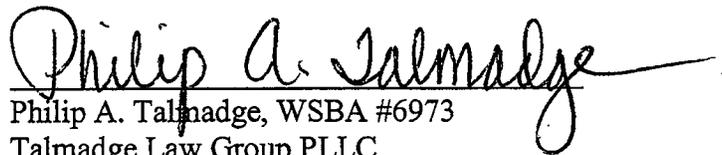
The New Jersey bankruptcy court's March 8, 1988 and December 14, 1990 orders carry preclusive effect as to unknown creditors of Todd; Herring was not a known creditor entitled to actual notice, nor was his union, and Todd was discharged from any liability to Herring. The New

Jersey bankruptcy court's orders are res judicata as to Todd and Herring.

If the Court goes beyond that initial issue, the Court should adhere to the principle announced in federal bankruptcy law that actual notice of the bankruptcy proceedings need only be given to actual known creditors of the debtor; publication notice is sufficient as to unknown claimants of the debtor. Todd asks this Court to reverse the Court of Appeals, and reinstate the trial court's order on summary judgment.

DATED this 23^d day of March, 2007.

Respectfully submitted,



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APPENDIX

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

-----X
In re: :
: :
: :
TODD SHIPYARDS CORPORATION, : Chapter 11
TODD PACIFIC SHIPYARDS CORPORATION, : Case Nos. 87-5005 WT *uy*
: 87-5006 WT
Debtors. :
: :
: :
-----X

ORDER (i) RECONFIRMING BAR DATE FOR
THE FILING OF PROOFS OF CLAIM OR INTEREST
AND (ii) PROVIDING FOR SUPPLEMENTAL NOTICE THEREOF

This matter having been opened to the Court by way of the Debtors' Notice of Motion dated February 2, 1988 and upon the application (the "Application") of Todd Shipyards Corporation and Todd Pacific Shipyards Corporation, Debtors and Debtors-in-Possession (collectively, the "Debtors"), seeking the entry of an Order, pursuant to Section 1111(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Code") and Bankruptcy Rule 3003, (i) reconfirming June 6, 1988 as an absolute bar date (the "Bar Date") for the filing of proofs of claim or interest and (ii) providing for the supplemental notice thereof; and it

appearing that sufficient notice of the Application has been given; and upon the record of the hearing held on February 29, 1988; and it appearing that the manner of entry of this Order as provided herein is reasonably calculated to give actual notice of the Bar Date; and this Court, by sua sponte order entered November 17, 1987, having heretofore ordered that any creditor or equity security holder whose claim or interest is not scheduled by the Debtors pursuant to Bankruptcy Rule 1007 or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest on or before June 6, 1988 unless otherwise modified by the Court, provided that stockholders need not file a proof of claim; and sufficient cause appearing therefor;

IT IS, ON THIS ^{8TH} DAY OF ~~FEBRUARY~~ ^{MARCH}, 1988

ORDERED, that all creditors, individuals, partnerships, corporations, associations, governmental units, note holders and stockholders of record as of the date of entry of this Order (as reflected in the books and records of the Debtors, the indenture trustees and the stock transfer agents), and other entities that hold or assert claims (as defined in Section 101(4) of the Code) against the Debtors arising prior to, or which may be deemed to have arisen prior to, the commencement of Debtors' Chapter 11 cases on August 17, 1987, which claims are based on the Debtors' primary, secondary, direct, indirect, secured, unsecured, contingent, guaranty, or other liability, and whose claims are not scheduled on

the Debtors' respective Schedules of Liabilities filed with the Court on January 15, 1988 pursuant to Bankruptcy Rule 1007 (collectively, the "Schedules") or whose claims are scheduled but are disputed as to amount or type by either the Debtors or the claimant or any party-in-interest or are listed on the Schedules, as filed or as may be amended, as contingent or unliquidated as to amount, provided that (a) a note holder shall not be required to file a proof of claim to the extent that its claim is based on principal and interest due on the subject note, and (b) a stockholder shall not be required to file a proof of interest to the extent that its interest is based on ownership of shares of the Debtors' stock, shall file by mail or by hand delivery a written proof of claim or interest conforming to Official Bankruptcy Form No. 19, with supporting documentation annexed thereto, identifying the entity against which the claim or interest is asserted and referencing any assigned creditor number, such that said claim is received as set forth below on or before 5:00 p.m. June 6, 1988 New Jersey Time, which is hereby deemed to be the Bar Date; and it is further

ORDERED, that the Debtors are authorized (a) to retrieve from the Clerk of the Court any and all proofs of claim or interest heretofore filed against the Debtors with the Clerk of the Court, and (b) to act as the agent of the Court for the purposes of receiving all proofs of claim or interest, which shall be filed (i) if by mail, at: Todd Shipyards Corporation, Debtor, Todd Pacific

Shipyards Corporation, Debtor, P.O. Box 2018, Jersey City, New Jersey 07303-9998 or (ii) if by courier or hand, at: Todd Shipyards Corporation, Debtor, Todd Pacific Shipyards Corporation, Debtor, 66 York Street, Jersey City, New Jersey 07302, and the Debtors shall from time to time provide the Clerk of the Court with a docket of all proofs of claim or interest filed herein; and it is further

ORDERED, that any holder of any claim or interest required to be filed by the preceding decretal paragraphs that fails to properly file such proof of claim or interest on or before the Bar Date shall be (i) forever barred from asserting that claim or interest against the Debtors and from voting on a plan(s) of reorganization in the Debtors' Chapter 11 cases or sharing in any distribution thereunder, and (ii) bound by the terms of any such plan(s) of reorganization confirmed by the Court; and it is further

ORDERED, that the Debtors, or Claudia King & Associates, Inc. ("King") on the Debtors' behalf, on or before March 18, 1988, shall give notice of the Bar Date by mailing a Notice of Bar Date for Filing Proofs of Claim or Interest in the form annexed hereto as Exhibit A (i) to all known stockholders and note holders at their last known addresses as of the date of entry of the Order, as reflected in the books and records of the Debtors, the indenture trustees and the stock transfer agents, and (ii) to all creditors listed on the Debtors' respective Schedules at the addresses

stated therein; and it is further

ORDERED, that in the event the Debtors amend the Schedules, appropriate notice thereof shall be given to such creditors whose status and/or claim has been revised, and said creditors shall have an additional thirty (30) day period following the giving of such notice to file a proof of claim or interest, if necessary; and it is further

ORDERED, that the Debtors shall arrange to be published on or before March 18, 1988 a copy of the Notice of Bar Date for Filing Proofs of Claim or Interest in the form annexed hereto as Exhibit B once in each of the following newspapers: The New York Times (national edition), The Wall Street Journal (national edition), The Journal of Commerce, The Washington Post, The Newark Star Ledger, The Los Angeles Times, The San Francisco Examiner, The San Pedro News Pilot, The New Orleans Times Picayune, The Seattle Times, The Houston Post, and The Galveston Daily News; and it is further

ORDERED, that the notice of the Bar Date by mail and by publication as provided for herein on or before March 18, 1988 shall be deemed good and sufficient notice of the Bar Date pursuant to Section 1111(a) of the Code and Bankruptcy Rule 3003.


UNITED STATES BANKRUPTCY JUDGE

By: Alan B. Hyman
Alan B. Hyman
ABH6655

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

-----X
In re: :
: :
TODD SHIPYARDS CORPORATION, : (Chapter 11)
TODD PACIFIC SHIPYARDS : Case Nos. 87-5005 WT
CORPORATION, : 87-5006 WT
: :
Debtors. :
: :
-----X

ORDER CONFIRMING DEBTORS' THIRD AMENDED
JOINT PLAN OF REORGANIZATION

This matter having been opened to this Court upon the application of Todd Shipyards Corporation and Todd Pacific Shipyards Corporation, debtors and debtors-in-possession (jointly, the "Debtors") dated June 22, 1990 for an Order, pursuant to Section 1129 of Title 11, United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), confirming a plan of reorganization filed by the Debtors; and upon the Debtors' Third Amended Joint Plan of Reorganization dated October 26, 1990 (the "Plan") (all capitalized terms not defined herein shall have

the meaning ascribed to them in the Plan); and upon the Debtors' Third Amended Disclosure Statement (relating to the Plan) dated October 26, 1990 (the "Disclosure Statement") which was approved as containing "adequate information", as such term is defined in Section 1125 of the Bankruptcy Code, by Order of this Court entered on October 30, 1990 (the "Disclosure Statement Approval Order"); and the Debtors each having filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code on August 17, 1987 and having continued in the operation of their businesses and management of their properties as debtors-in-possession pursuant to Section 1107 and 1108 of the Bankruptcy Code; and the Disclosure Statement Approval Order having, inter alia: (i) directed the Debtors to solicit acceptances or rejections of the Plan; (ii) approved the forms of ballot to be transmitted with the Disclosure Statement and Plan for voting purposes; (iii) scheduled the hearing on Confirmation of the Plan for December 14, 1990 at 11:00 o'clock in the forenoon or as soon thereafter as counsel can be heard (the "Confirmation Hearing"); (iv) directed that objections to confirmation of the Plan be filed and served pursuant to Bankruptcy Rule 3020(b) such that they would be filed with the Court and served on certain specified parties no later than ten (10) days prior to the Confirmation Hearing; (v) approved the form of notice to be provided by the Debtors respecting the voting process and the Confirmation Hearing; and (vi) directed that all ballots must be received on or before the close of business on December 5, 1990

to be eligible to be counted in determining whether the Plan is accepted or rejected; and the Debtors having served (i) copies of the Disclosure Statement and the Plan and (ii) a ballot as required pursuant to the Disclosure Statement Approval Order; and the Debtors having published a notice respecting the Confirmation Hearing once in the Wall Street Journal (national edition) and once in the New York Times (national edition) in accordance with the Disclosure Statement Approval Order; and affidavits of service and publication having been filed with the Clerk of this Court with respect thereto; and a Declaration of Claudia D. King certifying the Ballots Accepting and Rejecting the Plan having been filed with this Court; and the acceptances and rejections of the Plan of those holders of Allowed Claims that voted having been duly received and tabulated; and it appearing that the solicitation and tabulation of acceptances having thus been accomplished in a proper and fair manner satisfactory to this Court; and one objection to confirmation of the Plan having been initially received but subsequently withdrawn; and it appearing that the Plan has been duly accepted by the creditors and interest holders whose acceptance is required in accordance with the provisions of Section 1126 of the Bankruptcy Code; and upon the entire record of the Debtors' Chapter 11 cases, the arguments of counsel, and the testimony of witnesses and introduction of evidence at the Confirmation Hearing; and after due deliberation; and sufficient cause appearing therefor; and

IT HAVING BEEN FOUND AND DETERMINED by this Court,
that:

A. The Plan complies with the applicable provisions of the Bankruptcy Code.

B. The Debtors, as proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code.

C. The Plan has been proposed in good faith and not by any means forbidden by law.

D. Any payment made or to be made by the Debtors or any person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, these Chapter 11 cases, or in connection with the Plan and incident to the Chapter 11 cases, has been approved by, or will be subject to the approval of, the Court as reasonable.

E. The Debtors have disclosed the identity and affiliations of those individuals proposed to continue to serve, after confirmation of the Plan, as a director, officer, voting trustee or insider of the Debtors pursuant to the statement filed by the Debtors respecting officers and directors and the terms of their employment, and the continuance in such office of each such individual is consistent with the interests of creditors and equity security holders and with public policy.

F. There are no rate changes provided for in the Plan, with respect to which rates, a governmental regulatory commission has jurisdiction over the Debtors after confirmation.

G. (1) The Plan properly classifies Claims and Interests and properly designates such Classes in accordance with Section 1122 of the Bankruptcy Code;

(2) The Plan specifies ~~the classes of~~ Claims and Interests which are impaired or not impaired under the Plan; and

(3) With respect to each impaired Class of Claims and Interests, (i) each holder of a Claim or Interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date, and (ii) there are no holders of Allowed Secured Claims who made elections under Section 1111(b)(2) of the Bankruptcy Code.

H. Each Class has accepted the Plan or is not impaired under the Plan.

I. Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that:

(1) With respect to a Claim of a kind specified in Sections 507(a)(1) or (2) of the Bankruptcy Code, as soon as

practicable after the Effective Date, the holder of such Claim will receive on account of such Claim, cash equal to the allowed amount of such Claim;

(2) With respect to a Class of Claims of a kind specified in Sections 507(a)(3), (4), (5), or (6) of the Bankruptcy Code, each holder of a Claim of such Class will receive cash as soon as practicable after the Effective Date, equal to the allowed amount of such Claim; and

(3) With respect to a Claim of a kind specified in Section 507(a)(7) of the Bankruptcy Code, the holder of such Claim will receive as soon as practicable after the Effective Date, on account of such Claim, Cash equal to the allowed amount of such Claim.

J. At least one Class of Claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class.

K. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or the Reorganized Debtors.

L. The Debtors have paid or shall pay on or prior to the Effective Date all amounts due under 28 U.S.C. § 1930.

M. The Plan provides adequate means for the Plan's implementation, and is otherwise in compliance with Section 1123(a) of the Bankruptcy Code. The Debtors will have sufficient funds on hand as of December 17, 1990 to make the cash disbursements provided for in the Plan including the prepayment of the principal of the Confirmation Obligations otherwise payable 360 days after the Confirmation Date.

O. The Plan provides, pursuant to Section 8.3 thereof, for the continuation of retiree benefits in accordance with Section 1129(a)(13) of the Bankruptcy Code.

P. The substantive consolidation of the Debtors' estates for the purposes of effectuating the Plan is appropriate.

IT IS ON THIS 14th DAY OF Dec. THEREFORE ORDERED that:

1. The Plan is hereby confirmed, having met the requirements of Section 1129(a) of the Bankruptcy Code.

2. The record date for the purpose of determining those holders of debt and equity securities entitled to distributions under the Plan shall be as of the close of business on December 14, 1990.

3. Solely for the purposes of distributions to be made under the Plan, the Effective Date of the Plan shall be December 17, 1990.

4. On December 17, 1990, all of the property of the estates shall be vested in the Debtors and shall be free and clear of any and all Claims of the Debtors' creditors and equity security holders, and any and all liens and encumbrances which have not been expressly preserved under the Plan shall be deemed extinguished as of such date.

5. Chemical Bank ("Chemical"), as Escrow Agent pursuant to an agreement (the "Escrow Agreement") dated as of October 26, 1990 between Chemical Bank and Todd heretofore approved by this Court shall, on December 17, 1990, disburse the funds in the escrow account it is holding (the "Escrow Account") as follows:

a. With respect to payments to be made under the Plan to Whitmore Capital, L.P. ("Whitmore"), the sole Class 4 claimant, Chemical is hereby authorized to disburse such funds directly to Whitmore as soon as practicable on or after the later of the Effective Date or the date of surrender to Todd of the certificates representing the Notes held by Whitmore (or if such certificates have been stolen, lost, or destroyed, in lieu thereof (i) a lost security affidavit and (ii) a bond if reasonably required by Todd), in accordance with written wire instructions received from Whitmore prior thereto.

b. With respect to the balance of the funds held in the Escrow Account, on the Effective Date, Chemical shall

disburse such funds to DRX, Inc., the Debtors' disbursing agent (the "Disbursing Agent").

6. The Debtors are hereby authorized to provide the balance of the funds required to implement the Plan, including such funds as are required to prepay the Confirmation Obligations otherwise payable 360 days after the Confirmation Date, to the Disbursing Agent on December 17, 1990.

7. On December 17, 1990, interest at the rate of 11% per annum shall stop accruing on the amounts payable under the Plan to holders of Claims in Class 3, Class 5 and Class 6.

8. The Disbursing Agent shall disburse all funds received from Chemical and from the Debtors and securities received from the Debtors only in accordance with the terms of the Plan and this Order, as soon as practicable on or after December 17, 1990, except that (i) the Disbursing Agent is hereby authorized to prepay the principal amount of the Confirmation Obligations otherwise payable 360 days after the Confirmation Date and (ii) with respect to those funds to be paid to claimants in a manner other than wire transfer, the Disbursing Agent shall hold such funds in an interest bearing account at Chemical Bank (the "Disbursement Account") and shall disburse (a) such funds, including interest earned on the Disbursement Account through January 23, 1991, and (b) securities, to such creditors or holders of interests on or about the later of January 23, 1991 or the effective date of the Merger, or as soon thereafter as the

necessary information is received from such creditors by the Debtors.

9. The Disbursing Agent is authorized to make payments to creditors by wire transfer as provided for under the Plan as soon as practicable on or after December 17, 1990.

10. The Debtors are hereby authorized and directed to take all steps necessary to effectuate consummation of the Plan including but not limited to the mailing of letters of transmittal to holders of Claims or interests seeking the surrender of documents representing such obligations and interests, and the information required by the Debtors in order to be able to comply with applicable law respecting distributions made under the Plan to holders of such claims and interests.

11. Except as otherwise expressly provided in Section 1141 of the Bankruptcy Code or the Plan, the distributions made pursuant to the Plan will be in full and final satisfaction, settlement, release and discharge as against the Debtors, of any debt that arose before the Confirmation Date and any debt of a kind specified in Section 502(g), 502(h) or 502(i) of the Bankruptcy Code and all Claims and interests of any nature, including, without limitation, any interest accrued thereon from and after the Filing Date, whether or not (i) a proof of a Claim or interest based on such debt, obligation or interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) such Claim or Stock Interest is allowed

under Section 502 of the Bankruptcy Code or (iii) the holder of such Allowed Claim or Stock Interest has accepted the Plan. This discharge shall include the extinguishment of any and all liens and encumbrances which have not expressly been preserved under the Plan.

12. In addition, in consideration for past and future services, and other valuable consideration, all of the Debtors' present and former officers, directors, agents, employees, and counsel shall be deemed discharged and released from any and all Claims asserted or assertable by any person, firm or corporation arising in any way out of such person's relationship with or work performed for the Debtors on or prior to the date hereof.

13. The discharge set forth in the above decretal paragraphs shall not include:

a. administrative expenses representing liabilities incurred in the ordinary course of business by the Debtors as Debtors-in-Possession, or liabilities arising under loans or advances to the Debtors as Debtors-in-Possession, or liabilities arising under post-petition agreements or stipulations entered into by the Debtors as Debtors-in-Possession, which liabilities shall be paid by the Debtors in accordance with the terms and conditions of any such agreements or stipulations and the Plan, except as otherwise provided in the Plan:

b. administrative expenses due to Professionals representing allowances of compensation and reimbursement of expenses allowable pursuant to Section 330 of the Bankruptcy Code;

c. The Claims filed by the United States relating to response costs incurred by the Environmental Protection Agency with respect to the Harbor Island site, as well as any costs incurred in the future and any future injunctive obligations with respect to the Harbor Island site, as contemplated by Article 8.5 of the Plan, and such exclusion from discharge shall apply irrespective of whether a stipulation and agreement to settle and compromise environmental Claims of the United States of America shall be filed with the Court prior to the Confirmation Date;

d. All of the obligations relating to indemnification and exculpation existing in favor of Todd's, and its subsidiaries', respective present or former directors, officers, employees, fiduciaries, agents, attorneys or controlling persons as arise under applicable law or as provided in any of (i) Todd's Certificate of Incorporation in effect prior to or as of the date hereof, or (ii) Todd's by-laws in effect prior to or as of the date hereof, or (iii) each agreement identified in the Disclosure Statement or (iv) the articles of incorporation, by-laws or similar documents or agreements of any of Todd's subsidiaries as in effect prior to or as of the date

hereof, in each case with respect to matters occurring on or prior to the Effective Date, which obligations shall be assumed by Reorganized Todd;

e. Retiree Benefits Coverage (other than death benefits coverage) for all eligible Todd retirees who elected to retire on or before May 31, 1988 and for their eligible spouses and eligible dependents which, pursuant to Article VIII of the Plan terminates (a) when the appropriate maximum lifetime benefit has been exhausted by claims, or (b) when the eligible Todd retiree becomes covered, or is eligible to be covered, under a program with another employer providing similar benefits or (c) when the eligible spouse or eligible dependent of an eligible Todd retiree ceases to be such an eligible spouse or eligible dependent under the terms of the applicable plan, fund or program. Under the Plan, Retiree Benefits consisting of death benefits shall also be provided post-confirmation in the amount and under the terms of the applicable plan, fund or program. Retiree Benefits shall be provided at the applicable level established on or before May 31, 1988 to the extent, and for the period, the Debtors are contractually or otherwise legally obligated to provide such benefits. Any plan, fund or program for the provision of retiree benefits may be amended or terminated at any time according to the terms of such plan or program. Nothing herein contained shall be deemed to change, alter or amend any rights eligible Todd retirees or their respective eligible spouses, dependents or beneficiaries may have

to any Retiree Benefits. The Reorganized Debtors shall also continue all their Defined Benefit Pension plans and resume contributions to these plans in each case to the extent required by the plans and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq. ("ERISA"). In the event that the Reorganized Debtors seek to terminate their defined benefit pension plans, they shall do so pursuant to Title IV of ERISA. No distributions of the benefits due under these defined benefit pension plans may occur except to the extent that such distributions are consistent with Title IV of ERISA;

f. The death benefits of certain Todd retirees approved by Order of the Bankruptcy Court dated April 6, 1988 which shall be paid in full, in cash, upon the death of the Todd retiree by Todd, its successors and/or assigns; and

g. The Claims of the individuals listed on Exhibit D to this Court's previous Order dated February 22, 1989 entitled Order Granting Debtors' Objection to Allowance of Claims in accordance with the terms of such Order.

14. Except as otherwise provided under the Plan or under Order entered by this Court, any judgment at any time obtained, to the extent that such judgment is a determination of the liability of the Debtors with respect to any debt discharged under this Order and pursuant to the Plan and Section 1141(d)(1) of the Bankruptcy Code, shall be null and void and of no force and effect, regardless of whether a proof of claim therefor was

filed or deemed filed and all Claimants holding Claims against the Debtors and holders of equity interests of the Debtors shall be precluded from asserting against the Debtors, or any of their assets or properties, any other or further Claims or interests based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date, and this Order shall permanently enjoin said Claimants and holders of equity interests, their successors and assigns, from enforcing or seeking to enforce any such Claims or equity interests.

15. In addition, except as otherwise provided in the Plan or under Order entered by this Court and with respect to the Debtors' obligations under the Plan, the commencement or continuation of any action, the employment of process, or any act to collect, recover or offset any debt discharged under this Order and the Plan and pursuant to Section 1141(d)(1) of the Bankruptcy Code as a liability of the Debtors, or from property of the Debtors, is forever stayed, restrained and enjoined.

16. The Court shall retain jurisdiction of the Debtors' Chapter 11 cases with respect to (i) motions pending before this Court as of the date of this Order, (ii) approval of the terms of sale of any assets located at the Debtors' Galveston shipyard, (iii) approval of the terms of any settlement of the Debtors' outstanding dispute with Cunard respecting the M.V. Sagafford and (iv) approval of the terms of a settlement between

the Debtors and the EPA respecting the Queens City Farms, Wycoff Eagle Harbor and the Dutchtown Superfund sites including any terms of such settlement which provide for the barring of third party claims against the Debtors or newly organized Todd relating to these Superfund sites; provided, however, that in the event the Debtors and the EPA fail to execute an agreement within three (3) months of the Confirmation Date, then the proofs of claim filed by the EPA with respect to these three sites shall be governed by the procedures set forth in Paragraph 6.6 of the Plan for the resolution of Disputed Claims, except that the Debtors shall not be required to reserve any funds, nor make any payments respecting such claims; and matters provided for in Article X of the Plan.

17. For purposes of and solely to the extent set forth in the Plan, the Debtors' estates are hereby consolidated, and the assets of the Debtors are to be pooled and the liabilities of the Debtors are to be satisfied from the resultant common fund, as follows:

(i) all intercompany Claims by and among the Debtors will be eliminated; (ii) all assets and all proceeds thereof and all liabilities of the Debtors will be merged or treated as though they were merged for purposes of the Plan; (iii) any obligation of any Debtor and all guarantees thereof executed by either of the Debtors will be deemed to be one obligation of the

consolidated Debtors; (iv) any Claims filed or to be filed in connection with any such obligation and such guarantees will be deemed one Claim against the consolidated Debtors; (v) each and every Claim filed in the individual case of any of the Debtors will be deemed filed against the consolidated Debtors in the consolidated Case; and (vi) for purposes of determining the availability of the right of set-off under Section 553 of the Code, the Debtors shall be treated as one entity so that, subject to the other provisions of Section 553 of the Code, debts due to any of the Debtors may be set off against the debts of any of the Debtors. In addition, and in accordance with the terms of the Plan, all Claims based upon guarantees of collections, payment or performance made by one Debtor as to the obligations of the other Debtor shall be discharged, released and of no further force and effect.

18. The Debtors are hereby authorized and directed to deposit \$5,000,000 (the "Funds") into an escrow account, which Funds shall be available solely for the payment of the final allowance of professional fees in the amounts to be subsequently determined by the Court pursuant to appropriate notice and hearing.

19. The Debtors are hereby authorized to pay, in the ordinary course and without further application to this Court, all professional fees and expenses for services rendered after the date hereof.

20. The Debtors shall pay any amounts due under 28 U.S.C. § 1930 within ten (10) business days of notification of the amounts thereof by the Office of the United States Trustee.

21. Upon the entry of this Order, all rights, duties and obligations of the Indenture Trustee respecting the Notes and the holders of such notes shall cease and become null and void.

22. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Plan.

23. Notice of entry of this Order, substantially in the form annexed hereto as Exhibit "A" which is hereby approved, shall be, and hereby is, deemed sufficient (a) if served by first class mail upon (i) all persons having filed a notice of

appearance herein within 20 days from the date hereof, and (ii) together with the distributions to be made under the Plan to all holders of allowed claims and interests and (b) if published once on or before 20 days from the date hereof in the national editions of The New York Times and The Wall Street Journal.


UNITED STATES BANKRUPTCY JUDGE

RECEIVED
SUPERIOR COURT
STATE OF WASHINGTON

DECLARATION OF SERVICE

2007 MAR 23 4 10:53
On this day said forth below, I deposited with the U.S. Postal Service a true and accurate copy of: Supplemental Brief of Todd Shipyards Corporation in Cause No. 78774-3 to the following parties:

Walter E. Barton
Karr Tuttle Campbell
1201 Third Avenue, Ste 2900
Seattle, WA 98101-3028

William Rutzick
Janet L. Rice
Schroeter, Goldmark & Bender
810 Third Avenue, Suite 500
Seattle, WA 98104

Original filed with:
Washington Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 23, 2007, at Tukwila, Washington.



Christine Jones
Legal Assistant
Talmadge Law Group PLLC

FILED AS ATTACHMENT
TO E-MAIL

Rec. 3-23-07

-----Original Message-----

From: Christine Jones [mailto:christine@talmadgelg.com]

Sent: Friday, March 23, 2007 10:33 AM

To: OFFICE RECEPTIONIST, CLERK

Subject: Todd Shipyards

Clerk:

Attached is our supplemental brief in case number 78774-5 - Todd Shipyards - for filing.

Thank you,

Christine.

Christine Jones
Office Manager
Talmadge Law Group PLLC
(206) 574-6661