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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8)
9 In re) Case No. 06-20046-A-11
10)
LARGE SCALE BIOLOGY) Docket Control No. FWP-9
11 CORPORATION,)
12) Date: February 27, 2006
Debtor.) Time: 9:00 a.m.
13)
_____)

14 *On February 27, 2006 at 9:00 a.m., the court considered the*
15 *motion of the debtor in possession, as well as the committee of*
16 *unsecured creditors, seeking an advisory opinion regarding the*
17 *scope of disclosure required by 11 U.S.C. § 1102, as amended by*
18 *the Bankruptcy Abuse Prevention and Consumer Protection Act of*
19 *2005. The text of the final ruling appended to the minutes of*
20 *the hearing follows below. This final ruling constitutes a*
21 *"reasoned explanation" for the court's decision and accordingly*
22 *is posted to the court's Internet site, www.caeb.uscourts.gov, in*
23 *a text-searchable format as required by the E-Government Act of*
24 *2002. The official record of this ruling remains the ruling*
25 *appended to the minutes of the hearing.*

26 **FINAL RULING**

27 The motion will be denied without prejudice.

28 The debtors and the official committee of unsecured
creditors seek an order: (1) "confirming that section
1102(b)(3)(A) does not authorize or require the Creditors'
Committee appointed in this case to provide access to the
Debtors' Confidential Information (as defined below) to any
creditor that such Creditors' Committee represents;" (2)
"clarifying that the Creditors' Committee is not authorized or

1 required to provide access to Privileged Information (as defined
2 below) to any creditor that such Creditors' Committee
3 represents;" and (3) finding "that service of the accompanying
4 Section 1102(b)(3) Notice to Creditors ('Notice') constitutes
5 compliance with the requirement pursuant to section 1102(b)(3)(B)
6 to solicit and receive comments from creditors holding claims of
7 the kind represented on the Creditors' Committee but not
8 appointed to the Creditors' Committee."

9 Any party invoking federal jurisdiction has the burden of
10 establishing standing. Lujan v. Defenders of Wildlife, 504 U.S.
11 555, 561 (1992). To establish standing under the case or
12 controversy requirement of Article III of the United States
13 Constitution, a plaintiff (1) must have suffered some actual or
14 threatened injury due to alleged illegal conduct, known as the
15 "injury in fact element;" (2) the injury must be fairly traceable
16 to the challenged action, known as the "causation element;" and
17 (3) there must be a substantial likelihood that the relief
18 requested will redress or prevent plaintiff's injury, known as
19 the "redressability element." U.S. Const. Art. 3, § 1 et seq.;
20 Dunmore v. U.S., 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing
21 Lujan, 504 U.S. at 560-61). The asserted harm must have matured
22 sufficiently to warrant judicial intervention.

23 Here, the debtors and the official committee of unsecured
24 creditors (collectively "Parties") are seeking declaratory
25 relief. However, no complaint has been filed. There is no
26 dispute between the Parties, or between the Parties and anyone
27 else, regarding the proper scope of disclosure under 11 U.S.C. §
28 1102. Nor has anyone challenged the committee's compliance with

1 the disclosure, solicitation, or comment provisions of section
2 1102.

3 The Parties, in other words, are inviting the court to issue
4 an advisory opinion. The court will not issue one.

5 Nothing in section 1102 entitles the Parties to some
6 sweeping, hypothetical statement of the committee's obligations
7 under section 1102.

8 The Parties argue that "[t]he relief requested herein will
9 help ensure confidential, privileged, proprietary and/or material
10 non-public information will not be disseminated to the detriment
11 of the Debtors' estates and will aid the Creditors' Committee in
12 performing its statutory functions under section 1102(b)(3)."
13 However, no confidential, privileged, proprietary, or material
14 non-public information will be disseminated to the detriment of
15 the Debtors' estates unless the committee chooses to disseminate
16 it to creditors not on the committee. And, unless and until a
17 creditor challenges the non-disclosure of such or other
18 information, the Parties have no actual or threatened injury.

19 The new amendments to section 1102 do not envision that the
20 court will inject itself unilaterally into the committee's
21 decision to disseminate, or not to disseminate, information.
22 Rather, section 1102(b)(3)(C) contemplates that the issue will be
23 placed before the court only when a party in interest seeks an
24 order compelling the disclosure of additional information.

25 It is simply inappropriate for the court, in the absence of
26 an adversary and without the context of an actual controversy, to
27 speculate in the abstract about the committee's duties under
28 section 1102. The court has approved counsel for the committee

1 to advise it in this case. It will receive its advice from that
2 counsel and not from the court.

3 The court is aware of the bankruptcy court's opinion in In
4 re Refco, 336 B.R. 187 (Bankr. S.D.N.Y. 2006). For the reasons
5 expressed above, this court concludes, however, that it cannot
6 issue a comparable advisory opinion.