

FOR PUBLIC COMMENT

**PROPOSED AMENDMENTS TO
LOCAL BANKRUPTCY RULES
OF THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

(Proposed by the N.D. Tex. Complex Case Committee)

L.B.R. 1001-1 Short Title and Scope.

(a) Short Title.

Any citation referencing these rules shall be made as N.D. Tex. L.B.R. and the number of the pertinent rule.

(b) Scope.

- (1) The Local Bankruptcy Rules govern procedure in the United States Bankruptcy Court for the Northern District of Texas in cases under title 11 of the United States Code (the “Bankruptcy Code”). The Local Bankruptcy Rules supplement, but do not replace the Federal Rules of Bankruptcy Procedure, and shall be construed consistently with those rules to secure the just, expeditious and economical administration and determination of every case and proceeding under the Bankruptcy Code.
- (2) In addition to these Local Bankruptcy Rules, the Administrative Procedures for CM/ECF, ~~Procedures for Complex Chapter 11 Cases,~~ and the standing and general orders of the Bankruptcy Court govern practice, including any orders governing the procedures for complex chapter 11 cases.
- (3) Notwithstanding these Local Bankruptcy Rules, the Presiding Judge may direct the parties to proceed in any manner that the judge deems just and expeditious and may suspend or modify any Local Bankruptcy Rule in a particular case.
- (4) Any appendix to these Local Bankruptcy Rules may be modified by the Bankruptcy Court without the necessity of a formal amendment to these Local Bankruptcy Rules.

L.B.R. 2016-1 Compensation of Professionals.

(a) Statement Required by § 329 and Rule 2016(b).

The statement required by 11 U.S.C. § 329 and Bankruptcy Rule 2016(b) shall be filed by the attorney for the debtor within 14 days after the order for relief, whether or not the attorney seeks to be employed or compensated by the estate.

(b) Retainer Funds.

In chapter 9, 11, 12 and 13 cases, all attorneys and accountants employed by a debtor shall deposit retainer funds, whether received from the debtor or an insider of the debtor (as defined in 11 U.S.C. § 101(31)), in a trust account. Any withdrawal in a chapter 13 case from a retainer, other than for payment of filing fees, one credit report and fees paid for credit counseling required by 11 U.S.C. § 109(h)(1), to the extent that the attorney has incurred these charges, may not be made on an amount that exceeds \$3,000.00, in an individual case or \$3,500.00 in a business case, except after approval of a formal fee application. A retainer in a chapter 9, 11 or 12 case may be withdrawn provided the attorney or accountant complies with the following procedure:

- (1) A motion for distribution of retainer shall be filed with the Bankruptcy Clerk, and a copy shall be served on:
 - (A) The debtor, and, if the debtor is represented by an attorney, the attorney;
 - (B) Any attorney for a committee appointed or elected in the case, or if no attorney has been employed to represent the committee, through service on its members; and if no committee has been appointed in a chapter 9 or 11 case, the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d);
 - (C) The United States Trustee;
 - (D) Any trustee appointed in the case; and
 - (E) All parties requesting notice pursuant to Local Bankruptcy Rule 2002-1(j);
- (2) At a minimum, the motion for distribution of retainer shall contain a Fee Application Cover Sheet, a description of services rendered, including the time spent, hourly rates charged and the name of the attorney, accountant, other professional or paraprofessional performing the work;

- (3) For the purpose of distribution of retainer, this motion shall be deemed an application within the provisions of Bankruptcy Rule 2016, with the final compensation of counsel to be determined at a subsequent hearing before the court as required by Bankruptcy Rule 2016; and
- (4) If no objection is filed within 14 days of the mailing thereof, said professional may withdraw funds as described in the proposal in the amounts set forth as interim allowances. Motions for distribution may not be filed more frequently than monthly, without leave of court. If an objection is received, the affected professional shall request a hearing before the court. Said hearing shall be held pursuant to Bankruptcy Rule 2017(a), and will not require preparation of a formal fee application.

(c) Fee Application Form.

At a minimum, an application for compensation shall:

- (1) include a Fee Application Cover Sheet; and
- ~~(2) comply with the Court's Guidelines For Compensation and Expense Reimbursement of Professionals; and~~
- (3) comply with any other applicable guidelines and court orders.

L.B.R. 3016-1 Chapter 11 - Plan.

(a) Extension of Exclusivity Period.

If the debtor desires an extension of the exclusive period for filing a plan of reorganization, the debtor shall file a motion requesting the extension that includes a statement of the reasons why a plan has not been filed and a ~~detailed description and/or~~ timetable of the steps to be taken in order to file a plan. ~~No order extending the periods of exclusivity as provided in 11 U.S.C. § 1121(b) or (e) shall be entered in the absence of such information.~~

(b) Small Business Cases.

If the debtor desires an extension of the periods provided for filing or confirming a plan of reorganization in a small business case, as provided in 11 U.S.C. § 1121(e)(3), then the debtor shall file and serve a motion requesting the extension, as described in subsection (a), on all parties in interest. The motion should be filed sufficiently in advance of the expiration of the time periods provided in § 1121(e) to provide at least 21 days' notice of the hearing and for the order extending time to be signed before the existing deadline has expired. Expedited or emergency hearings will be granted only in exceptional circumstances.

~~(c) — Report Required for Plans Not Filed Within Initial Exclusivity Period.~~

~~Whenever a plan has not been filed within the exclusive period for filing a plan of reorganization as set forth in 11 U.S.C. § 1121(b) or (e), or upon the expiration of any extension or reduction of exclusivity, the debtor shall file either: (1) a report stating the reasons why a plan has not been filed and a detailed timetable of the steps to be taken in order to file a plan; or (2) a recommendation that the case either be dismissed or converted.~~

L.B.R. 3016-2 Special Expedited Consideration of Prepackaged Funded Debt Plans.

(a) Authorization.

Where there has been solicitation of votes on a Funded Debt Plan prior to the commencement of a case on at least 28 days' notice to the debtor, U.S. Trustee, all creditors, all equity security holders, and all other parties required by Bankruptcy Rule 2002, the court may, after considering any objections to the Funded Debt Plan, hold a hearing and confirm the Funded Debt Plan on an expedited basis. The proponent of the Funded Debt Plan shall contact the Bankruptcy Clerk to coordinate a hearing date and objection deadline.

(b) Notice.

The Funded Debt Plan shall be mailed with the notice of the hearing to at least the debtor, Funded Debt holders, secured creditors, the 30 largest general unsecured creditors, equity security holders, and interested governmental entities. The notice of the hearing shall also be published in a national publication and an international publication to the extent the debtor operates internationally.

(c) Pleadings.

All first-day pleadings relating to the Funded Debt Plan shall be posted on a public forum at least 24 hours before the hearing to consider confirmation of the Funded Debt Plan. The website address or other instructions for accessing such public forum shall be included in the notice described paragraph (b) of this rule.

(d) Objections.

Notwithstanding Local Bankruptcy Rule 3020-1, objections to the Funded Debt Plan shall be served on the proponent of the Funded Debt Plan within 5 days of the hearing to confirm the Funded Debt Plan; upon the commencement of the case, the proponent of the Funded Debt Plan shall cause to be filed with the court any objections to the Funded Debt Plan that were submitted by parties in interest and received prior to the commencement of the case.

(e) Voting Report

Notwithstanding Local Bankruptcy Rule 3018-1, the ballot certification described therein may be filed at any time before the hearing on confirmation of a Funded Debt Plan.

L.B.R. 3017-3 Disclosure Statement – Cases that Are Not Small Business Cases.

(a) Procedure for Conditional Approval.

In appropriate circumstances, a plan proponent may file a motion requesting (i) conditional approval of a disclosure statement; (ii) approval of solicitation procedures and forms of ballots and notices; and (iii) the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of a proposed plan. The motion may be granted without a hearing if the motion provides at least fourteen (14) days' notice to the United States Trustee, any statutory committee, the twenty (20) largest unsecured creditors and all parties who have requested service. Any objections to a request for conditional approval must be filed within fourteen (14) days. The failure to object to a request for conditional approval does not constitute a waiver of any objection to the final approval of a disclosure statement or confirmation of a proposed plan.

(b) Combining Documents.

A disclosure statement and plan may be combined into one document so long as the combined document contains information consistent with section 1125 of the Bankruptcy Code.

L.B.R. 3018-1 Ballots - Voting on Plans.

Except as permitted under Local Bankruptcy Rule 3016-2, unless the court orders otherwise, at least one day prior to the hearing on confirmation, the proponent of a plan or other party who receives the acceptances or rejections shall file a ballot certification which identifies the amount and number of allowed claims of each class accepting or rejecting the plan and the amount of allowed interests of each class accepting or rejecting the plan. A copy of the certification shall be served on the debtor, case trustee, if any, United States Trustee and any committee appointed or elected in the case. On the basis of the certification, the Presiding Judge may find that the plan has been accepted or rejected.

L.B.R. 3020-1 Chapter 11 - Confirmation.

Except as permitted under Local Bankruptcy Rule 3016-2, unless the court orders otherwise, an objection to confirmation shall be filed and served no later than 4 days prior to the date set for hearing on confirmation of the plan.

L.B.R. 4001-1 Automatic Stay - Relief From.

(a) Motions; Service.

No summons is required. The movant shall file with the Bankruptcy Clerk a certificate of service attached to the motion, evidencing the mode of service and the names and addresses of the parties served, and a certificate of conference evidencing compliance with Local Bankruptcy Rule 9014-1(d)(1). The motion shall contain a notice of the requirement of the filing of a response to the motion as set forth in subdivision (b) of this rule. A motion for relief from the automatic stay shall be served on the following parties:

- (1) The debtor, and, if the debtor is represented by an attorney, the attorney;
- (2) Any attorney for a committee appointed or elected in the case, or if no attorney has been employed to represent the committee, through service on its members; and if no committee has been appointed in a chapter 9 or 11 case, the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d);
- (3) Any party scheduled in the case as holding a lien, with respect to a motion seeking relief from the stay of an act against property;
- (4) The United States Trustee;
- (5) Any trustee or examiner appointed in the case; and
- (6) All parties requesting notice pursuant to Local Bankruptcy Rule 2002-1(j).

(b) Response Required.

Any party opposing the motion for relief from stay shall file a response within 14 days from the date of service of the motion. Such response shall include a detailed and comprehensive statement as to how the movant can be “adequately protected” if the stay is to be continued. If no response is filed, the allegations in the motion may be deemed admitted, and an order granting the relief sought may be entered by default. The motion for relief shall contain a statement in substantially the following form:

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND 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 AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED.

(c) Discovery.

The time within which responses to discovery requests on automatic stay issues are due under Bankruptcy Rules 7028-7036 is shortened from 30 to 14 days. Similarly, depositions on automatic stay issues may be taken commencing at the expiration of 14 days after service of the motion for relief from the automatic stay.

(d) Attorney Certification.

In any evidentiary hearing conducted on a motion for relief from the automatic stay, all counsel shall certify before the presentation of evidence: (1) that good faith settlement discussions have been held or why they were not held; (2) that all exhibits, appraisals and lists of witnesses (it is presumed that the debtor(s) will testify) have been exchanged at least 2 days in advance of the hearing date; and (3) the anticipated length of the hearing. Exhibits shall be marked in advance of the hearing and two bound, marked sets of exhibits shall be presented to the court prior to the commencement of the hearing.

(e) Preliminary Hearings and Affidavits

(1) Preliminary Hearings and Affidavits, Generally. Absent compelling circumstances warranting an alternative procedure, evidence presented at preliminary hearings in the Dallas and Fort Worth Divisions on motions for relief from the automatic stay will be by affidavit only. Except as set forth below (with regard to a motion filed by the holder of claim secured by a security interest in the debtor's principal residence, and with regard to requests for expedited settings), the party requesting the hearing shall serve evidentiary affidavits at least 7 days in advance of such hearing; the responding party shall serve evidentiary affidavits at least 2 days in advance of such hearing; the party requesting the hearing must give notice to all other affected parties of the requirement of this rule. The failure of a respondent to file an evidentiary affidavit, or the failure of an attorney to attend a scheduled and noticed preliminary hearing, shall be grounds for granting the relief, regardless of the filing of a response to the motion.

(2) Special Affidavits and Proof Requirements for Holders of Mortgages on a Debtor's Principal Residence (Applicable in all Chapter Cases). Whenever a

motion for relief from automatic stay or whenever a motion for approval of an agreement regarding automatic stay is filed regarding a security interest in the debtor's principal residence, an affidavit in support of the motion shall be filed and served on the debtor, debtor's counsel, trustee, United States Trustee, and any other affected party within 7 days of the filing of the motion—regardless of the hearing date and regardless of whether any opposition is expected. The affidavit must be signed and certified under penalty of perjury by a person with knowledge of the facts, and must include: (a) a copy of the note or other debt instrument and any and all assignments thereof to substantiate proof of holder status; (b) a copy of the deed of trust showing the date, volume, page and county of recordation; and (c) in the event of alleged delinquent payments as a “cause” for relief from stay, a chronological payment history for the debtor showing, on a month-by-month basis, beginning with the first payment alleged to be delinquent, the date payment was due, the amount due, the date payment was received (if applicable), the amount received (if applicable), how any received payments were applied (*e.g.*, applied to balance, put in suspense, put in escrow, *etc.*), and also indicating any other types of defaults alleged including escrow shortages, such as for payments for insurance premiums or ad valorem tax payments made by the creditor. The affidavit shall clearly reflect all amounts received by the movant since the debtor allegedly first became delinquent, and whether such amounts were applied to indebtedness, put in suspense, or otherwise dealt with. The response deadline for motions for relief from automatic stay or for a motion for approval of an agreement regarding automatic stay regarding security interests in the debtor's principal residence, as well as the affidavit deadline for any responders, is the same as set forth in subdivisions (b) and (e)(1) of this L.B.R. 4001-1. No Order will be entered on a motion for relief from automatic stay or on a motion for approval of an agreement regarding a security interest in the debtor's principal residence unless an affidavit complying with this subdivision is filed and properly served (regardless of whether there is any pending opposition to the motion by any party).

- (3) **Time for Filing Affidavit in the Event of a Request for an Expedited Hearing.** Notwithstanding the foregoing, whenever a party seeks an expedited setting on a motion for relief from automatic stay, an affidavit in support of such motion shall be filed at the time of the filing of the motion.
- (4) **Motions to Extend Time to File Affidavits/Dismissal of Stay Motions.** In the event that an Affidavit is not timely filed by a holder of a security interest in the debtor's principal residence, as set forth in subsection (e)(2) above, the underlying motion may be *sua sponte* dismissed by the court. A holder of a security interest in the debtor's principal residence may move for an extension of time to file the required affidavit, but (a) extensions shall be granted only in exceptional circumstances; and (b) in the event of an extension, the preliminary hearing will be continued out to a date that is at least as many days long as the extended time to file the affidavit. By seeking such an extension, the holder of a security interest

in the debtor's principal residence waives the time periods provided by Section 362(e).

(5) **Application of Rule of Divisions.** Subsections (2) through (4) of this Rule 4001-1(e), describing the specific affidavit requirements in connection with stay motions involving a debtor's principal residence, apply in all Divisions of the Northern District of Texas. Subsection (1) of this Rule 4001-1(e), which more generally refers to there being preliminary hearings on motions to lift stay, applies only in the Dallas and Fort Worth Divisions.

(f) **Continuation or Imposition of Automatic Stay.**

(1) **Motion Required.** Any party that seeks a continuation or imposition of the automatic stay under 11 U.S.C. §§ 362(c)(3)(B) or -(c)(4)(B) shall file a motion with the court, and shall set the motion for hearing on notice to all parties against whom the movant seeks to continue or impose the stay.

(2) **Filing, Service and Setting.** The motion shall be filed and served promptly upon the filing of a petition for relief under the Bankruptcy Code so that it may be heard by the court within 30 days of the date of the filing of the petition, and so that parties may be given at least 21 days' notice of the hearing without the need for an expedited or emergency hearing, which will be granted only in exceptional circumstances. A copy of the motion and notice of hearing shall be served on all parties against whom the debtor seeks to continue or impose the stay, and proof of such service shall be filed within 2 days after service of the motion.

(3) **Content of Motion.** The motion shall:

- (A) specifically allege the identity of the creditor(s) as to which the movant seeks to continue or impose the stay;
- (B) identify, by case number, any and all prior bankruptcy filings by the debtor;
- (C) state whether the debtor has had more than one previous case pending within the preceding year;
- (D) state whether any previous case was dismissed within the preceding year after the debtor failed to perform any of the acts set forth in 11 U.S.C. § 362(c)(3)(C)(i)(II);
- (E) state whether there has been a substantial change in the financial or personal affairs of the debtor and, if so, support the statement with specific factual allegations;
- (F) state whether any creditor moved for relief from the automatic stay in a previous case and, if so, the disposition of that motion; and

(G) allege specific facts entitling the movant to relief.

- (4) **Evidence Presented at Hearing.** At the hearing on the motion, the movant shall present evidence demonstrating that the new case is filed in good faith as to the creditor(s) to be stayed. The movant shall be present at the hearing to testify.

(g) Hearing Dates in Complex Chapter 11 Cases.

In a complex chapter 11 case, the movant may not schedule preliminary or final hearings on the Court's general lift stay self-calendar dates unless the Court has scheduled no future omnibus hearing dates in the applicable complex chapter 11 case. In complex chapter 11 cases, the movant shall be required to schedule hearings on the motion for relief from stay on one of the next available omnibus hearing date, following the requisite amount of time necessary for responses under these rules. The Court may not consider the motion if the movant fails to follow this rule.

L.B.R. 9001-1 Definitions.

- (a) “Bankruptcy Rule(s)” means the Federal Rule(s) of Bankruptcy Procedure currently in effect, and as thereafter amended.
- (b) “Bankruptcy Court” means the bankruptcy judges of the United States Bankruptcy Court for the Northern District of Texas, as a collective body.
- (c) “Bankruptcy Clerk” means Clerk of the Bankruptcy Court for the Northern District of Texas.
- (d) “District Clerk” means Clerk of the District Court for the Northern District of Texas.
- (e) “District Court Local Civil Rule(s)” means the Local Rules of the United States District Court for the Northern District of Texas, effective September 1, 2009, and as thereafter amended.
- ~~(f)~~ “Funded Debt” is an interest-bearing debt that either (i) is recognized on a company’s balance sheet statement as long-term debt or (ii) otherwise resembles such long-term debt.
- ~~(g)~~ “Funded Debt Plan” is a plan that only impairs a debtor’s Funded Debt, equity securities, and subordinated equity securities claims, and all claims, other than Funded Debt claims, equity security interests, and subordinated equity securities claims, are unimpaired under the Funded Debt Plan.
- ~~(h)~~ “Local Bankruptcy Rules” means these Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas, as hereafter may be amended.
- ~~(i)~~ “Presiding Judge” means the bankruptcy judge to whom the case, adversary proceeding, or contested matter is assigned.
- ~~(j)~~ The phrase “complex chapter 11” or “complex case” shall have the meaning ascribed in any procedures approved by the Bankruptcy Court pursuant to Local Rule 1001-1(b) intended to govern the practice and procedures in complex chapter 11 cases.
- ~~(k)~~ The phrase “small business case” means a case filed under chapter 11 of the Bankruptcy Code in which the debtor is a small business debtor, as defined in 11 U.S.C. § 101(51D).

**** *L.B.R. 9007-1 General Authority to Regulate Notices.*

(a) Negative Notice Procedure Authorized.

When authority to act or relief is sought which can only be authorized or granted upon notice or “after notice and hearing” as defined in 11 U.S.C. § 102, subject to Local Bankruptcy Rule 9014-1 and Local Bankruptcy Rule 3007-1, the party may, with respect to both motions under Bankruptcy Rule 9013 and contested matters under Bankruptcy Rule 9014, serve notice of the relief sought, and unless impracticable, any underlying motion, as follows using the “negative notice” procedure as set forth in this rule, except as provided in subsection (h) hereof. When this procedure is used with respect to a contested matter, no summons is required but service shall otherwise comply with the Federal Rules of Bankruptcy Procedure.

(b) Minimum Service Requirement.

At a minimum, the pleading or notice shall be served upon the following parties in interest:

- (1) The debtor, and, if the debtor is represented by an attorney, the attorney;
- (2) Any attorney for a committee appointed or elected in the case, or if no attorney has been employed to represent the committee, through service on its members; and if no committee has been appointed in a chapter 9 or 11 case, the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d);
- (3) The United States Trustee;
- (4) Any trustee appointed in the case; and
- (5) All parties requesting notice pursuant to Local Bankruptcy Rule 2002-1(j); and
- (6) Any entity required to be served by any applicable Bankruptcy Rule.

(c) Notice of Hearing Requirement.

Except in a complex chapter 11 case, ~~the~~ the pleading or notice served shall contain a statement in substantially the following form:

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN 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 AT LEAST 21¹ DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION 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.

Except in a complex chapter 11 case, where sales free and clear are involved, Bankruptcy Rule 6004 shall be complied with by changing the first paragraph above to read substantially as follows:

HEARING DATE ON SUCH SALE IS SET FOR (MONTH, DAY, YEAR), WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF. NO OBJECTION TO SUCH SALE WILL BE CONSIDERED UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT (ADDRESS OF CLERK'S OFFICE) AT LEAST 4 DAYS IN ADVANCE OF SUCH HEARING DATE.

Except in a complex chapter 11 case, where objections to claims are involved, the first paragraph of the notice shall be modified to provide:

NO HEARING WILL BE CONDUCTED ON THIS OBJECTION TO CLAIM UNLESS A WRITTEN 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 AT LEAST 30 DAYS FROM THE DATE OF SERVICE HEREOF.

(d) Statement of Relief Sought.

Any notice shall state what authority to act or relief is sought by the moving party with sufficient particularity to apprise noticed parties of the subject matter of the notice or motion by reference to the pleadings delivered and shall not just refer to a pleading on file with the court. The court may deny any relief not sufficiently described so as to give general notice of the relevant factors to parties in interest.

(e) Certificate of Service.

¹ 14 days for motions to obtain credit, and for motions to waive the requirement of a disclosure statement in a small business case.

The movant shall file with the Bankruptcy Clerk a certificate of service, evidencing the date and mode of service and the names and addresses of the parties served.

(f) Certificate of Conference.

A certificate of conference indicating whether or not a conference was held prior to filing the motion is required. The certificate shall indicate the date of conference and the identities of the attorneys conferring, and explain why agreement could not be reached. If a conference was not held, the certificate shall explain why it was not possible or practicable to confer. A conference is not required to be held when it is reasonably anticipated that the number of responding parties may be too numerous to contact prior to filing the motion.

(g) Certificate of No Objections.

If no response and request for a hearing has been timely filed following service of notice in accordance with this rule, 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 upon the moving party. In the event that the court has entered an order limiting the parties to whom notice shall be given or copies shall be sent, or limiting the time to respond, the certificate also shall state the date and substance of such order so that the existence of and compliance with such order may be determined from such certificate.

(h) Exceptions.

This procedure may not be used for the following requests for relief, which shall be set for hearing:

- (1) motions to dismiss or convert filed by a party in interest other than the debtor;
- (2) motions for relief from the automatic stay, which are governed by Local Bankruptcy Rule 4001-1;
- (3) motions to extend or impose the automatic stay;
- (4) motions for use of cash collateral or to obtain credit in chapter 11 cases;
- (5) motions to assume, or to assume and assign, executory contracts or unexpired leases;
- (6) motions to extend exclusivity or the time to confirm a plan of reorganization;
- (7) motions to approve or implement one or more key employee incentive programs (KEIP), key employee retention programs (KERP) or any similar program;
- ~~(7)~~ (78) motions for substantive consolidation;

| (~~89~~) confirmation of a plan in a chapter 9, 11 or 12 case, or approval of a disclosure statement, other than pursuant to Local Bankruptcy Rule 3017-2(a); and

| (~~910~~) any motion for which the Bankruptcy Rules specifically require a hearing.

L.B.R. 9014-1 Contested Matters.

(a) Response Required.

Except as set forth in subparagraphs (f) and (g) hereof, and subject to the requirement that a movant provide proof in support of a motion, a response is required with respect to a contested matter. This rule shall constitute the Bankruptcy Court's direction requiring a response under Bankruptcy Rule 9014. A response is not required to a Chapter 13 Trustee's Notice of Intent to Dismiss, or an objection to confirmation of a chapter 13 plan.

(b) Service and Conference.

The movant shall serve the motion electronically, or by mail, in the manner provided by Bankruptcy Rule 7004. No summons is required. Following service of the motion, pursuant to Bankruptcy Rule 7005, movant shall file with the Bankruptcy Clerk a certificate of service, attached to the motion, evidencing the date and mode of service and the names and addresses of the parties served, and where reasonably feasible, a certificate of conference evidencing compliance with Local Bankruptcy Rules 7007-1(a) and 9014-1(d)(1). A certificate of conference will not be required when it is reasonably anticipated that the number of opposing parties may be too numerous to contact prior to the filing of the motion.

(c) Exchanging Exhibits, Lists, and Designating Deposition Excerpts.

- (1) Exchanging Exhibits.** All exhibits that a party intends to offer at the hearing, except those to be offered solely for impeachment, shall be marked with gummed labels or tags that identify them by the party's initials or name, followed by the exhibit number or letter under which they will be offered, and shall be exchanged with opposing parties at least 3 calendar days before the scheduled hearing date, except in complex chapter 11 cases where the applicable procedures shall govern the applicable deadline. Two bound copies of such exhibits shall be furnished to the Presiding Judge prior to the beginning of the hearing.
- (2) Exchanging Exhibit and Witness Lists.** At least 3 calendar days before the scheduled hearing date, except in complex chapter 11 cases where the applicable procedures shall govern the applicable deadline, the parties shall file with the Bankruptcy Clerk and deliver to opposing parties, separate lists of exhibits and witnesses, except those to be offered solely for impeachment. One copy of the exhibit and witness list shall be presented to the court reporter at the beginning of the hearing. It is assumed that the debtor(s) will testify.
- (3) Designating Deposition Excerpts.** The parties shall designate, in lists delivered to opposing parties and filed with the Bankruptcy Clerk at least 3 calendar days before the scheduled hearing date, the portions of any depositions to be offered at

the hearing, except in complex chapter 11 cases where the applicable procedures shall govern the applicable deadline.

(d) Certification of Counsel at Evidentiary Hearing.

In any evidentiary hearing, all counsel shall certify before the presentation of evidence:

- (1) that good faith settlement discussions have been held or why they were not held,
- (2) that all exhibits (except for those used solely for impeachment), lists of witnesses, and appraisals (if applicable) have been exchanged at least 3 days in advance of the hearing date. In any conflict between a scheduling order entered in a contested matter and these Local Bankruptcy Rules, the scheduling order controls.

(e) Motions to Lift Stay.

Motions to lift the automatic stay pursuant 11 U.S.C. § 362(d) are governed by Local Bankruptcy Rule 4001-1.

(f) Objections to Claims.

Objections to claims do not require a written response unless the party filing the objection has used the negative notice procedure set forth in Local Bankruptcy Rule 9007-1.

(g) Expedited Motions.

Where a party has obtained a hearing on an expedited motion, the Court may waive the response requirement.

APPENDIX A

**ORDER OF REFERENCE OF BANKRUPTCY CASES AND
PROCEEDINGS NUNC PRO TUNC**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

MISCELLANEOUS RULE NO. 33

Pursuant to Section 104 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, 28 U.S.C. Section 157, it is hereby

ORDERED nunc pro tunc as of June 27, 1984 that any or all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 which were pending in the Bankruptcy Court of the Northern District of Texas on June 27, 1984, which have been filed in this district since that date and which may be filed herein hereafter (except those cases and proceedings now pending on appeal) be and they hereby are referred to the Bankruptcy Judges of this district for consideration and resolution consistent with law.

It is further ORDERED that the Bankruptcy Judges for the Northern District of Texas be, and they hereby are, directed to exercise the authority and responsibilities conferred upon them as Bankruptcy Judges by the Bankruptcy Amendments and Federal Judgeship Act of 1984 and this court's order of reference, as to all cases and proceedings covered by this order from and after June 27, 1984.

In accordance with 28 U.S.C. Section 157(b)(5), it is further ORDERED that all personal injury tort and wrongful death claims arising in or related to a case under Title 11 pending in this court shall be tried in, or as determined by, this court and shall not be referred by this order.

So ORDERED this the 3rd day of August, 1984.

/s/ Halbert O. Woodward
HALBERT O. WOODWARD
CHIEF JUDGE
NORTHERN DISTRICT OF TEXAS

APPENDIX B
FEE APPLICATION COVER SHEET

Interim / Final Fee Application of:

Capacity: _____ **Time Period:** _____

Bankruptcy Petition Filed on: _____

Date of Entry of Retention Order: _____ **Status of Case:** _____

Amount Requested:

Fees: \$ _____

Expenses: \$ _____

Other: \$ _____

Total: \$ _____

Reductions:

Voluntary fee reductions: \$ _____

Expense reductions: \$ _____

Total Reductions: \$ _____

Draw Down Request:

Retainer Received: \$ _____

Previous Draw Down(s): \$ _____

Remaining Retainer (now): \$ _____

Requested Draw Down: \$ _____

Retainer Remaining (after): \$ _____

Expense Detail:

Copies - per page cost and total: \$ _____

Fax - per page cost and total: \$ _____

Computer Research: \$ _____

Other: \$ _____

Other: \$ _____

Hourly Rates

Attorney/Accountant

Paralegal/Clerical

Highest Billed Rate: \$ _____

\$ _____

Total Hours Billed: _____

Blended Rate: \$ _____

\$ _____

APPENDIX C

FREQUENTLY USED ADDRESSES OF GOVERNMENTAL AGENCIES AND STANDING CHAPTER 12 AND CHAPTER 13 TRUSTEE ADDRESSES

FEDERAL

UNITED STATES TRUSTEE

Office of the United States Trustee
1100 Commerce Street, Room 976
Dallas, TX 75242-1699

INTERNAL REVENUE SERVICE

Internal Revenue Service
Special Procedures-Insolvency
P.O. Box 7346
Philadelphia, PA 19101-7346

UNITED STATES ATTORNEY

Office of the United States Attorney
3rd Floor, 1100 Commerce Street
Dallas, Texas 75242-1699

ATTORNEY GENERAL OF THE UNITED STATES

Office of the Attorney General
Main Justice Building, Room 5111
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

DEPARTMENT OF AGRICULTURE

For farm loans, farm programs and Commodity

Credit Corporation:

Farm Service Agency, USDA
2405 Texas Ave. South
College Station, Texas 77840

For house loans:

Rural Housing Service, USDA
Centralized Servicing Center
P.O. Box 66879
St. Louis, MO 63166-6879

For apartment loans:

Rural Housing Service, USDA
Rural Development State Office
Attn: Multi-Family Housing Section
101 South Main Street
Temple, Texas 76501

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Dallas and Fort Worth Divisions:

HUD
1600 Throckmorton
Fort Worth, Texas 76113

Lubbock and Amarillo Divisions:

HUD
1205 Texas Avenue
Lubbock, Texas 79401

SMALL BUSINESS ADMINISTRATION

Dallas and Fort Worth Divisions:

Small Business Administration
4300 Amon Carter Blvd. Suite 114
Fort Worth, Texas 76155

Lubbock and Amarillo Divisions:

Small Business Administration
1205 Texas Avenue, Room 408
Lubbock, Texas 79401-2693

DEPARTMENT OF VETERAN'S AFFAIRS

Department of Veteran's Affairs
Regional Office
Finance Section (24)
One Veterans plaza
701 Clay Avenue
Waco, Texas 76799

UNITED STATES POSTAL SERVICE

United States Postal Service
Law Department, Southwest Field Office
P.O. Box 227078
Dallas, Texas 75222-7078

STATE OF TEXAS

ATTORNEY GENERAL

For notices other than in child support matters:

Texas Attorney General's Office
Bankruptcy-Collections Division
P.O. Box 12548
Austin, Texas 78711-2548

Notices involving child support matters should be sent to the Child Support Division Branch Office handling the individual debtor's case.

COMPTROLLER OF PUBLIC ACCOUNTS

State Comptroller of Public Accounts
Revenue Accounting Division-
Bankruptcy Section
P.O. Box 13528
Austin, Texas 78711

TEXAS ALCOHOL BEVERAGE COMMISSION

Texas Alcohol Beverage Commission
License and Permits Division
P.O. Box 13127
Austin, Texas 7871-312

TEXAS WORKFORCE COMMISSION

Texas Workforce Commission
TEC Building - Bankruptcy
101 East 15th Street
Austin, Texas 78778

CITY OF DALLAS

Dallas City Secretary's Office
1500 Marilla Street, Suite 5DS
Dallas, TX 75201
citysecretary@dallascityhall.com

APPENDIX D

DIVISIONAL LISTING OF COUNTIES

The following listing of counties by division is adapted from 28 U.S.C. § 124:

1) The Abilene Division includes the following counties:

Callahan	Howard	Nolan	Stonewall
Eastland	Jones	Shackleford	Taylor
Fisher	Mitchell	Stephens	Throckmorton
Haskell			

2) The Amarillo Division includes the following counties:

Armstrong	Deaf Smith	Hutchinson	Potter
Brisco	Donley	Lipscomb	Randall
Carson	Gray	Moore	Roberts
Castro	Hall	Ochiltree	Sherman
Childress	Hansford	Oldham	Swisher
Collingsworth	Hartley	Parmer	Wheeler
Dallam	Hemphill		

3) The Dallas Division includes the following counties:

Dallas	Hunt	Kaufman	Rockwall
Ellis	Johnson	Navarro	

4) The Fort Worth Division includes the following counties:

Comanche	Hood	Palo Pinto	Tarrant
Erath	Jack	Parker	Wise

5) The Lubbock Division includes the following counties:

Bailey	Dickens	Hockley	Motley
Borden	Floyd	Kent	Scurry
Cochran	Gaines	Lamb	Terry
Crosby	Garza	Lubbock	Yoakum
Dawson	Hale	Lynn	

6) The San Angelo Division includes the following counties:

Brown	Crockett	Mills	Sterling
Coke	Glasscock	Reagan	Sutton
Coleman	Irion	Runnels	Tom Green
Concho	Menard	Schleicher	

7) The Wichita Falls Division includes the following counties:

Archer	Cottle	King	Wichita
Baylor	Foard	Knox	Wilbarger
Clay	Hardeman	Montague	Young

APPENDIX E

PROCEDURES FOR COMPLEX CHAPTER 11 CASES

The following procedures shall be implemented in complex Chapter 11 cases.

1. ~~A complex Chapter 11 case is defined as a case filed in this district under Chapter 11 of the Bankruptcy Code that requires special scheduling and other procedures because of a combination of the following factors:~~

- a. ~~The size of the case (usually total debt of more than \$10 million);~~
- b. ~~The large number of parties in interest in the case (usually more than 50 parties in interest in the case);~~
- c. ~~The fact that claims against the debtor and/or equity interests in the debtor are publicly traded (with some creditors possibly being represented by indenture trustees); or~~
- d. ~~Any other circumstances justifying complex case treatment.~~

2. ~~Expedited means a matter which, for cause shown, should be heard on less than 23 days' notice. Emergency means a matter which, for cause shown, should be heard on less than 7 days' notice.~~

3. ~~If any party filing a Chapter 11 bankruptcy petition believes that the case should be classified as a complex Chapter 11 case, the party shall file with the bankruptcy petition a Notice of Designation as Complex Chapter 11 Case in the form:~~

4. ~~If a party has First Day" matters requiring emergency consideration by the court, it should submit a Request for Emergency Consideration of Certain First Day Matters.~~

5. ~~Each judge shall arrange the judge's calendar so that first day emergency hearings, as requested in the court approved form entitled Request for Emergency Consideration of Certain First Day Matters, can be conducted consistent with the Bankruptcy Code and Rules, including Rule 4001, as required by the circumstances, but not more than 2 days after the request for emergency first day" hearings.~~

6. ~~When a party has filed a Chapter 11 case and filed a Notice of Designation as Complex Chapter 11 Case, the Clerk of Court shall:~~

- a. ~~Generally, assign the case to a judge in accordance with the usual procedures and general orders of the district or division;~~
- b. ~~Immediately confer with the court about designating the case as a complex Chapter 11 case and about setting hearings on emergency or first day motions. If the court determines that the case does not qualify as a complex Chapter 11 case, the court shall issue an Order Denying Complex Case Treatment. If the court determines~~

~~that the case appears to be a complex Chapter 11 case, the court shall issue an Order Granting Complex Chapter 11 Case Treatment; and~~

- ~~e. Notify and serve counsel for the debtor with the order entered by the court relating to the complex case treatment and notify counsel for the debtor regarding the hearing settings for emergency first day matters.~~

~~7. Counsel for the debtor, upon receipt of notice of entry of an order regarding complex Chapter 11 case treatment, shall;~~

- ~~a. Serve the order granting or denying complex Chapter 11 case on all parties in interest within 7 days.~~
- ~~b. Provide notice of the first day emergency hearings in accordance with the Procedures for Obtaining Hearings in Complex Chapter 11 Cases.~~

~~8. Counsel shall follow the Agenda Guidelines for Hearings in Complex Chapter 11 Cases and the Guidelines for Mailing Matrices and Shortened Service Lists.~~

PROCEDURES FOR OBTAINING HEARINGS IN COMPLEX CHAPTER 11 CASES

~~I. Hearing on First Day Matters: Official Forms for Request for Expedited Consideration of Certain First Day Matters.~~

~~Upon the filing of a complex Chapter 11 case, if the debtor has matters that require expedited consideration (“first day” or “near first day” relief), the debtor should file a “Request for Expedited Consideration of Certain ‘First Day’ Matters” using the form of Exhibit B to the Procedures for Complex Chapter 11 Cases (“First Day Hearing Request”). The first day hearing request will be immediately forwarded by the clerk of court to the judge who has been assigned the complex Chapter 11 case (or if there are multiple, related debtor cases, to the judge assigned to the first filed case). The court will hold a hearing within 2 days of the time requested by the debtor’s counsel and the courtroom deputy will notify counsel for the debtor of the time of the setting. If the judge assigned to the complex Chapter 11 case is not available to hold the hearing within 2 days of the time requested by the debtor’s counsel, an available judge will hold a hearing within 2 days of the time requested by the debtor’s counsel and the courtroom deputy will notify counsel for the debtor of the time of the setting. The debtor’s counsel should (1) serve by fax and electronically, if the email address is available, (or by immediate hand delivery) a copy of the first day hearing request on all affected parties, including the U.S. Trustee, simultaneously with its filing; and (2) notify by fax and electronically, if the email address is available, or telephonically (or by immediate hand delivery) all affected parties of the hearing time on first day matters as soon as possible after debtor’s counsel has received confirmation from the court. The court will allow parties in interest to participate telephonically at the hearing on first day matters whenever (and to the extent) practicable, and debtor’s counsel will be responsible for the coordination of the telephonic participation.~~

~~II. Pre-Set Hearing Dates.~~

~~The debtor may request (as one of its first day matters or otherwise) that the court establish in a complex Chapter 11 case a weekly/bi-monthly/monthly setting time (“Pre-Set Hearing Dates”) for hearings in the complex Chapter 11 case (e.g., every Wednesday at 1:30 p.m.). The court will accommodate this request for pre set hearing dates in a complex Chapter 11 case if it appears justified. After pre set hearing dates are established, all matters in the complex Chapter 11 case (whether initiated by a motion of the debtor or by another party in interest) will be set upon approval by the courtroom deputy on the first pre set hearing date that is at least 23 days after the filing/service of a particular motion (unless otherwise requested by a party or ordered by the court) and the movant shall indicate the hearing date and time on the face of the pleading.~~

~~III. Notice of Hearing~~

~~Notice of hearing of matters scheduled for pre set hearing dates shall be accomplished in the following manner in each district:~~

~~**Northern District:** By the moving party, who shall file a notice of hearing with a certificate of service that proper notice has been accomplished in accordance with these procedures.~~

~~**Western District:** By the moving party, who shall file a certificate that the notice has been accomplished in accordance with these procedures.~~

~~**Southern District:** See Southern District of Texas procedures.~~

~~**Eastern District:** By the moving party, who shall file a certificate that the notice has been accomplished in accordance with these procedures.~~

~~**IV. Case Emergencies (Other than the First Day Matters).**~~

~~If a party in interest has an emergency or other situation that it believes requires consideration on less than 23 days' notice, the party should file and serve, a separate, written motion for expedited hearing, in respect of the underlying motion, and may present the motion for an expedited hearing either (a) *ex parte* at a regular docket call of the presiding judge, or (b) at the next available pre-set hearing date. The court will rule on the motion for expedited hearing within 24 hours of the time it is presented. If the court grants the motion for expedited hearing, the underlying motion will be set by the courtroom deputy at the next available pre-set hearing date or at some other appropriate shortened date approved by the court. Motions for expedited hearings will only be granted under emergency or exigent circumstances.~~

AGENDA GUIDELINES FOR HEARINGS IN COMPLEX CHAPTER 11 CASES

In complex Chapter 11 cases where five or more matters are noticed for the same hearing date, counsel for the debtor in possession, the party requesting the hearings, or trustee shall file and serve an agenda describing the nature of the items set for hearing.

1. ~~Timing of Filing.~~ Counsel shall file an agenda at least 24 hours prior to the date and time of the hearing. At the same time, counsel shall also serve the agenda (or confirm electronic service has been effectuated) upon all attorneys who have filed papers with respect to the matters scheduled and upon the service list.

2. ~~Sequence of Items on Agenda.~~ Uncontested matters should be listed ahead of contested matters. Contested matters should be listed in the order in which they appear on the court's docket.

3. ~~Status Information.~~ For each motion filed in the complex Chapter 11 case, each motion filed in an adversary proceeding concerning the Chapter 11 case, each objection to claim, or application concerning the case, the agenda shall indicate the moving party, the nature of the motion, the docket number of the pleadings, if known, the response deadline, and the status of the matter. The status description should indicate whether the motion is settled, going forward, whether a continuance is requested (and any opposition to the continuance, if known) and any other pertinent information.

4. ~~Information for Motions in the Case.~~ For each motion that is going forward, or where a continuance request is not consensual, the agenda shall also list all pleadings in support of the motion, and any objections or responses. Each pleading listed shall identify the entity that filed the pleading and the docket number of the pleading, if known. If any entity has not filed a responsive pleading, but has engaged in written or oral communications with the debtor, that fact should be indicated on the agenda, as well as the status or outcome of those communications. For an omnibus objection to claims, responses to the objection which have been continued by consent may be listed collectively (e.g., the following responses have been continued by consent:).

5. ~~Changes in Agenda Information.~~ After the filing of the agenda, counsel shall notify judge's chambers by phone or letter of additional related pleadings that have been filed, and changes in the status of any agenda matter.

6. The requirements listed above should not be construed to prohibit other information of a procedural nature that counsel thinks would be helpful to the court.

ALL MOTIONS AND PLEADINGS SHALL CONTAIN THE HEARING DATE AND TIME BELOW THE CASE/ADVERSARY NUMBER.

**GUIDELINES FOR MAILING MATRICES AND
SHORTENED SERVICE LISTS
IN COMPLEX CHAPTER 11 CASES**

I. Mailing List or Matrix (a/k/a the Rule 2002 Notice List)

A. Helpful Hints Regarding Whom to Include on the Mailing Matrix in a Complex Chapter 11 Case:

There are certain events and deadlines that occur in a Chapter 11 case which Bankruptcy Rule 2002 requires be broadly noticed to all creditors, indenture trustees, equity interest holders, and other parties in interest ("Rule 2002 notice list"). To facilitate this, Local Bankruptcy Rule 1007-2 requires a debtor to file a mailing list or matrix at the commencement of any case. This list must include all creditors, equity interest holders, and certain other parties in interest (who might be impacted by any relief granted in the bankruptcy case), in order to ensure that parties receive reasonable and adequate notice and are insured due process. When preparing the mailing matrix and after consultation with the clerk of court, debtor's counsel shall evaluate and consider whether the following people are required to be included:

1. Creditors (whether a creditor's claim is disputed, undisputed, contingent, non-contingent, liquidated, unliquidated, matured, unmatured, fixed, legal, equitable, secured or unsecured);
2. Indenture trustees;
3. Financial institutions at which the debtor has maintained accounts (regardless of whether such institutions are creditors);
4. Vendors with whom the debtor has dealt, even if the debtor's records currently indicate no amount is owed;
5. Parties to contracts, executory contracts or leases with the debtor;
6. All federal, state, or local taxing authorities with which the debtor deals, including taxing authorities in every county in which the debtor owns real or personal property with regard to which ad-valorem taxes might be owed;
7. All governmental entities with which the debtor might interact (including, but not limited to, the U.S. Trustee and the SEC);
8. Any party who might allege a lien on property of the debtor;
9. Parties to litigation involving the debtor;
10. Parties with which the debtor might be engaged in some sort of dispute, whether or not a claim has formally been made against the debtor;
11. Tort claimants or accident victims;
12. Insurance companies with whom the debtor deals or has policies;
13. Active and retired employees of the debtor;
14. Officers or directors of the debtor;
15. Customers who are owed deposits, refunds, or store credit;
16. Utilities;
17. Shareholders (preferred and common), holders of options, warrants or other rights or equitable interests in the debtor;

18. Miscellaneous others who, in debtor's counsel's judgment, might be entitled to "party in interest" status or who have requested notice.

B. Flexible ("User-Friendly") Format Rules for Mailing Matrix in a Complex Chapter 11 Case in Which Debtor's Counsel Serves Notices:

In a complex Chapter 11 case, where the mailing matrix is likely to be very lengthy, the following special format rules will apply, in lieu of Local Bankruptcy Rule 1007-2, whenever it is the debtor's responsibility to serve notices in the case. The debtor (since it will typically be the party serving all notices in the Chapter 11 case rather than the clerk of court) may create the mailing matrix in whatever format it finds convenient so long as it is neatly typed in upper and lower case letter quality characters (in no smaller than 10 point and no greater than 14 point type, in either Courier, Times Roman, Helvetica or Orator font) on 8 1/2 x 11 inch blank, unlined, standard white paper. The mailing matrix, if lengthy, should ideally include separate subheadings throughout, to help identify categories of parties in interest. By way of example the following subheadings (among others) might be used:

Debtor and its Professionals
Secured Creditors
Indenture Trustees
Unsecured Creditors
Governmental Entities
Current and Retired Employees
Officers and Directors
Tort Claimants
Parties to Executory Contracts
Equity Interest Holders
Etc.

Parties in interest within each category/subheading should be listed alphabetically. Also, the mailing matrix may be filed in separate volumes, for the separate categories of parties of interest, if the mailing matrix is voluminous (e.g., Volume 2: Unsecured Creditors). Finally, if there are multiple, related debtors and the debtors intend to promptly move for joint administration of their cases, the debtors may file a consolidated mailing matrix, subject to later being required to file separate mailing matrices if joint administration is not permitted.

C. When Inclusion of Certain Parties in Interest on a Mailing Matrix is Burdensome:

If inclusion of certain categories of parties in interest on the mailing matrix would be extremely impracticable, burdensome and costly to the estate, the debtor may file a motion, pursuant to Bankruptcy Rule 2002(1), requesting authority to provide notice by publication in lieu of mailing certain notices to certain categories of parties in

interest and may forego including those categories of parties in interest on the mailing matrix in the court grants the motion.

~~II. Shortened Service List Procedure in a Complex Chapter 11 Case.~~

~~A. Procedures/Contents/Presumptions.~~

~~If the court has entered an order granting complex Chapter 11 case treatment, the debtor shall provide service as required by ¶1 of that order. If the court has not entered such an order, the debtor may move to limit notice—that is, for approval of a shortened service list—that will be acceptable for noticing most events in the bankruptcy case, other than those events/deadlines that Bankruptcy Rule 2002 contemplates be served on all creditors and equity interest holders. At a minimum, the shortened list should include the debtor and its professionals, the secured creditors, the 20 largest unsecured creditors, any official committees and the professional for same, the U.S. Trustee, the IRS and other relevant governmental entities, and all parties who have requested notice. Upon the court's approval of a shortened service list in a complex Chapter 11 case, notice in any particular situation during a case shall be presumed adequate if there has been service on (1) the most current service list on file in the case; plus (2) any other party directly affected by the relief requested and not otherwise included on the service list.~~

~~B. Obligation to Update, File and Serve Service List~~

~~The debtor must update the service list as parties request to be added to it or as circumstances otherwise require. To be added to the list, a party should file a notice of appearance and request for service and serve the notice on debtor's counsel. Parties should include fax or email transmission information if they wish to receive expedited service of process during the case. Additionally, the debtor should file an updated service list and should serve a clean and redlined copy of the updated service list on all parties on the service list weekly for the first month after filing, then bi-monthly for the next 60 days, then monthly thereafter during the pendency of the case. If, in a particular month, there are no changes to the service list, the debtor should simply file a notice with the court so stating.~~

APPENDIX F

**GUIDELINES FOR COMPENSATION AND REIMBURSEMENT
OF PROFESSIONALS IN CHAPTER 11 CASES**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS**



**GUIDELINES FOR
COMPENSATION AND EXPENSE
REIMBURSEMENT OF PROFESSIONALS**

EFFECTIVE JANUARY 1, 2001

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NOTICE

The following are guidelines governing the most significant issues related to applications for compensation and expense reimbursement. The guidelines cover the narrative portion of an application, time records, and expenses. It applies to all professionals with the exception of chapter 7 and chapter 13 trustees, but is not intended to cover every situation. All professionals are required to exercise reasonable billing judgment, notwithstanding total hours spent.

If, in a chapter 11 case, a professional to be employed pursuant to section 327 or 1103 of the Bankruptcy Code desires to have the terms of its compensation approved pursuant to section 328(a) of the Bankruptcy Code at the time of such professional's retention, then the application seeking such approval should so indicate and the Court will consider such request after an evidentiary hearing on notice to be held after the United States trustee has had an opportunity to form a statutory committee of creditors pursuant to section 1102 of the Bankruptcy Code and the debtor and such committee have had an opportunity to review and comment on such application. At a hearing to consider whether a professional's compensation arrangement should be approved pursuant to section 328(a), such professional should be prepared to produce evidence that the terms of compensation for which approval under section 328(a) is sought comply with the certification requirements of section I.G(3) of these guidelines.

I. NARRATIVE

A. Employment and Prior Compensation

The application should disclose the date of the order approving applicant's employment and contain a clear statement itemizing the date of each prior request for compensation, the amount requested, the amount approved, and the amount paid.

B. Case Status

With respect to interim requests, the application should briefly explain the history and the present posture of the case, including a description of the status of pending litigation and the amount of recovery sought for the estate.

In chapter 11 cases, the information furnished should describe the general operations of the debtor; whether the business of the debtor, if any, is being operated at a profit or loss; the debtor's cash flow; whether a plan has been filed, and if not, what the prospects are for reorganization and when it is anticipated that a plan will be filed and a hearing set on the disclosure statement.

In chapter 7 cases, the application should contain a report of the administration of the case including the disposition of property of the estate; when property remains to be disposed of; why the estate is not in a position to be closed; and whether it is feasible to pay an interim dividend to creditors.

In both chapter 7 and chapter 11 cases, the application should state the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration. On applications for interim fees, the applicant should orally supplement the application at the hearing to inform the Court of any changes in the current financial status of the debtor's estate since the filing of the application. All retainers, previous draw downs, and fee applications and orders should be listed specifying the date of the event and the amounts involved and drawn down or allowed.

With respect to final requests, applications should meet the same criteria except where a chapter 7 trustee's final account is being heard at the same time, the financial information in final account need not be repeated.

Fee applications submitted by special counsel seeking compensation from a fund generated directly by their efforts, auctioneers, real estate brokers, or appraisers do not have to comply with the above. For all other application, when more than one application is noticed for the same hearing, they may, to the extent appropriate, incorporate by reference the narrative history furnished in a contemporaneous application.

C. Project Billing

This is required in all cases where the applicant's professional fee is expected to exceed \$10,000.00. The narrative should be categorized by subject matter, and separately discuss each

professional project or task. All work for which compensation is requested should be in a category. Miscellaneous items may be included in a category such as "Case Administration." The professional may use reasonable discretion in defining projects for this purpose, provided that the application provides meaningful guidance to the Court as to the complexity and difficulty of the task, the professional's efficiency, and the results achieved. With respect to each project or task, the number of hours spent and the amount of compensation and expenses requested should be set forth at the conclusion of the discussion of that project or task. In larger cases with multiple professionals, efforts should be made by the professionals for standard categorization.

D. Billing Summary

Hours and total compensation requested in each application should be aggregated and itemized as to each professional and paraprofessional who provided compensable services. Dates of changes in rates should be itemized as well as reasons for said changes.

E. Paraprofessionals

Fees may be sought for paralegals, professional assistants and law clerks only if identified as such and if the application includes a resume or summary of the paraprofessional's qualifications.

F. Preparation of Application

Reasonable fees for preparation of a fee application and responding to objections thereto may be requested. The aggregate number of hours spent, the amount requested, and the percentage of the total request which the amount represents must be disclosed. If the actual time spent will be reflected and charged in a future fee application, this fact should be stated, but an estimate provided, nevertheless.

G. Certification

Each application for compensation and expense reimbursement must contain a certification by the professional designated by the applicant with the responsibility in the particular case for compliance with these guidelines ("Certifying Professional") that 1) the Certifying Professional has read the application; 2) to the best of the Certifying Professional's knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with these guidelines, except as specifically noted in the application; and 3) the compensation and expense reimbursement requested are billed at rates, in accordance with practices, no less favorable than those customarily employed by the applicant and generally accepted by the applicant's clients.

H. Interim Compensation Arrangements in Complex Cases

In a complex case, the Court may, upon request, consider at the outset of the case approval of an interim compensation mechanism for estate professionals that would enable

professionals on a monthly basis to be paid up to 80% of their compensation for services rendered and reimbursed up to 100% of their actual and necessary out of pocket expenses. In connection with such a procedure, if approved in a particular complex case, professionals shall be required to circulate monthly billing statements to the U.S. Trustee and other primary parties in interest, and the Debtor in Possession or Trustee will be authorized to pay the applicable percentage of such bill not disputed or contested by a party in interest.

H. TIME RECORDS

~~A. Time Records Required~~

~~All professionals, except auctioneers, real estate brokers, and appraisers must keep accurate contemporaneous time records.~~

~~B. Increments~~

~~Professionals are required to keep time records in minimum increments no greater than six minutes. Professionals who utilize a minimum billing increment greater than 1 hour are subject to a substantial reduction of their requests.~~

~~C. Descriptions~~

~~At a minimum, the time entries should identify the person performing the service, the date(s) performed, what was done, and the subject involved. Mere notations of telephone calls, conferences, research, drafting, etc., without identifying the matter involved, may result in disallowance of the time covered by the entries.~~

~~D. Grouping of Tasks~~

~~If a number of separate tasks are performed on a single day, the fee application should disclose the time spent for each such task, i.e., no "grouping" or "clumping." Minor administrative matters may be lumped together where the aggregate time attributed thereto is relatively minor. A rule of reason applies as to how specific and detailed the breakdown needs to be. For grouped entries, the applicant must accept the Court inferences therefrom.~~

~~E. Conferences~~

~~Professionals should be prepared to explain time spent in conferences with other professionals or paraprofessionals in the same firm. Relevant explanation would include complexity of issues involved and the necessity of more individuals' involvement. Failure to justify this time may result in disallowance of all, or a portion of, fees related to such conferences.~~

~~—— F. Multiple Professionals~~

~~—— Professional should be prepared to explain the need for more than one professional or paraprofessional from the same firm at the same court hearing, deposition, or meeting. Failure to justify this time may result in compensation for only the person with the lowest billing rate. The Court acknowledges, however, that in complex chapter 11 cases the need for multiple professionals' involvement will be more common and that in hearings involving multiple or complex issues, a law firm may justifiably be required to utilize multiple attorneys as the circumstances of the case require.~~

~~—— G. Travel Time~~

~~—— Travel time is compensable at one-half rates, but work actually done during travel time is fully compensable.~~

~~—— H. Administrative Tasks~~

~~—— Time spent in addressing, stamping and stuffing envelopes, filing, photocopying or "supervising" any of the foregoing is generally not compensable, whether performed by a professional, paraprofessional, or secretary.~~

~~III. — EXPENSES~~

~~—— A. Firm Practice~~

~~—— The Court will consider the customary practice of the firm in charging or not charging non-bankruptcy/insolvency clients for particular expense items. Where any other clients, with the exception of pro bono clients, are not billed for a particular expense, the estate should not be billed. Where expenses are billed to all other clients, reimbursement should be sought at the least expensive rate the firm or professional charges to any client for comparable services or expenses. It is recognized that there will be differences in billing practices among professionals.~~

~~—— B. Actual Cost~~

~~—— This is defined as the amount paid to a third party provider of goods or services without enhancement for handling or other administrative charge.~~

~~—— C. Documentation~~

~~—— This must be retained and made available upon request for all expenditures in excess of \$50.00. Where possible, receipts should be obtained for all expenditures.~~

~~—— D. Office Overhead~~

~~—— This is not reimbursable. Overhead includes: secretarial time, secretarial overtime (where clear necessity for same has not been shown), word processing time, charges for after-hour and~~

~~weekend air conditioning and other utilities, and cost of meals, or transportation provided to professionals and staff who work late or on weekends.~~

~~—— **E. Word Processing**~~

~~This is not reimbursable.~~

~~—— **F. Computerized Research**~~

~~This is reimbursable at actual cost. For large amounts billed to computerized research, significant explanatory detail should be furnished.~~

~~—— **G. Paraprofessional Services**~~

~~These services may be compensated as a paraprofessional under §330, but not charged or reimbursed as an expense.~~

~~—— **H. Professional Services**~~

~~A professional employed under §327 may not employ, and charge as an expense, another professional (e.g., special litigation counsel employing an expert witness) unless the employment of the second professional is approved by the Court prior to the rendering of service.~~

~~—— **I. Photocopies (Internal)**~~

~~Charges must be disclosed on an aggregate and per page basis. If the per page cost exceeds \$.20, the professional must demonstrate to the satisfaction of the Court, with data, that the per page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the copy machine and supplies therefor, including the space occupied by the machine, but not including time spent in operating the machine.~~

~~—— **J. Photocopies (Outside)**~~

~~This item is reimbursable at actual cost.~~

~~—— **K. Postage**~~

~~This is reimbursable at actual cost.~~

~~—— **L. Overnight Delivery**~~

~~This is reimbursable at actual cost where it is shown to be necessary. The court acknowledges that in complex chapter 11 cases overnight delivery or messenger services may often be appropriate, particularly when shortened notice of a hearing has been requested.~~

~~—— M. Messenger Service~~

~~—— This is reimbursable at actual cost where it is shown to be necessary. An in-house messenger service is reimbursable, but the estate cannot be charged more than the cost of comparable services available outside the firm.~~

~~—— N. Facsimile Transmissions~~

~~—— The actual cost of telephone charges for outgoing transmissions is reimbursable. Transmissions received are reimbursable on a per page basis. If the per page cost exceeds \$.20, the professional must demonstrate, with data, to the satisfaction of the Court, that the per page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the facsimile machine and supplies therefor, including the space occupied by the machine, but not including time spent in operating the machine.~~

~~—— O. Long Distance Telephone~~

~~—— This is reimbursable at actual cost.~~

~~—— P. Parking~~

~~—— This is reimbursable at actual cost.~~

~~—— Q. Air Transportation~~

~~—— Air travel is expected to be at regular coach fare for all flights.~~

~~—— R. Hotels~~

~~—— Due to wide variation in hotel costs in various cities, it is not possible to establish a single guideline for this type of expense. All persons will be required to exercise reasonable discretion and prudence in connection with hotel expenditures.~~

~~—— S. Meals (Travel)~~

~~—— Reimbursement may be sought for the reasonable cost of breakfast, lunch and dinner while traveling.~~

~~—— T. Meals (Working)~~

~~—— Working meals at restaurants or private clubs are not reimbursable. Reasonable reimbursement may be sought for working meals only where food is catered to the professional's office in the course of a meeting with clients, such as a Creditors' Committee, for the purpose of allowing the meeting to continue through a normal meal period.~~

~~U. Amenities~~

~~Charges for entertainment, alcoholic beverages, newspapers, dry cleaning, shoe shines, etc. are not reimbursable.~~

~~V. Filing Fees~~

~~These are reimbursable at actual cost.~~

~~W. Court Reporter Fees~~

~~These are reimbursable at actual cost.~~

~~X. Witness Fees~~

~~These are reimbursable at actual cost.~~

~~Y. Process Service~~

~~This is reimbursable at actual cost.~~

~~Z. UCC Searches~~

~~These are reimbursable at actual cost.~~

APPENDIX G

GUIDELINES FOR EARLY DISPOSITION OF ASSETS IN CHAPTER 11 CASES, THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER 11 U.S.C. § 363 AND OVERBID AND TOPPING FEES

The following guidelines are promulgated as a result of the increasing use of pre-negotiated or pre-packaged plans and 11 U.S.C. § 363 sales to dispose of substantially all assets of a Chapter 11 debtor shortly after the filing of the petition. The guidelines recognize that parties in interest perceive the need at times to act expeditiously on such matters. In addition, the guidelines are written to provide procedural protection to the parties in interest. The court will consider requests to modify the guidelines to fit the circumstances of a particular case.

OVERBIDS AND TOPPING FEES

1. ~~1. Topping Fees and Break-up Fees. Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the precise conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. The request shall also disclose the identities of other potential purchasers, the offers made by them (if any), and the nature of the offer, including, without limitation, any disclosure of their plans as it relates to retention of debtor's employees.~~

2. ~~2. Topping fees, break-up fees, overbid amounts and other buyer protection provisions will be reviewed on a case-by-case basis and approved if supported by evidence and case law. Case law may not support buyer protection provisions for readily marketable assets.~~

3. ~~3. In connection with a request to sell substantially all assets under § 363 within 60 days of the filing of the petition, buyer protections may be considered upon motion, on an expedited basis.~~

~~THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER SECTION 363 WITHIN 60 DAYS OF THE FILING OF THE PETITION~~

1. ~~—— The Motion to Sell. In connection with any hearing to approve the sale of substantially all assets at any time before 60 days after the filing of the petition, a motion for an order authorizing a sale procedure and hearing or the sale motion itself when regularly noticed, should include factual information on the following points:~~

~~—— a. Creditors' Committee. If a creditors' committee existed pre-petition, indicate the date and manner in which the committee was formed, as well as the identity of the members of the committee and the companies with which they are affiliated.~~

~~b. Counsel for Committee. If the pre-petition creditors' committee retained counsel, indicate the date counsel was engaged and the selection process, as well as the identify of committee counsel.~~

~~e. Sale Contingencies. Statement of all contingencies to the sale agreement, together with a copy of the agreement.~~

~~d. Creditor Contact List. If no committee has been formed, a list of contact persons, together with fax and phone numbers for each of the largest 20 unsecured creditors.~~

~~e. Administrative Expenses. Assuming the sale is approved, an itemization and an estimate of administrative expenses relating to the sale to be incurred prior to closing and the source of payment for those expenses.~~

~~f. Proceeds of Sale. An estimate of the gross proceeds anticipated from the sale, together with an estimate of the net proceeds coming to the estate with an explanation of the items making up the difference. Itemize all deductions that are to be made from gross sale proceeds and include a brief description of the basis for any such deductions.~~

~~g. — Debt Structure of Debtor. A brief description of the debtor's debt structure, including the amount of the debtor's secured debt, priority claims and general unsecured claims.~~

~~h. — Need for Quick Sale. An extensive description of why the assets of the estate must be sold on an expedited basis. Include a discussion of alternatives to the sale.~~

~~i. — Negotiating Background. A description of the length of time spent in negotiating the sale, and which parties in interest were involved in the negotiation, along with a description of the details of any other offers to purchase, including, without limitation, the potential purchaser's plans in connection with retention of the debtor's employees.~~

~~j. — Marketing of Assets. A description of the manner in which the assets were marketed for sale, including the period of time involved and the results achieved.~~

~~k. — Decision to Sell. The date on which the debtor accepted the offer to purchase the assets.~~

~~l. — Relationship of Buyer. A statement identifying the buyer and setting forth all of the buyer's (including its officers, directors and shareholders) connections with the debtor, creditors, any other party in interest, their respective attorneys, accountants, the U.S. Trustee or any person employed in the office of the U.S. Trustee.~~

~~m. — Post Sale Relationship with Debtor. A statement setting forth any relationship or connection the debtor (including its officers, directors, shareholders and employees) will have with the buyer after the consummation of the sale, assuming it is approved.~~

~~n. — Relationship with Secured Creditors. If the sale involves the payment of all or a portion of secured debt(s), a statement of all connections between debtor's officers, directors, employees or other insiders and each secured creditor involved (for example, release of insider's guaranty).~~

~~o. — Insider Compensation. Disclosure of current compensation received by officers, directors, key employees or other insiders pending approval of the sale.~~

~~p. — Notice Timing. Notice of the hearing on the motion to approve the motion to sell will be provided as is necessary under the circumstances.~~

~~2. — Proposed Order Approving Sale. A proposed order approving the sale must be included with the motion or the notice of hearing. A proposed final order and redlined version of the order approving the sale should be provided to chambers twenty four hours prior to the hearing.~~

~~3. — Good Faith Finding. There must be an evidentiary basis for a finding of good faith under 11 U.S.C. §363(m).~~

~~4. — Competing Bids. Unless the court orders otherwise, competing bids may be presented at the time of the hearing. The motion to sell and the notice of hearing should so provide.~~

~~5. — Financial Ability to Close. Unless the court orders otherwise, any bidder must be prepared to demonstrate to the satisfaction of the court, through an evidentiary hearing, its ability to consummate the transaction if it is the successful bidder, along with evidence regarding any financial contingencies to closing the transaction.~~

~~6. — Hearing and Notice Regarding Sale. Unless the court orders otherwise, all sales governed by these guidelines, including auctions or the presentation of competing bids, will occur at the hearing before the court. The court may, for cause, including the need to maximize and preserve asset value, expedite a hearing on a motion to sell substantially all assets under §363.~~

APPENDIX H

**CHECKLIST FORM AND COMMENTS
FOR MOTIONS AND ORDERS PERTAINING TO
THE USE OF CASH COLLATERAL AND POST-PETITION FINANCING**

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

 DIVISION

IN RE:

§

§

§

CASE NO.

 DEBTOR.

§

§

§

HEARING:

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS
PERTAINING TO USE OF CASH COLLATERAL AND
POST-PETITION FINANCING
(WHICH ARE IN EXCESS OF TEN (10) PAGES)**

 Motions and orders pertaining to cash collateral and post-petition financing matters tend to be lengthy and complicated. Although the Court intends to read such motions and orders carefully, it will assist the Court if counsel will complete this checklist. All references are to the Bankruptcy Code (§) or Rules. **PLEASE NOTE:**

~~_____ * _____ Means generally not favored by Bankruptcy Courts in this District.~~

~~_____ ** _____ Means generally not favored by Bankruptcy Courts in this District without a
_____ reason and a time period for objections.~~

~~_____ If your motion or order makes provision for any of the following, so indicate in the space
provided:~~

CERTIFICATE BY COUNSEL

~~_____ This is to certify that the following checklist fully responds to the Court's inquiry
concerning material terms of the motion and/or proposed order:~~

~~Yes, at Page/Exhibit~~

~~Y means yes; N means no~~

~~N/A means not applicable~~

~~(Page Listing Optional)~~

~~1. Identification of Proceeding:~~

- ~~(a) Preliminary or final motion/order (circle one)~~
- ~~(b) Continuing use of cash collateral (§ 363)~~
- ~~(c) New financing (§ 364)~~
- ~~(d) Combination of §§ 363 and 364 financing~~
- ~~(e) Emergency hearing (immediate and irreparable harm)~~

~~2. Stipulations:~~

- ~~(a) Brief history of debtor's businesses and status of debtor's prior relationships with lender~~
- ~~(b) Brief statement of purpose and necessity of financing~~
- ~~(c) Brief statement of type of financing (i.e.) accounts receivable, inventory~~
- ~~** (d) Are lender's pre-petition security interest(s) and liens deemed valid, fully perfected and non-avoidable?~~

~~(i) Are there provisions to allow for objections to above?~~

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Y means yes; N means no

N/A means not applicable

(Page Listing Optional)

~~(e) Is there a post-petition financing agreement between lender and debtor?~~

~~(i) If so, is agreement attached?~~

~~** f) If there is an agreement, are lender's post-petition security interests and liens deemed valid, fully perfected and non-avoidable?~~

~~(g) Is lender under secured or oversecured? (circle one)~~

~~(h) Has lender's non-cash collateral been appraised?~~

~~Insert date of latest appraisal~~

~~(i) Is debtor's proposed budget attached?~~

~~(j) Are all pre-petition loan documents identified?~~

~~(k) Are pre-petition liens on single or multiple assets? (circle one)~~

~~(l) Are there pre-petition guaranties of debt?~~

~~(i) Limited or unlimited (circle one)~~

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3. Grant of Liens:

- * (a) Do post-petition liens secure pre-petition debts? _____
- * (b) Is there cross-collateralization? _____
- ** (c) Is the priority of post-petition liens equal to or higher than existing liens? _____
- ** (d) Do post-petition liens have retroactive effect? _____
- * (e) Are there restrictions on granting further liens or liens of equal or higher priority? _____
- ** (f) Is lender given liens on claims under §§ 506(c), 544-50 and §§ 522? _____
 - _____ (i) Are lender's attorney's fees to be paid? _____
 - * _____ (ii) Are debtor's attorney's fees excepted from § 506(c)? _____
- (g) Is lender given liens upon proceeds of causes of action under §§ 544, 547, and 548? _____

4. Administrative Priority Claims:

- (a) Is lender given an administrative priority? _____
- (b) Is administrative priority higher than § 507(a)? _____

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~~(e) — Is there a conversion of pre-petition secured claim to post-petition administrative claim by virtue of use of existing collateral?~~

5. Adequate Protection (§ 361):

~~(a) — Is there post-petition debt service? —~~

~~(b) — Is there a replacement/additional 361(1) lien? (circle one or both) —~~

~~** (c) — Is the lender's claim given super-priority? —~~

~~— (§ 364(c) or (d)) [designate] —~~

~~(d) — Are there guaranties? —~~

~~(e) — Is there adequate insurance coverage? —~~

~~(f) — Other? —~~

6. Waiver/Release Claims v. Lender:

~~** (a) — Debtor waives or releases claims against lender, including, but not limited to, claims under §§ 506(e), 544-550, 552, and 553 of the Code? —~~

~~** (b) — Does the debtor waive defenses to claim or liens of lender? —~~

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N/A means not applicable

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7. Source of Post-Petition Financing (§ 364 Financing):

~~(a) — Is the proposed lender also the pre-petition lender? —~~

~~(b) — New post-petition lender? —~~

~~(c) — Is the lender an insider? —~~

8. Modification of Stay:

~~** (a) — Is any modified lift of stay allowed? —~~

~~** (b) — Will the automatic stay be lifted to permit lender to exercise self-help upon default without further order? —~~

~~(c) — Are there any other remedies exercisable without further order of court? —~~

~~(d) — Is there a provision that any future modification of order shall not affect status of debtor's post-petition obligations to lender? —~~

9. Creditors' Committee:

~~(a) — Has creditors' committee been appointed? —~~

~~(b) — Does creditors' committee approve of proposed financing? —~~

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Y means yes; N means no

N/A means not applicable

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10. Restrictions on Parties in Interest:

****** (a) Is a plan proponent restricted in any manner, concerning modification of lender's rights, liens and/or causes? —

****** (b) Is the debtor prohibited from seeking to enjoin the lender in pursuit of rights? —

(c) Is any party in interest prohibited from seeking to modify this order? —

****** (d) Is the entry of any order conditioned upon payment of debt to lender? —

(e) Is the order binding on subsequent trustee on conversion? —

11. Nunc Pro Tunc:

****** (a) Does any provision have retroactive effect? —

12. Notice and Other Procedures:

(a) Is shortened notice requested? —

(b) Is notice requested to shortened list? —

(c) Is time to respond to be shortened? —

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(d) If final order sought, have 15 days elapsed since service of motion pursuant to Rule 4001(b)(2)? _____

(e) If preliminary order sought, is cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing? _____

(f) Is a Certificate of Conference included? _____

(g) Is a Certificate of Service included? _____

(h) Is there verification of transmittal to U.S. Trustee included pursuant to Rule 9034? _____

(i) Has an agreement been reached subsequent to filing motion? _____

_____ (i) If so, has notice of the agreement been served pursuant to Rule 4001(d)(1)? _____

_____ (ii) Is the agreement in settlement of motion pursuant to Rule 4001(d)(4)? _____

_____ (iii) Does the motion afford reasonable notice of material provisions of agreement pursuant to Rule 4001(d)(4)? _____

_____ (iv) Does the motion provide for opportunity for hearing pursuant to Rule 9014? _____

_____ **SIGNED** this the _____ day of _____, 20____.

_____ [Firm Name]

_____ By: _____

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_____[Attorney's Name]

_____[Texas Bar No.]

_____[Address]

_____[Telephone Number]

_____[Email Address]

_____[Identification of role in case]

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COMMENTS TO CASH COLLATERAL AND DIP FINANCING CHECKLIST

1. — Interim vs. Final Orders

a. — Stipulations in preliminary or interim orders should be minimized. Notice is generally not adequate to test the validity of stipulations, and they should be avoided to the extent not absolutely necessary to the interim approval process.

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b. — Simply state the nature of notice given; do not recite notice was "sufficient and adequate" since that is usually not the case particularly on the first day. The order should simply note that the financing is being approved pursuant to Bankruptcy Rule 4001(c)(2) authorizing such financing to avoid immediate and irreparable harm.

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c. — Adequate protection for the use of pre-petition cash collateral may be granted to the extent of a diminution of collateral. The court will not approve on an interim basis language that adequate protection is granted in the form of replacement liens on post-petition assets based on stipulations that use of cash collateral shall be deemed a dollar-for-dollar decrease in the value of the pre-petition collateral." At the final hearing, the court will consider evidence to determine the extent to which the lender's pre-petition collateral has or is likely to diminish in value. That evidence will inform the extent to which adequate protection will be granted.

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d. — The court expects that other parties in interest will be involved in the process of developing an interim cash collateral order to the extent practicable. If the court finds that the debtor and lender have not made reasonable efforts to afford the best notice possible, preliminary relief will not be granted until parties in interest have had a reasonable opportunity to review and comment on any proposed interim order.

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e. — Bankruptcy Rule 4001(b) and (c) limit the extent to which the court may grant relief on less than 15 days' notice. The debtor and the lender must negotiate interim orders within the confines of that authority. Interim orders shall be expressly without prejudice to the rights of parties in interest at a final hearing.

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2. — Stipulations

a. — The lender may request a stipulation as to the amount, validity, priority and extent of the pre-petition documents. The stipulation will only be approved if the order provides the stipulation is binding on other parties in interest only after the passage of an appropriate period of time (customarily 90 days) during which the parties in interest will have the opportunity to test the validity of the lien and the allowance of the claim.

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3. — Grant of Liens

a. — Liens granted in the cash collateral and DIP financing orders may not secure pre-petition debts. Financing orders should not be used to elevate a pre-petition lender's collateral inadequacy to a fully secured status.

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b. — Avoidance actions are frequently one of the few sources of recovery for creditors other than secured lenders. Orders granting liens on these unencumbered assets for the benefit of the lender will require a showing of extraordinary circumstances. In most cases the adequate protection grant will protect the lender since the lender will have a super-priority under § 507(b) that will give the lender who suffers a failure of adequate protection a first right to payment out of the proceeds from such actions before payment of any other expenses of the Chapter 11 case. Avoidance actions in the event of a conversion to Chapter 7 may be the only assets available to fund the trustee's discharge of his or her statutory duties.

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e. — Similarly, limitations on the surcharge of the lender's collateral under § 506(c) are disfavored. The secured creditor may be the principal beneficiary of the proceedings in Chapter 11. Since the burden to surcharge requires a showing of direct benefit to the lender's

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~~collateral, lenders are not unreasonably exposed to surcharges of their collateral. And in light of the decision in Hartford Underwriters Insurance Co. v. Union Planters Bank N.A. (In re Hen House Interstate Inc.), 530 U.S. 1, 120 S.Ct. 1942 (2000), only the DIP or the trustee may recover under ' 506(e).~~

~~4. — Modification of Stay~~

~~a. — Authority for unilateral action by lender without necessity to return to court to establish post-petition default or breach or at least a notice to parties in interest will not be approved. If the cash collateral or financing order provides for a termination of the automatic stay in the event of a default, parties in interest must have an opportunity to be heard before the stay lifts.~~

~~5. — Restrictions on Plan Process~~

~~a. — The court will not approve cash collateral orders (or post-petition financing orders that are in substance cash collateral orders that have the effect of converting all the pre-petition liens and claims to post-petition liabilities under the guise of collecting pre-petition accounts and re-advancing them post-petition) that have the effect of converting pre-petition secured debt into post-petition administrative claims that must be paid in full in order to confirm a plan. That type of provision unfairly limits the ability and flexibility of the debtor and other parties in interest to formulate a plan. That type of provision, granted at the outset of a case, effectively compels the debtor to pay off the secured lender in full on the effective date and has the consequence of eviscerating ' 1129(b).~~

~~b. — On the other hand, persons who are advancing new money to the debtor post-petition may include in financing orders provisions that the post-petition loans have a ' 364(c)(1) super-super priority.~~

~~6. — Loan Agreements~~

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~~a. — If there will be a loan agreement, the language of the financing order does not need to restate all of the terms of the loan agreement. The financing motion should, however, summarize the essential elements of the proposed borrowing or use of cash collateral, such as, amount of loan facility, sublimits on availability, borrowing base formula, conditions to new advances, interest rate, maturity, events of default, limitation on use of funds and description of collateral.~~

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~~7. — Professional Fees~~

~~a. — To the extent consistent with the market for similar financings, the lender may request reimbursement of reasonable professional fees. The lender should provide reasonably detailed invoices to the debtor and the committees so a proper assessment of reasonableness can be made.~~

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~~b. — The parties may agree on carve outs for estate professionals. Lenders may exclude from the carve out payment of professional fees for litigation of the extent, validity or perfection of the lender's claim as well as prosecution of lender liability suits. The carve out should not, however, exclude the due diligence work by the committee or its professionals to determine whether a challenge to the lender is justified.~~

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~~8. — Work Fees/Loan Fees~~

~~a. — Underwriting a substantial DIP loan may involve both direct out-of-pocket expenses and, at times, a certain lost opportunity cost. The debtor may move for the reimbursement of its lender's direct out-of-pocket expenses. The debtor and lender must be prepared to establish actual out-of-pocket costs, the reasonableness of the costs, and that the type of costs are actually paid in the market. On a case-by-case basis, the court will consider on an expedited basis the debtor's request to pay a reasonable up-front fee to a prospective DIP lender to reimburse it for direct out-of-pocket costs. In addition, in connection with approving a DIP loan facility, on motion of the debtor, the court will consider evidence of market rates and pricing for comparable loans in determining whether commitment fees, facility or availability fees, and other up-front or periodic loan charges are appropriate. The lender must provide evidence that it actually has provided or will provide the services customarily associated with these fees.~~

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