

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SCOTT WEITZEL,

Plaintiff-Appellant,

ORDER

10-CV-6330L

v.

ROBERT C. SINCLAIR, JR. AND  
ANNA B. SINCLAIR,

Defendants-Appellees.

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SCOTT WEITZEL,

Plaintiff-Appellant,

10-CV-6331L

v.

ROBERT C. SINCLAIR, JR. AND  
ANNA B. SINCLAIR,

Defendants-Appellees.

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Defendants-appellees, Robert C. SinClair, Jr. and Ann B. SinClair, have filed statements designating additional items to be included in the record on appeal in these bankruptcy appeals. 10-CV-6330 (Dkt. #6), 10-CV-6331 (Dkt. #6). At the direction of the Court, plaintiff-appellant, Scott Weitzel, has filed a response, disputing in some respects which items should be included in the record, and whether corrections should be made to one of the items, a court transcript.

As noted in this Court's Order entered on April 7, 2011 (Dkt. #8), most courts agree that "it is appropriate for the Bankruptcy Court to address [the appellate record] in the first instance." *In re Enron Corp.*, 379 B.R. 425, 445 (S.D.N.Y. Aug. 27, 2007) (citation omitted); *accord In re National Century Financial Enterprises, Inc.*, 334 B.R. 907, 912 (Bkrcty. S.D. Ohio, December 22, 2005). This Court will not consider these appeals until the proper appellate record has been determined. Accordingly, this matter is remanded to the Bankruptcy Court for a determination of that issue, as set forth in the Conclusion of this Order.

### CONCLUSION

This matter is hereby remanded to the United States Bankruptcy Court for a determination of what items are to be included in the record on appeal in each of these two actions. Once that issue has been resolved by the Bankruptcy Court, the parties are to advise this Court that the appeal is ripe for decision.

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
May 25, 2011.