

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

IN THE MATTER OF	§	
	§	
MOTIONS INITIATING CONTESTED	§	GENERAL ORDER NO. 2005-01
MATTERS	§	

GENERAL ORDER

Bankruptcy Rule 9014 provides that in a contested matter not otherwise governed by the Bankruptcy Rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required unless the court orders an answer to a motion. Bankruptcy Rule 9014(a). Pursuant to N.D. TX L.B.R. 9014.1(a), with the exception of motions for relief from the automatic stay, no response is required unless the court orders an answer to a motion.

Rule 9007 authorizes the court to designate the time, form and manner of providing the notice. Pursuant to Rule 9007, the court has adopted N.D. TX L.B.R. 9007.1, which may be used by a moving party when a motion may only be considered by the court “after notice and hearing” as that requirement is defined by 11 U.S.C. § 102(1). Under N.D. TX L.B.R. 9007.1, a party against whom relief is sought who receives a notice with the language required by N.D. TX L.B.R. 9007.1 must file an answer or response within the noticed period of time or the court may consider that the party does not oppose the relief requested, and that the court may decide the motion without an actual hearing.

N.D. TX L.B.R. 9007.1 provides an effective and efficient process to present contested matters under Rule 9014 for which the moving party does not anticipate opposition, while assuring compliance with the Bankruptcy Code's requirement for notice and opportunity to be heard. Since Rule 9014(a) does not require an answer or response to a motion unless the court orders an answer but N.D. TX L.B.R. 9007.1 compels an answer or response for a party opposing a motion to obtain a hearing, the court enters this General Order to provide the necessary judicial directive for the use of N.D. TX L.B.R. 9007.1 when a response has not been otherwise directed under Rule 9014 and N.D. TX L.B.R.9014.1. By entering this General Order, the court provides for the continuing use of N.D. TX L.B.R. 9007.1. Parties appearing before the court are cautioned to use N.D. TX L.B.R. 9007.1 when the moving party reasonably believes the motion will not be opposed. If the moving party believes or anticipates that the motion will be opposed, the moving party shall obtain a setting for a hearing on the motion.

IT IS THEREFORE ORDERED:

1. **Generally.** Notwithstanding N.D. TX L.B.R. 9007.1 and L.B.R. 9014.1, and except as otherwise directed by the court, negative notice in substantially the form set forth below may be used when the filing of a motion initiates a contested matter under the Federal Rules of Bankruptcy Procedure.

2. **Exceptions.** Motions to dismiss or convert filed by a party in interest other than the debtor, motions for relief from the automatic stay, for use of cash collateral or for financing authority, objections to claims in Chapter 11 cases, and motions to assume or assume and assign executory contracts and unexpired leases are excepted from this General Order and shall be governed by N.D. TX L.B.R. 9014.1 and such other local rule(s) as may be applicable. N.D. TX

L.B.R. 4001.1 governs motions for relief from the automatic stay. For other excepted motions and objections, the moving party may request that the court order an answer or response to the motion or objection, or the moving party may file and serve without negative notice language the motion or objection and obtain a hearing on the motion or objection. The motion must be served pursuant to Bankruptcy Rule 7004 and, for objections to claims, Bankruptcy Rule 3007.

3. **Service Requirements.** The movant shall serve any motion initiating a contested matter governed by this General Order in the manner provided by Bankruptcy Rule 7004. No summons is required. Pursuant to Bankruptcy Rule 7005, the movant shall file with the clerk a certificate of service, attached to the motion, evidencing the mode of service and the names and addresses of the parties served and, where reasonably feasible, a certificate of conference evidencing compliance with District Court Local Civil Rule 7.1(a) and N.D. TX L.B.R. 9014.1(c)(1). A certificate of conference will not be required when it is reasonably anticipated that the number of responding parties may be too numerous to contact prior to filing the motion.

Notwithstanding N.D. TX L.B.R. 9007.1, except as the court may otherwise order, a motion which initiates a contested matter and which contains negative notice need be served only upon the following:

- (a) debtor and debtor's attorney;
- (b) the office of the U.S. trustee;
- (c) any trustee and the trustee's attorney;
- (d) the member of any official committee, or the attorney for any official committee if an attorney has been employed; or, if there is no committee, the twenty (20) largest unsecured creditors;
- (e) any party that has requested notice pursuant to Bankruptcy Rule 2002(i);

- (f) any other party named on a court-approved alternative service list; and
- (g) for relief as to specific entities, the entity affected.

4. **Negative Notice.** The negative notice served must be in substantially the following

form:

A HEARING MAY NOT BE CONDUCTED HEREON UNLESS A RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT (ADDRESS OF CLERK'S OFFICE) BEFORE CLOSE OF BUSINESS ON (MONTH) (DAY), (YEAR), WHICH IS TWENTY (20) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE MUST BE FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING WILL BE HELD WITH NOTICE TO (1) THE DEBTOR AND DEBTOR'S ATTORNEY; (2) THE OFFICE OF THE U.S. TRUSTEE; (3) ANY TRUSTEE AND THE TRUSTEE'S ATTORNEY; (4) THE MEMBERS OF ANY OFFICIAL COMMITTEE, OR THE ATTORNEY FOR ANY OFFICIAL COMMITTEE IF AN ATTORNEY HAS BEEN EMPLOYED; OR, IF THERE IS NO COMMITTEE, THE TWENTY (20) LARGEST UNSECURED CREDITORS; (5) ANY PARTY REQUESTING NOTICE; (6) ANY PARTY NAMED ON A COURT-APPROVED ALTERNATIVE SERVICE LIST; (7) THE RESPONDING PARTIES; AND (8) ANY OTHER AFFECTED ENTITY.

IF NO HEARING ON SUCH NOTICE OR MOTION INITIATING A CONTESTED MATTER IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

5. **Statement of Relief Sought.** Any motion initiating a contested matter shall state the authority for the relief sought by the moving party with sufficient particularity to apprise the noticed parties of the subject matter of the motion. The court may, upon objection or *sua sponte*, deny any relief not sufficiently described to give general notice of the relevant factors to the parties in interest.

6. **Certificate of No Objections.** If no response and request for hearing has been timely filed following service of the motion and notice in accordance with this General Order, the moving party shall file a certificate with the court, after the expiration of the applicable notice period, stating that no objections have been timely served on the moving party. In the event that the court has entered an order (1) approving an alternative list of parties to whom notice must be given or copies must be served or (2) limiting the time to respond, the certificate shall also state the date and substance of the order so that the existence of and compliance with the order may be determined from the certificate.

7. **Certification of Counsel at Evidentiary Hearing.** In any evidentiary hearing conducted on a contested matter, all counsel shall certify before the presentation of evidence that:

- (a) good faith settlement discussions have been held or why they were not held;
- (b) all exhibits (except for those used solely for impeachment), lists of witnesses (it is presumed that debtor(s) will testify), and appraisals (if applicable) have been exchanged at least three (3) business days in advance of the hearing date. In any conflict between a scheduling order entered in a contested matter and a N.D. TX L.B.R., the scheduling order controls.

8. **Necessity for Hearing.** Nothing in this General Order supercedes any requirement in the Bankruptcy Code or Bankruptcy Rules that a hearing be held.

The court has authorized the Chief Bankruptcy Judge of the district to enter this order on behalf of the court. This order shall be effective beginning February 1, 2005.

SO ORDERED.

Signed this 28th day of January, 2005.

/s/ Steven A. Felsenthal

Steven A. Felsenthal, Chief
United States Bankruptcy Judge