

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

IN RE: RUBEN E. HINOJOSA,  
Debtor

\* CASE NO. 10-70900-M--11  
\* CHAPTER 11 PROCEEDING

**DEBTOR'S RESPONSE TO ALEXENDAR B. WATHEN'S  
MOTION FOR A NEW TRIAL REGARDING  
DEBTOR'S EXPEDITED MOTION & ORDER SEALING DOCUMENTS  
[DOCKET ENTRY # 70]**

TO THE HONORABLE BANKRUPTCY JUDGE:

Ruben E. Hinojosa, Debtor, files this Response to Alexander B. Wathen's Motion For a New Trial [Doc. # 70] regarding Debtor's Expedited Motion to Seal Documents, (Docket Entries # 1 & #27) and would show the Court the following:

**I. Background Facts**

1. Debtor filed his petition under Chapter 11 of Title 11 of the United States Code on December 18, 2010 (Docket #1), and such petition was amended on January 5, 2011 (Docket # 27) and since such date has continued in possession of his property as Debtor-in-Possession, pursuant to 11 U.S.C. §§1107 & 1108. This Court has not appointed a Trustee or Examiner nor has an official committee been established in this Chapter 11 proceeding.

2. Docket Entry #1 contains a copy of the Debtor's 2009 income tax return attached. Docket Entry #27 has both debtor's 2009 Income Tax Return and his 2009 Member Report on Financial Disclosure Statement.

3. At the time Debtor filed his petition, the Debtor was not certain that his case would fall outside the definition of a small business case due to the nature of his case and the uncertain amount of his debts. Debtor, nevertheless, filed the case as a non-small business case and in an abundance of caution appended to the petition copies of his 2009 Federal Income Tax Return (redacted), and a copy of his 2009 Member's Report on Financial Disclosure Statement.

4. On February 15, 2011 Debtor filed his Motion To Seal Documents #1 and #27.

5. On February 21, 2011 [Doc. # 61] Alexander B. Wathen filed an Opposition Response to Debtor's Expedited Motion To Seal.

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6. On February 22, 2011 this Court denied Mr. Wathen's Motion and entered its Order [Doc. #62] granting Debtor's request to seal documents.

7. On February 22, 2011 debtor filed his amended petition [Doc. #64].

8. On March 7, 2011, some thirteen (13) days after this Court entered its Order, Mr. Wathen filed his Motion for A New Trial.

## **II. Arguments & Authorities**

9. Mr. Wathen's Response fails to point out to the Court how he has standing to raise such a Motion or even enter an objection as he is not a "party-in-interest" in this case. The Bankruptcy Act of 1898 originally limited standing to appeal a bankruptcy case to "persons aggrieved" by an order of the referee. *See* 11 U.S.C. § 67(c) (1976). Although the 1978 amendments to the Bankruptcy Code repealed this language, this and other circuits have continued to apply this test for Bankruptcy Standing. *See, e.g., In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir.2004); *Rohm & Hass Tex., Inc. v. Ortiz Bros. Insulation, Inc.*, 32 F.3d 205, 210 n. 18 (5th Cir.1994) ("Although the applicable statute has since been repealed, bankruptcy courts still limit appellate standing to those 'aggrieved.' ") (citations omitted). "The 'person aggrieved' test is an even more exacting standard than traditional constitutional standing." *Coho*, 395 F.3d at 202 (citation omitted). It requires an appellant show he was "directly and adversely affected pecuniarily by the order of the bankruptcy court". *Id.* at 203 (citation and internal quotation marks omitted). An "indirect financial stake" in another's claims is insufficient for standing; rather, the "injury or threat of injury must be both real and immediate". *Rohm*, 32 F.3d at 208 (citation and internal quotation marks omitted). Conjectural or hypothetical injuries do not support standing *Id.* (citations omitted). Because each decision by a bankruptcy court might affect, indirectly, a number of parties, the "person aggrieved" standard prevents any party with some interest in the proceedings from tying up the bankruptcy estate in prolonged litigation.

10. To satisfy Article III's standing requirements, a party must show: (1) it has suffered an "injury in fact" that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical, (2) the injury is fairly traceable to the challenged action of defendant, and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. U.S.C.A. Const. Art. 3, § 2, cl. 1. In bankruptcy proceedings, standing is limited to "parties in interest," that is, persons whose pecuniary interests are directly affected by the bankruptcy proceedings. *See e.g. Magnolia Venture Capital Corp. v. Prudential Securities, Inc.*, 151 F.3d 439, 445 n. 9 (5th Cir.1998). A party in interest is a person "whose pecuniary interests are directly affected by the bankruptcy proceedings." *In re Hutchinson*, 5 F.3d 750, 756 (4th Cir.1993).

11. Mr. Wathen lacks standing because he is not a party-in-interest in this case as defined by 11 U.S.C. §1109(b) (Right To Be Heard) which states: “a party in interest, including the debtor, a trustee, a creditor’s committee, an equity security holder’s committee, a creditor, an equity security holder, or an indenture trustee, may raise and may appear and may be heard on any issue in the case under this chapter.” The term is not specifically defined in the Bankruptcy Code. However, in other contexts, courts have interpreted the term to include “any party who has an actual pecuniary interest in the case, as well as to those parties who have a practical stake in the outcome of the case, or to those parties who will be impacted in any significant way by a decision made in the case.” *In re Citi-Toledo Partners II*, 254 B.R. at 163 (citing *In re Cowan*, 235 B.R. 912, 915 (Bankr.W.D.Mo.1999) (citing *In re Amatex Corp.*, 755 F.2d 1034, 1041-44 (3rd Cir.1985); *Kapp v. Naturelle, Inc.*, 611 F.2d 703, 706 (8th Cir.1979); *In re Johns-Manville Corp.*, 36 B.R. 743, 754 (Bankr.S.D.N.Y.1984)). Mr. Wathen has not demonstrated any actual pecuniary interest in the case nor has he claimed to possess any practical stake in the outcome of the case therefore he has no standing and is not a party-in-interest in this case.

12. Debtor, through his undersigned counsel, advised Mr. Wathen that the debtor’s 2009 Federal Income Tax Return and 2009 Member’s Report on Financial Disclosure Statement are both available through his Public Information Office in Washington D.C. upon written request. The objection to the debtor sealing these documents in the bankruptcy proceeding does not in any way harm him or any other party wanting to obtain such information that is readily available through his Congressional Office.

13. Notwithstanding the above should the Court find that Mr. Wathen is in fact a party-in-interest, the debtor is still not required to file the financial statements as a matter of law.

14. Pursuant to 11 U.S.C. §(51C) “The term “small business case” means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term “small business debtor”--

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$2,343,300 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$2,343,300 (excluding debt owed to 1 or more affiliates or insiders).”

15. On December 29, 2010 Debtor filed all of his Schedules, Statement of Financial Affairs, 20 Largest Creditors and Chapter 11 Statement of Current Monthly Income. Since then, it has become clear that in fact this case falls outside the debt limits and definition of a small business case.

16. Since this is not a small business case, neither the U.S. Bankruptcy Code nor the United States Trustee will require such financial attachments to the bankruptcy petition and therefore the debtor requested that these docket entries be sealed by the Court as set forth in his Motion To Seal. The U.S. Bankruptcy Code simply does not make exceptions for public officials that would require them to disclose financial records in a bankruptcy proceeding when it is simply not required as in this case. The debtor’s financial records are available through his public information office in Washington D.C. by written request.

WHEREFORE, for the reasons set forth above, Debtor requests that Alexander B. Wathen’s Motion For a New Trial be denied; and grant the debtor such other and further relief as may be necessary.

Respectfully submitted,

By: /s/ Eduardo V. Rodriguez  
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**Certificate of Service**

I hereby certify that on March 8, 2011 a copy of Debtor's Response was forwarded to the following parties by first class mail, unless otherwise requested by electronic filing:

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