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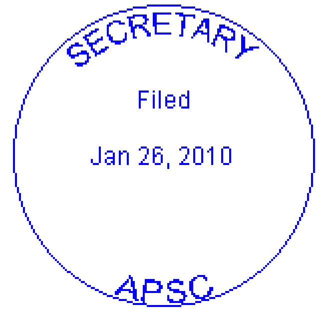

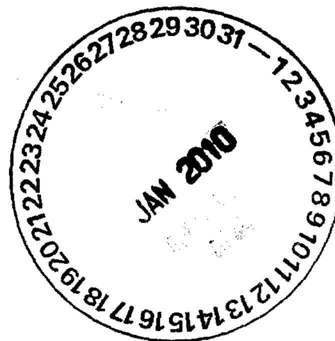

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
CHARTER COMMUNICATIONS, INC., et al.,	)	Case No. 09-11435 (JMP)
Reorganized Debtors.	)	Jointly Administered

AGENDA FOR JANUARY 26, 2010 HEARING

The above-captioned reorganized debtors and debtors-in-possession (respectively, the "Reorganized Debtors") respectfully submit the following agenda (the "Agenda") for the hearing scheduled for **Tuesday, January 26, 2010** at **10:00 a.m.** (Prevailing Eastern Time) (the "January 26 Hearing").

Location of Hearing:	The Honorable James M. Peck, Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, Courtroom 601, New York, New York 10004-1408.
Response Deadline:	All responses or objections to any of the motions to be heard at the January 26 Hearing, must have been received on or before **January 24, 2010** at **12:00 p.m.** (Prevailing Eastern Time)..
Copies of Motions:	A copy of each pleading can be viewed on the Court's website at www.ecf.nysb.uscourts.gov and at the website of the Reorganized Debtors'[1] notice, claims and balloting agent, www.kccllc.net/charter.

[1] The Reorganized Debtors in these cases include: Ausable Cable TV, Inc.; Hometown TV, Inc.; Plattsburgh Cablevision, Inc.; Charter Communications Entertainment I, LLC; Falcon First Cable of New York, Inc.; Charter Communications, Inc.; Charter Communications Holding Company, LLC; CCHC, LLC; Charter Communications Holdings, LLC; CCH I Holdings, LLC; CCH I, LLC; CCH II, LLC; CCO Holdings, LLC; Charter Communications Operating, LLC; American Cable Entertainment Company, LLC; Athens Cablevision, Inc.; Cable Equities Colorado, LLC; Cable Equities of Colorado Management Corp.; CC 10, LLC; CC Fiberlink, LLC; CC Michigan, LLC; CC Systems, LLC; CC V Holdings, LLC; CC VI Fiberlink, LLC; CC VI Operating, LLC; CC VII Fiberlink, LLC; CC VIII Fiberlink, LLC; CC VIII Holdings, LLC; CC VIII Leasing of Wisconsin, LLC; CC VIII Operating, LLC; CC VIII, LLC; CCH I Capital Corp.; CCH I Holdings Capital Corp.; CCH II Capital Corp.; CCO Fiberlink, LLC; CCO Holdings Capital Corp.; CCO NR Holdings, LLC; CCO Purchasing, LLC; Charter Advertising of Saint Louis, LLC; Charter Cable Leasing of Wisconsin, LLC; Charter Cable Operating Company, L.L.C.; Charter Cable Partners, L.L.C.; Charter Communications Entertainment, LLC; Charter Communications Entertainment I, DST; Charter Communications Entertainment II, LLC; Charter Communications Holdings Capital Corporation; Charter Communications Operating Capital Corp.; Charter Communications Properties LLC; Charter Communications V, LLC; Charter Communications Ventures, LLC; Charter Communications VI, LLC; Charter Communications VII, LLC; Charter Communications, LLC; Charter Distribution, LLC; Charter Fiberlink – Alabama, LLC; Charter Fiberlink AR-CCVII, LLC; Charter Fiberlink AZ-CCVII, LLC; Charter Fiberlink CA-CCO, LLC; Charter Fiberlink CA-CCVII, LLC; Charter Fiberlink CC VIII, LLC; Charter Fiberlink CCO, LLC; Charter Fiberlink CT-CCO, LLC; Charter Fiberlink – Georgia, LLC; Charter Fiberlink ID-CCVII, LLC; Charter Fiberlink – Illinois, LLC; Charter Fiberlink IN-CCO, LLC; Charter Fiberlink KS-CCO, LLC; Charter Fiberlink LA-CCO, LLC; Charter Fiberlink MA-CCO, LLC; Charter Fiberlink – Michigan, LLC; Charter Fiberlink – Missouri, LLC; Charter Fiberlink MS-CCVI, LLC; Charter Fiberlink NC-CCO, LLC; Charter Fiberlink NC-CCVII, LLC; Charter Fiberlink – Nebraska, LLC; Charter Fiberlink NH-CCO, LLC; Charter Fiberlink NM-CCO, LLC; Charter Fiberlink NV-CCVII, LLC; Charter Fiberlink NY-CCO, LLC; Charter Fiberlink NY-CCVII, LLC; Charter Fiberlink OH-CCO, LLC; Charter Fiberlink OK-CCVII, LLC; Charter Fiberlink OR-CCVII, LLC; Charter Fiberlink SC-CCO, LLC; Charter Fiberlink SC-CCVII, LLC; Charter Fiberlink – Tennessee, LLC; Charter Fiberlink TX-CCO, LLC; Charter Fiberlink UT-CCVII, LLC; Charter Fiberlink VA-CCO, LLC; Charter Fiberlink VT-CCO,
(Continued…)

CONTESTED MATTER

1. Reorganized Debtors' Motion to Enforce the Plan of Reorganization Injunction [Docket No. 1111].

   - **Related Documents and Responses Received**:

     a) Reorganized Debtors' Brief in Support of Motion to Enforce the Plan of Reorganization Injunction [Docket No. 1108].

     b) Declaration of Paul M. Basta, Esq. Pursuant To Local Bankruptcy Rule 9077-1(a) [Docket No. 1109].

     c) Order to Show Cause Why an Order Should Not Be Entered Enforcing Plan Injunction [Docket No. 1110].

     d) Joinder of Paul G. Allen to Reorganized Debtors' Motion to Enforce the Plan of Reorganization Injunction [Docket No. 1113].

     e) Notice of Adjournment of Hearing to Consider the Reorganized Debtors' Motion to Enforce the Plan of Reorganization Injunction [Docket No. 1117].

     f) Securities Class Action Plaintiffs' Response in Opposition to Reorganized Debtors' Motion to Enforce the Plan of Reorganization Injunction and Showing of Cause Why an Order Should Not Be Entered Enforcing Plan Injunction [Docket No. 1127].

     g) Reorganized Debtors' Reply Brief in Support of Motion to Enforce the Plan of Reorganization Injuction [To be filed].

   - **Status:** Going forward.

LLC; Charter Fiberlink WA-CCVII, LLC; Charter Fiberlink – Wisconsin, LLC; Charter Fiberlink WV-CCO, LLC; Charter Fiberlink, LLC; Charter Gateway, LLC; Charter Helicon, LLC; Charter Investment, Inc.; Charter RMG, LLC; Charter Stores FCN, LLC; Charter Video Electronics, Inc.; Dalton Cablevision, Inc.; Enstar Communications Corporation; Falcon Cable Communications, LLC; Falcon Cable Media, a California Limited Partnership; Falcon Cable Systems Company II, L.P.; Falcon Cablevision, a California Limited Partnership; Falcon Community Cable, L.P.; Falcon Community Ventures I, LP; Falcon First Cable of the Southeast, Inc.; Falcon First, Inc.; Falcon Telecable, a California Limited Partnership; Falcon Video Communications, L.P.; Helicon Partners I, L.P.; HPI Acquisition Co., L.L.C.; Interlink Communications Partners, LLC; Long Beach, LLC; Marcus Cable Associates, L.L.C.; Marcus Cable of Alabama, L.L.C.; Marcus Cable, Inc.; Midwest Cable Communications, Inc.; Pacific Microwave; Peachtree Cable TV, L.P.; Peachtree Cable T.V., LLC; Renaissance Media LLC; Rifkin Acquisition Partners, LLC; Robin Media Group, Inc.; Scottsboro TV Cable, Inc.; Tennessee, LLC; The Helicon Group, L.P.; Tioga Cable Company, Inc.; and Vista Broadband Communications, LLC.

New York, New York
Dated: January 25, 2010

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in Possession Charter Investment, Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
CHARTER COMMUNICATIONS, INC., et al.,	)	Case No. 09-11435 (JMP)
Reorganized Debtors.	)	Jointly Administered

REORGANIZED DEBTORS' REPLY BRIEF IN SUPPORT OF MOTION TO ENFORCE THE PLAN OF REORGANIZATION INJUNCTION

The Securities Class Action Plaintiffs' Response in Opposition to Reorganized Debtors' Motion (the "Motion") to Enforce the Plan of Reorganization Injunction (hereinafter "Opp.") provides no reason for this Court to deny the relief sought by the Reorganized Debtors.[1] This Court has exclusive jurisdiction to determine scope of the Third Party Release. Indeed, after sitting on the sidelines until after the Court confirmed Charter's Plan of Reorganization, the Securities Class Action Plaintiffs came to this Court in December seeking relief from the Third Party Release. At that time, the Securities Class Action Plaintiffs repeatedly stated—in open court, and in their briefs before this Court and the Eastern District of Arkansas—that their securities claims were released by the Plan. Now, in light of this Court's decision denying reconsideration, they reverse course, arguing for the first time that the Release somehow does not apply to them. But they were right before. Their claims were released by the Plan, and Charter's motion to enforce the Plan injunction should be granted.

Given the clarity of the Court's jurisdiction and the breadth of the release, the Securities Class Action Plaintiffs try to change the subject by making much of this Court's statement at the end of the December 17, 2009 hearing, in which the Court stated that it was not being asked to determine the res judicata effects of the Plan Confirmation Order. That statement does not lead to a different result, either as to jurisdiction or to the merits of the Securities Class Action Plaintiffs' arguments. Because the Securities Class Action Plaintiffs' claims have been released by the Plan, the Court should enforce the Plan and enjoin them from further attempts to resume their litigation.

[1] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

ARGUMENT

I. The Bankruptcy Court is the Appropriate Forum for Interpreting Its Own Order

As the Plan and Confirmation Order make clear, this Court has exclusive jurisdiction to grant the relief sought by the Reorganized Debtors. The Plan provides that this Court has "exclusive jurisdiction" to "[h]ear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order," to "[i]ssue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan," and to "[e]nforce all orders previously entered by the Bankruptcy Court." (Plan Art. XIV.A.11, 20, 23.) This is consistent with prevailing law in this Circuit, which provides that where a dispute involves an interpretation of the bankruptcy court's orders or a plan consummation motion, the court retains jurisdiction to enforce the injunction provisions of its orders. *See In re Petrie Retail, Inc.*, 304 F.3d 223, 230 (2d Cir. 2002).

The Court did not state that it was ceding its exclusive jurisdiction when it noted in December that the denial of a motion for reconsideration decision did not itself decide the scope of the releases or resolve the res judicata effect of the confirmation order. (12/17/09 Hr'g Tr. at 52.) Nor did the Court suggest that the Plan Injunction did not apply to the securities case—***the plaintiffs themselves had asserted exactly the opposite*** in arguing that the release should be voided. Indeed, they acknowledged the primacy of this Court's jurisdiction over the Plan in seeking a stay of the securities case and reconsideration from this Court in December, rather than attempting to litigate the scope of the release in the Eastern District of Arkansas in the first instance. While they may seek to disclaim it now, they recognized then that the release applied to them, and that only ***this*** Court could modify the release. Notably, the Eastern District of Arkansas has concurred, agreeing to hold the Securities Class Action Plaintiff's motion to lift the

stay in abeyance, pending this Court's ruling on this motion. (*See* 1/20/2010 Order ("The deadline for defendants to respond to the motion to lift stay and reopen case is extended until ten (10) days after the bankruptcy court has issued its written ruling on the pending Motion to Enforce the Plan of Reorganization Injunction and the Notice of Presentment.") (attached as Reply Exhibit 1).)

Moreover, given the circumstances of this case, it only makes sense that this Court should decide the scope of the Release ***it itself adopted*** in confirming the Plan. This Court has a unique understanding of the nature and importance of the provisions at issue here. Over the course of a 19-day confirmation trial, this Court—and no other—heard ample testimony regarding the rationale behind the Third Party Release and the importance of the Release to the plan as a whole. Indeed, this Court concluded that the Release was an "integral," "vital," and "essential component of the Plan." (Slip Confirmation Op. at 61-62.) Plaintiffs should not be allowed to collaterally challenge that Third Party Release in a forum that did not have the benefit of hearing the evidence that was before this Court. For them to do so would undermine the final resolution of the Reorganized Debtors' Plan. Given the "strong public 'need for finality of decisions, especially in a bankruptcy proceeding,'" *see In re Calpine Corp.*, No. 05-60200 (BRL), 2008 WL 207841, at *6 (Bankr. S.D.N.Y. Jan. 24, 2008), the Court should avoid that result. Because this Court is the best positioned to interpret and apply the Plan and its Third Party Release, and because it retained exclusive jurisdiction to do so, the Court should grant the relief sought.

II. The Securities Class Action Plaintiffs' Assertions in Their Opposition Brief Cannot be Squared With Their Prior Unequivocal Statements Regarding the Application of the Release to Their Claims

What is perhaps most remarkable about the Securities Class Action Plaintiffs' submission is their bald assertion that they "have disputed – and respectfully continue to dispute – the applicability of the non-debtor, third party release provisions to the Securities Fraud Suit based

upon the plain meaning of provisions of the confirmed plan of reorganization." (Opp. 5 ¶ 16.) The Securities Class Action Plaintiffs go on to say that they have "***consistently*** taken the position that the non-debtor, third party release is inapplicable to the Securities Fraud Suit." (*Id.* at 6, ¶ 20 (emphasis added).) Those assertions are false, and tellingly the Securities Class Action Plaintiffs cite no document in support of them. Indeed, the whole premise of the Securities Class Action Plaintiffs' motion for reconsideration was that the release applied to their claims, and should be voided or invalidated (at least with respect to them) due to a purported lack of notice. Thus, consistent with their prior theory, plaintiffs' previous representations were the opposite of what they now say they were:

- In their Motion to Stay the securities case in the Eastern District of Arkansas, the Securities Class Action Plaintiffs argued that "the Plan, which was approved by the Bankruptcy Court, ***provides a release of any and all Exchange Act claims, or other securities fraud claims, the Class might have against the individual defendants*** named in [the Securities Class Action suit]." (Securities Class Action Plaintiffs' Stay Mot. (attached as Exhibit B to Reorganized Debtors' Opening Brief) at 2 (emphasis added).)

- The Securities Class Action Plaintiffs argued to this Court that a "limited rehearing" was necessary because otherwise, Article X.F of the Plan "***permanently enjoin[ed]*** holders of interests in the Debtor (***including the Securities Class Action Plaintiffs***) from commencing or continuing any cause of action released pursuant to the Plan." (Mot. for Ltd. Rehearing [Dkt No. 973] at 5 (emphasis added).)

- The Securities Class Action Plaintiffs sought entry of an order from this Court "granting them limited rehearing, limited reconsideration, and/or limited relief from the Confirmation Order ***such that the Third Party Release is rendered inapplicable*** to their securities fraud claims against the Debtors's Officer and Directors in the Securities Fraud Suit." (*Id.* at 9.)

- At the hearing before this Court on December 17, 2009, counsel for the Securities Class Action Plaintiffs twice represented that it "is not disputed that that third party release and injunction provision ***would take out the carpet from underneath the securities class action plaintiffs in that lawsuit***." (12/17/09 Hr'g Tr. at 13 (emphasis added); *see also id.* at 9 ("the third party release and the injunction . . . would effectively take the rug out from underneath the securities class action plaintiffs").)

- And even in their recent motion to lift the stay, the Securities Class Action Plaintiffs candidly admitted that they were changing positions, noting that "although Lead Plaintiffs' [sic] believed at the time of filing their motion to stay that the Third Party

> Release would impact their securities fraud claims . . . upon further review of the Plan of Reorganization, Lead Plaintiffs believe that the Third Party Release *does not* apply to the securities fraud claims of all or most of the putative Class of Charter stockholders in this action." (Mot. to Reopen (attached as Exhibit A to Reorganized Debtors' Opening Brief) at 2-3.)

Indeed, relying on their prior representations, the Eastern District of Arkansas granted Securities Class Action Plaintiffs' request for a stay, specifically acknowledging that their motion "state[d] that the judge presiding over [the Chapter 11 cases] has confirmed a plan of reorganization and adjudicated an adversary proceeding the result of which deems ***the claims asserted in this action to be discharged and released***." (12/8/09 Order (attached as Exhibit F to Reorganized Debtors' Opening Brief.) at 1 (emphasis added).) Thus, the Securities Class Action Plaintiffs sought and obtained a stay of that action pending resolution of their "motion for reconsideration [before this Court] ***and, if necessary, until after resolution of any appeal thereof***." (Securities Class Action Plaintiffs' Stay Mot. (attached as Exhibit B to Reorganized Debtors' Opening Brief) at 3 (emphasis added).)

Having obtained a stay from one court and sought relief from this Court on one theory, the Securities Class Action Plaintiffs should not be allowed to circumvent the denial of such relief by advancing inconsistent theories. The Securities Class Action Plaintiffs are judicially estopped, and should be forced to accept the consequences of their blatant misrepresentations and gamesmanship.

III. The Release Applies to the Securities Class Action Plaintiffs under any Reasonable Interpretation of the Plan

Notwithstanding their ever-shifting positions, there is no merit to the Securities Class Action Plaintiffs' argument that they were not the "Holders of Claims and Interests" who are bound by the Plan's Third Party Release. As set forth in Charter's opening brief, the Securities Class Action Plaintiffs were plainly the "Holders of Claims," based on the securities claims they

could have attempted to assert against the debtors. They said they had claims against Charter, (*see, e.g.*, Pension Funds' Jt. Decl. in Support of Mot. for Appointment as Lead Plaintiffs (attached as Exhibit E to Reorganized Debtors' Opening Brief) at 3, ¶ 10), and their complaint is based in large part based on statements allegedly made by Charter, (*see, e.g.*, Compl. ¶¶ 4, 56, 62).

Case law makes clear that a claim need not be asserted, or even known, to be a "claim" within the meaning of 11 U.S.C. § 101(5). *See In re R.H. Macy & Co.*, 67 F. Appx. 30, 31-32 (2d Cir. 2003) (quoting *In re Cool Fuel, Inc.*, 210 F.3d 999, 1006 (9th Cir. 2000) (collecting cases)) ("'It is well-established that a claim is . . . allowable . . . in a bankruptcy proceeding even if it is a cause of action that has not yet accrued.'"). Indeed, being a "Holder of a Claim" is plainly not contingent upon the filing of a claim, as the Release expressly applies to even ***unknown*** claims. The Securities Class Action Plaintiffs, however, have no response whatsoever, except to repeat the mantra that they did not actually name the Debtors "as parties to the Securities Fraud Suit and because they did not file a proof of claim in the bankruptcy case." (Opp. 3 n.3.) The fact that they sought to avoid the automatic stay by excluding Charter from among the defendants does not mean they were not holders of claims. Again, the Securities Class Action Plaintiffs cite no case law supporting the notion that those tactical decisions takes their claims outside the broad scope of 11 U.S.C. § 101(5). *See In re Egleston*, 448 F.3d 803, 812 (5th Cir. 2006) ("The definition of 'claim' in the Bankruptcy Code is very broad."). Under these plaintiffs' approach, parties could avoid a release in a proposed plan merely by not submitting a claim. This would, perversely, lead to claimants not filing claims, thereby undermining the effectiveness and finality of the Bankruptcy Code and bankruptcy proceedings.

Moreover, as explained in the Reorganized Debtors' opening brief, the Securities Class Action Plaintiffs' claims against Mr. Allen and other Charter officers are nothing more than a claim against the Debtors themselves in light of the Reorganized Debtors' indemnification obligations. The Securities Class Action Plaintiffs assert that any indemnification claim will "likely" have no economic impact on the debtors because it would be subject to expungement under 11 U.S.C. § 502(e)(1)(B) and subordinated to the claims of general unsecured creditors pursuant to 11 U.S.C. § 510(b). Not only do the Securities Class Action Plaintiffs concede that the indemnification claims may impact the Reorganized Debtors, their assertion that such an impact is unlikely is incorrect and ignores the terms of the Plan, which specifically provide that claims are ***not*** subject to disallowance under Section 502(e)(1)(B), and makes clear that the Reorganized Debtors ***fully assumed*** the indemnification obligations. (*See* Plan Arts. X.L, VII.B.) The Debtors' Directors & Officers Insurance is, of course, an asset of the estate, and any recovery against that insurance is, thus, a recovery against an asset of the estate. Further, any claim against the director and officer coverage would deplete the Reorganized Debtors' entity coverage and any claim against Charter's directors and officers that exceeded such coverage would leave the estate to make up the difference. Thus, even if a party needs to affirmatively assert a claim to be a "Holder of Claim"—and they need not—the Securities Class Action Plaintiffs' claims against Mr. Allen and other Charter officers were sufficient.

The Securities Class Action Plaintiffs were also the "Holders of Interests," by virtue of their ownership of Charter stock. It is no answer to say that "'Holder' means an Entity holding a Claim or Interest, as applicable." (Opp. 5 & n.4 (quoting Plan Art. I.A.115).) The definition of "Holder" does not limit its application to entities "holding" interests on the record date, or any other date. Under the Securities Class Action Plaintiffs' approach, a party could avoid

application of the release merely by divesting itself of Charter stock prior to the record date, subsequently reacquire that stock, and yet have no release of its claims. That makes no sense and would deprive the bankruptcy proceeding of the desired finality. There is no reasonable distinction that justifies barring the claim of a party who owns the stock ***on*** the record date, but allowing the claim of a party who sells on ***the day before*** the record date. The Securities Class Action Plaintiffs' assertions notwithstanding, there is no "temporal limitation" in the release. Any party that was holding claims or interests at any time prior to the Plan Effective Date is deemed, by the Plan, to have released their claims.

CONCLUSION

For these reasons, and those set forth in the Reorganized Debtors' opening brief, the Court should grant the relief sought in the Motion.

Respectfully submitted,

New York, New York
Dated: January 25, 2010

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REPLY
EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

IRON WORKERS LOCAL NO. 25 PENSION FUND;
INDIANA LABORERS PENSION FUND;
IRON WORKERS DISTRICT COUNCIL OF
WESTERN NEW YORK; VICINITY PENSION FUND;
THE NEW JERSEY BUILDING LABORERS
PENSION AND ANNUITY FUNDS; and HERB LAIR — PLAINTIFFS

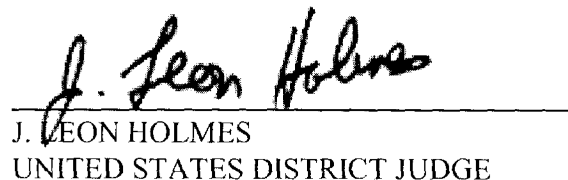
v. — No. 4:09CV00405 JLH

PAUL G. ALLEN; ELOISE SCHMITZ;
and NEIL SMIT — DEFENDANTS

ORDER

Defendants' motion for enlargement of time to respond to lead plaintiffs' motion to lift stay and reopen case is GRANTED without objection. Document #52. The deadline for defendants to respond to the motion to lift stay and reopen case is extended until ten (10) days after the bankruptcy court has issued its written ruling on the pending Motion to Enforce the Plan of Reorganization Injunction and the Notice of Presentment.

IT IS SO ORDERED this 20th day of January, 2010.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE