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*Counsel to Sprint Communications  
Company, LP*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

WINDSTREAM HOLDINGS., *et al*,  
  
Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**NOTICE OF HEARING ON SPRINT COMMUNICATIONS COMPANY, LP'S  
MOTION TO SEAL DOCUMENTS FILED IN CONNECTION WITH ITS MOTION  
FOR RELIEF FROM THE AUTOMATIC STAY**

PLEASE TAKE NOTICE, that upon the attached motion (the "Motion"), Sprint Communications Company, LP ("Sprint"), through its undersigned attorneys, will move this Court, before The Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on **January 16, 2019, at 10:00 a.m. prevailing Eastern Time**, for the entry of an order pursuant to 11 U.S.C. § 362(d)(1), for an order terminating or modifying the automatic stay imposed pursuant to 11 U.S.C. § 362, in the above-entitled cases, pursuant to the



proposed order (the “Order”), together with such other and further relief as is just, proper and equitable under the circumstances.

**PLEASE TAKE FURTHER NOTICE**, that responses or objections, if any, to the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, all General Orders Applicable to Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York, and the *Final Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 392] (the “Case Management Order”) approved by the Bankruptcy Court; and be filed electronically with the Bankruptcy Court on the docket of *In re Windstream Holdings, Inc.*, Case 22312 (RDD) by registered users of the Court’s Electronic Case Filing System and in accordance with the General Order M-399 (which is available on the Bankruptcy Court’s website, at <http://nysb.uscourts.gov> ) (login and password required) with a paper copy delivered directly to Chambers and to the Office of the U.S. Trustee; and (d) be served so as to be actually received by **January 9, 2019, at 4:00 p.m. prevailing Eastern Time**, by (i) McGuireWoods LLP, Attn: Shawn R. Fox, Esq., 1251 6<sup>th</sup> Ave., 20<sup>th</sup> Floor, New York, NY 10020, (ii) McGuireWoods LLP, Attn: David I. Swan, Esq., 1750 Tysons Blvd., Suite 1800, Tysons, Virginia 22102, (iii) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors’ case website at <http://www.kccllc.net/windstream>), and (iv) any person or entity with a particularized interest in the subject matter of the Motion.

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the Motion, Sprint shall, on or after the Objection Deadline, submit to the Court an order substantially in the form attached as **Exhibit A** to the Motion, which order the Court may enter with no further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that the Hearing may be continued or adjourned thereafter from time to time without further notice other than the announcement of the adjourned date or dates at the Hearing.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Motion may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at <http://www.kccllc.net/windstream>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: December 24, 2019

Respectfully submitted,

By: David I. Swan  
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Company, LP*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

WINDSTREAM HOLDINGS., *et al*,

Debtors.

Chapter 11  
Case No. 19-22312 (RDD)  
(Jointly Administered)

**Hearing Date:** January 16, 2020, 10 a.m.  
**Response Date:** January 9, 2020

**SPRINT COMMUNICATIONS COMPANY, LP'S MOTION TO SEAL  
DOCUMENTS FILED IN CONNECTION WITH ITS  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Sprint Communications Company, LP ("Sprint"), by and through its undersigned counsel, hereby moves this Court (the "Motion") pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Rule 9018 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9018-1 seeking entry of an order, in the form attached to this Motion as Exhibit A, to approve redacting and filing under seal (i) certain portions of the Motion for Relief from the Automatic Stay ("362 Motion"), (ii) the Fiber Optic Lease Agreement attached to the 362 Motion as "Exhibit A" (the "Agreement"), and (iii) certain portions of the Declaration of James B. Farris, attached to the 362

Motion as Exhibit “B” (“Declaration”). In support of this Motion, Sprint respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. § 1334.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rules 9018-1.

**RELIEF REQUESTED AND BASIS FOR RELIEF**

4. Sprint moves to file the Agreement under seal. The information contained in the Agreement involves confidential subject matter, and the Agreement itself has a confidentiality provision. Sprint also moves to redact certain portions of the 362 Motion and the Declaration which refer to confidential subject matter.

5. Section 107(b) of the Bankruptcy Code authorizes courts to issue orders that will protect entities from the potential harm that results from the disclosure of confidential or sensitive information. Specifically, Section 107(b)(1) states that on “request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b)(1).

6. Bankruptcy Rule 9018 provides the procedure for invoking the court’s power under section 107. Specifically, Rule 9018 allows the court to “make any order which justice requires (1) to protect . . . any entity in respect of a trade secret or other confidential research, development or commercial information.” Fed. R. Bankr. P. 9018.

7. Courts have granted protective or sealing orders when they fall under one of the categories enumerated in section 107(b). *In re Borders Grp., Inc.*, 462 B.R. 42, 46-47 (Bankr.

S.D.N.Y. 2001); *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (citing 2 *Collier on Bankruptcy*, ¶ 107.01, at 107-2 (15th ed. 1993) (“Protection is mandatory when requested by an [interested party]”). *In re MF Global, Inc.*, 2012 WL 3260393 (Bankr. S.D.N.Y. Aug. 8, 2012) (granting motion to seal because document was commercial information under section 107(b)).

8. There is good cause to grant Sprint’s Motion. The documents contain terms and conditions that the parties have agreed to treat as confidential, including route information and pricing terms. Since the Agreement, and certain language in the 362 Motion and Declaration pertaining to the Agreement, fall under the categories listed in section 107(b), Sprint requests that the Court grant this Motion.

9. The documents sought to be sealed by this Motion should be sealed for the duration of this matter. Sprint will retrieve the documents from the Court at the conclusion of this matter.

10. The parties who will have access to the sealed and unredacted documents are the Debtors and Debtors’ counsel, the Court, and the U.S. Trustee.

11. Redacted copies of the 362 Motion and the Declaration have been filed on the Bankruptcy Court’s docket, with only those redactions necessary to preserve confidentiality.

12. No prior request for the relief sought herein has been made by Sprint to this court.

### **CONCLUSION**

WHEREFORE, for all of the foregoing reasons, Sprint Communications Company, LP respectfully requests that this Court grant the relief requested herein and such other and further relief that the Court deems just and appropriate.

Dated: December 24, 2019

Respectfully submitted,

By: David I. Swan  
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*Counsel Sprint Communications Company,  
LP*

# **EXHIBIT A PROPOSED ORDER**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

WINDSTREAM HOLDINGS., *et al*,

Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**ORDER GRANTING SPRINT COMMUNICATIONS COMPANY, LP'S  
MOTION TO SEAL DOCUMENTS FILED IN CONNECTION WITH ITS  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Upon consideration of Sprint Communications Company, LP's Motion to Seal Documents Filed in Connection with its Motion for Relief from the Automatic Stay, the motion is hereby **GRANTED.**

This order is without prejudice to the rights of any party in interest, or the United States Trustee, to seek to unseal the documents, or any part thereof.

Sprint is to retrieve and dispose of all sealed documents and confidential information at the conclusion of this matter.

Dated: \_\_\_\_\_, 20\_\_\_\_  
White Plains, New York

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**  
**REDACTED MOTION FOR RELIEF AND ATTACHED EXHIBITS**

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*Counsel to Sprint Communications  
Company, LP*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

WINDSTREAM HOLDINGS., *et al*,

Debtors.

Chapter 11  
Case No. 19-22312 (RDD)  
(Jointly Administered)

**Hearing Date:** January 16, 2020, 10:00 a.m.  
**Response Date:** January 13, 2020, 4:00 p.m.

**SPRINT COMMUNICATIONS COMPANY, LP'S MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY TO EXERCISE ITS RIGHT TO TERMINATE  
THE FIBER OPTIC LEASE AGREEMENT**

Sprint Communications Company, LP ("Sprint"), by and through its undersigned counsel, hereby moves this Court (the "Motion") for entry of an order modifying the automatic stay to allow Sprint to terminate that certain Fiber Optic Lease Agreement ("Agreement") between Sprint and McLeod USA Telecommunications Services, L.L.C. ("McLeod"), one of the debtors and debtors-in-possession in the above-captioned jointly administered cases.

Sprint and McLeod are parties to an Agreement that is terminable by Sprint without penalty. Sprint is able to obtain the services currently provided by McLeod at a rate that is

significantly less than the rate it pays McLeod. Sprint has the bargained-for right to terminate for convenience at any time during the option period. Sprint, therefore, files this Motion to exercise its termination rights pursuant to the Agreement. In support of this Motion, Sprint respectfully states as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. § 1334.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(G) and (O).
4. The bases for the relief requested herein are sections 362(d)(1) and 362(d)(2) of chapter 11 of title 11 of the United States Code. 11 U.S.C. § 101 *et seq.* (as amended, the “Bankruptcy Code”) and Rules 4001 and 6006 of the Federal Rules of Bankruptcy Procedure.

### **BACKGROUND**

5. On February 25, 2019 (the “Petition Date”), McLeod and certain of its affiliates (the “Debtors”) filed with the United States Bankruptcy Court for the Southern District of New York (the “Court”) a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. On February 22, 1996, Sprint entered into a Fiber Optic Lease Agreement with CapRock Fiber Network, Ltd. (“CapRock”). McLeod is the successor-in-interest to CapRock.<sup>1</sup>

[REDACTED]

[REDACTED] A copy of the Agreement is attached hereto as Exhibit “A”. The factual statements made in this Motion are supported by the declaration of James B. Farris attached hereto as “Exhibit “B”.

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<sup>1</sup> Caprock merged into McLeod in April, 2004. The Agreement is listed on the McLeod bankruptcy schedules. The Debtors have confirmed to Sprint that the Agreement and underlying fiber were not transferred to Uniti.

7. The Agreement had an initial term of ten years, and Sprint had four 5-year options to extend the term of the Agreement. The Agreement is currently in the third option period, scheduled to expire in July, 2021.

8. The Agreement provides that if Sprint terminates the Agreement at any time during the initial 10-year term, it must pay McLeod all remaining payments due until the end of the term. If, on the other hand, Sprint terminates the Agreement during any option period, it must pay McLeod amounts due only until the date of termination.<sup>2</sup>

9. [REDACTED]

[REDACTED] Sprint has identified alternative providers willing to lease fiber optic on this route for just a fraction of this amount, and thus it has the right to terminate the Agreement at will and without any post-termination charges.

### **RELIEF REQUESTED**

10. By this Motion, Sprint respectfully requests that this Court enter an Order, pursuant to section 362(d) of the Bankruptcy Code, modifying the automatic stay, to allow Sprint to terminate the Agreement in accordance with its terms.

### **ARGUMENT**

11. Section 362(a) of the Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay of and precludes, among other things, “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. §362(a)(3). The right of a contractual counterparty to terminate a contract with

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<sup>2</sup> See Exhibit “A”, at ¶ 12.5:

If Sprint terminates this Agreement, other than for Vendor’s breach or as provided in Article 16, Vendor may declare due and payable all the remaining payments due Vendor under Article 5 above for the initial ten (10) year term of this Agreement. Should Sprint terminate this Agreement during any renewal or extension term, recurring charges will continue only up to the date of termination.

a debtor pursuant to and in observance of the terms of the contract may be subject to the automatic stay. *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 687, 702 (Bankr. S.D.N.Y. 1992); *see also In re Carroll v. Tri-Growth Centre City, Ltd.*, 903 F.2d 1266, 1279 (9th Cir. 1987) (“An executory contract that is property of the estate can only be terminated after a grant of relief from the stay.”). Accordingly, Sprint is filing this Motion to request the Court enter an order granting Sprint relief from the automatic stay to exercise its contractual rights to terminate the Agreement in accordance with the applicable termination provisions.

12. Section 362(d) of the Bankruptcy Code provides that “on request of a party in interest” the Court shall grant relief in the automatic stay “by terminating, annulling, modifying, or conditioning” the stay either “for cause,” or with respect to the automatic stay of an act against property of the debtor, if “(a) the debtor does not have an equity in such property; and (b) such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(1) and (2). While “neither the statute nor its legislative history defines ‘cause’ sufficient to sustain a § 362(d)(1) motion, it is viewed as a broad and flexible concept.” *In re M.J. & K. Co., Inc.*, 161 B.R. 586, 590 (Bankr. S.D. N.Y. 1993).

13. As a matter of law, the Bankruptcy Code does not prevent Sprint from terminating the Agreement pursuant to its terms. *See Thompson v. Texas Mexican Railway Co.*, 328 U.S. 134, 142 (“[T]he right to terminate a contract pursuant to its terms survives the bankruptcy of the other contracting party.”); *In re Commonwealth Mortg. Co., Inc.*, 149 B.R. 4, 8-9 (Bankr. D. Mass. 1992) (granting relief from the automatic stay because the agreement gave movant the absolute right to terminate the agreement by paying a termination fee); *In re Best Film v. Video Corp.*, 46 B.R. 861, 870 (Bankr. E.D.N.Y. 1985) (“The Bankruptcy Code neither enlarges the rights of a debtor under a contract, nor prevents the termination of a contract by its own terms.”).

14. Section 12.5 of the Agreement states that if Sprint terminates for any reason other than McLeod's breach or force majeure, McLeod may charge Sprint for all remaining payments due until the end of the initial 10-year term. If, however, Sprint terminates the Agreement during any renewal or extension term, lease payments are due until the date of termination. As the Agreement is currently in its third extension term, it is terminable at will by paying McLeod the remaining charges only up to the date of termination. *See Jones v. Dumas Development Co.*, 229 S.W.2d 936 (Tex. App. – Amarillo 1950). *See also, 4N Intern., Inc. v. Metropolitan Transit Authority*, 56 S.W. 3d 860, 863 (Tex. App. – Houston 2001) (“A contract that a party may terminate in its best interests is terminable at will.”).<sup>3</sup>

15. Therefore, cause exists under section 362(d)(1) of the Bankruptcy Code to allow Sprint to terminate the Agreement under § 12.5. This is not an ipso facto termination based upon the bankruptcy filing or the Debtor's financial condition. Sprint is acting in good faith. *See In re M.J. & K Co.*, 161 B.R. at 594-95. Sprint has identified an alternative provider of fiber optic cable for this route at a significantly less cost, and it has the bargained-for right under the Agreement, during the option period, to terminate for convenience and without breach or penalty. *See Jones v. Dumas Development Co.*, 229 S.W. 2d at 940-41.

16. Moreover, pursuant to section 362(d)(2) of the Bankruptcy Code, Sprint should be granted relief from the automatic stay because (i) there is no equity in the Agreement, and (ii) the Agreement is not necessary to an effective reorganization. Even if McLeod attempted to assume the Agreement, Sprint would still have the unfettered right to terminate the Agreement at will and without any post-termination liability.

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<sup>3</sup> The Agreement states that it shall be governed by Texas law § 15.6.

**CONCLUSION**

WHEREFORE, for all of the foregoing reasons, Sprint Communications Company, LP respectfully requests that this Court grant it relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2) to exercise its contractual right to terminate the Agreement, and grant Sprint Communications Company, LP such other and further relief that the Court deems just and appropriate.

Dated: December 24, 2019

Respectfully submitted,

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*Counsel Sprint Communications Company,  
LP*



**EXHIBIT A**  
**AGREEMENT FILED UNDER SEAL**

**EXHIBIT B**  
**DECLARATION**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

WINDSTREAM HOLDINGS., *et al*,  
  
Debtors.

Chapter 11  
Case No. 19-22312 (RDD)  
(Jointly Administered)

**DECLARATION OF JAMES B. FARRIS IN SUPPORT OF SPRINT  
COMMUNICATIONS COMPANY, LP'S MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY**

I, JAMES B. FARRIS, hereby affirm and declare as follows:

1. I am a Manager in the Real Estate department at Sprint Communications Company, LP ("Sprint"). My duties include the review, management, and negotiation of contracts and leases relating to real estate and dark fiber.

2. I am familiar with the various contracts and agreements Sprint has with the Debtors, including the Fiber Optic Lease Agreement dated February 22, 1996 between Sprint and McLeod USA Telecommunications Services, LLC ("McLeod" or the "Debtor"), as successor-in-interest to

CapRock Fiber Network, Ltd. I submit this declaration in support of Sprint's Motion for Relief from the Automatic Stay to Exercise its Right to Terminate the Fiber Optic Lease Agreement.

3. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal experience and knowledge of Sprint's business operations, my discussions with Sprint's management and advisors, and my review and knowledge of the Fiber Optic Lease Agreement between Sprint and the Debtor for the [REDACTED] [REDACTED] (the "Agreement"). If called as a witness, I could and would testify completely to the facts set forth in this declaration.

4. Sprint has a number of fiber optic agreements with the Debtors, including this Agreement with McLeod. It is typical for Sprint's fiber optic agreements to have an initial term, followed by a number of options for Sprint to renew or extend the term. Often, these fiber optic agreements provide that if Sprint terminates the agreement without cause during the initial term, it is responsible for all remaining payments due under the agreement through the end of the initial term; and if Sprint terminates the agreement for any reason during an extended term, it is responsible for payments only up to the date of termination.

5. This Agreement had an initial term of ten years from August 1, 1996 through July 31, 2006, and Sprint had four 5-year options to extend the term of the Agreement. On January 6, 2005, Sprint exercised its first option to renew the Agreement for an additional five-year term from August 1, 2006 through July 31, 2011. On November 29, 2010, Sprint exercised its second option to renew the Agreement for an additional five-year term from August 1, 2011 through July 31, 2016. On January 8, 2016, Sprint exercised its third option to renew the Agreement for an additional five-year term from August 1, 2016 through July 31, 2021. The Agreement therefore is currently in the third option period, and it is scheduled to expire on July 31, 2021.

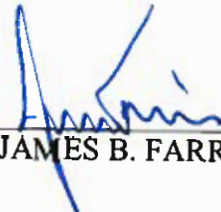
6. [REDACTED]

7. In the normal course of business, Sprint reviews their fiber optic agreements on an annual basis to determine whether better, less costly alternatives are available. With respect to this dark fiber route, I was part of the team that was responsible for reviewing the Agreement and determining whether there were better, less costly alternatives.

8. Sprint has identified alternative providers willing to lease fiber optic on this route long term for just a fraction of the current lease payment under the Agreement. Sprint has the right under the Agreement to terminate during any renewal or extension term, and pay the monthly recurring charges only up to the date of termination. Terminating the Agreement is in Sprint's best business interest, undertaken in the normal course of business operations, and is unrelated to the Debtor's insolvency or financial condition.

I, JAMES B. FARRIS, declare under penalty of perjury that the foregoing is true and correct.

Date: December 24, 2019

  
\_\_\_\_\_  
JAMES B. FARRIS

**EXHIBIT C**  
**PROPOSED ORDER**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

WINDSTREAM HOLDINGS., *et al*,  
  
Debtors.

Chapter 11

Case No. 19-22312 (RDD)

(Jointly Administered)

**PROPOSED ORDER PURSUANT TO 11 U.S.C. § 362(d)  
MODIFYING THE AUTOMATIC STAY IMPOSED BY 11 U.S.C. § 362(a)**

Upon the motion, dated December 24, 2019 (the “Motion”), of Sprint Communications Company, LP (“Sprint”), for an order, pursuant to section 362(d) of title 11 of the United States Code (the “Bankruptcy Code”), vacating the automatic stay imposed in this case by section 362(a) of the Bankruptcy Code as to Sprint’s interests in that certain Fiber Optic Lease Agreement between Sprint and McLeod USA Telecommunications Service, L.L.C. (the “Agreement”) to allow Sprint’s enforcement of its rights in the Agreement and to allow Sprint to terminate the Agreement; and due and proper notice of the Motion having been made on all necessary parties; and the Court having held a hearing on the Motion on January 16, 2020; and this Court having reviewed the Motion and all responses thereto, if any, including all documents submitted therewith; and this Court having heard the statements of counsel presented with respect to the Motion at a hearing, if any, before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing, it is hereby

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that the automatic stay imposed in this case by section 362(a) of the Bankruptcy Code is vacated under section 362(d) of the Bankruptcy Code to allow Sprint's enforcement of its rights to terminate the Agreement.

Dated: \_\_\_\_\_, 20\_\_\_\_  
White Plains, New York

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UNITED STATES BANKRUPTCY JUDGE