

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

ORDER AMENDING LOCAL
BANKRUPTCY RULES

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GENERAL ORDER 12-0003

ORDER

Notice of proposed amendments to the local rules of this Court was given to the bar and the public on July 16, 2012. The last date for submitting comments concerning the proposed amendment was August 17, 2012. The Court received some comments and proposed edits for clarity, which resulted in minor stylistic changes to the proposals as published.

Effective October 1, 2012, the local rules are amended as shown in the attached document.

Date: August 28, 2012

/s/ Anthony J. Metz III
ANTHONY J. METZ III
CHIEF BANKRUPTCY JUDGE

Attachment to General Order 12-0003

B-1009-1. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES, AND STATEMENTS OF FINANCIAL AFFAIRS

(b) Amendments Adding Creditors: Notice Requirements

- (2) The Debtor shall give notice to added creditors and provide copies of notices and documents in the case as appropriate, including the notice of the meeting of creditors with full SSN or ITIN, notice of the bar date, the most recent plan or amended plan, and confirmation hearing notice and shall file a certificate of service that complies with S.D.Ind. B-9013-2. If the Debtor asserts that no notice is required, the Debtor shall file a statement in lieu of notice. A sample form is available on the Court's website.

(c) Amendments to Social Security Number or Individual Taxpayer Identification Number: Notice Requirements

If a SSN or ITIN is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect SSN or ITIN, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

- (3) The Debtor shall distribute notice of the corrected SSN or ITIN to all creditors, trustee, and the UST.
- (4) The Debtor shall file a certificate of service that complies with S.D.Ind. B-9013-2.

(d) Amendments Changing Debtor's Name: Notice Requirements

If the Debtor's name is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect Debtor name, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

- (3) The Debtor shall distribute notice of the corrected name to all creditors, trustee, and the UST.
- (4) The Debtor shall file a certificate of service that complies with S.D.Ind. B-9013-2.

B-1015-1. CONSOLIDATION OR JOINT ADMINISTRATION OF CASES PENDING IN SAME COURT

(a) Joint Cases

Unless otherwise ordered by the Court, a joint case commenced pursuant to 11 U.S.C. §302(a) shall be jointly administered. The separate estates of Debtors in a joint case will only be consolidated upon motion, after notice.

(b) Manner of Joint Administration

Unless otherwise ordered, jointly administered cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case.” The other jointly administered cases are known as “Member Cases.”

(2) Caption

All papers, except those which are to be filed in the Member Case pursuant to subparagraphs (b)(4) and (5) of this rule, shall have the caption with the name and case number of the Lead Case followed by the words “Jointly Administered,” except that if one of the Member Cases is for an individual Debtor then the caption shall include the Lead Case name and case number and the case name for any individual Debtor. The caption for any jointly administered case shall not include the word “Consolidated.”

(3) Docket

Except for the documents listed in subparagraphs (4) and (5) below, a pleading or document filed in any of the jointly administered cases after the entry of the order for joint administration shall be docketed under the case number of the Lead Case. If joint administration is terminated, documents filed after the order terminating joint administration shall be filed and docketed in the separate cases.

(4) Claims

A separate claims register shall be maintained for each case. Claims shall be filed only in the name and case number of the Debtor against which the claim is asserted. Any pleading related to a claim filed in a Member Case shall also be filed in that Member Case, and its caption shall have the name and case number of the Member Case. A separate claim must be filed in each jointly administered case in which a claim is asserted.

(5) Documents to be Filed in Member Cases Separately

Even if filed after the entry of the order for joint administration, the following documents shall be filed on the dockets of the Member Case as to which the document applies, and the caption of these documents shall have the name and case number of the Member Case:

- (A) schedules, statements of financial affairs, and amendments thereto;
- (B) In Chapter 11 cases, plans and disclosure statements and objections or other pleadings related thereto, and ballot reports.

(6) Ballots

Ballots shall be styled only in the name and case number of the Member Case for which the plan being voted on was filed.

(c) Substantive Consolidation

Unless otherwise ordered, substantively consolidated cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case”.

(2) Caption

All papers in substantively consolidated cases shall contain in the caption only the name and case number of the Lead Case, unless one of those cases is for an individual Debtor; then the caption shall include the Lead Case and the case name for any individual Debtor.

(3) Docket

A single case docket shall be maintained after the entry of the order for consolidation. If consolidation is later terminated, then documents filed after the order terminating consolidation shall be filed and docketed in the separate cases.

(4) Claims

After consolidation all claims shall be filed in the Lead Case. Any claim filed and docketed prior to the consolidation shall be considered as if filed in the substantively consolidated cases but shall remain on the claims register of the originally filed case.

B-1019-1. CONVERSION OF CHAPTER 11, CHAPTER 12, OR CHAPTER 13 CASE TO CHAPTER 7 CASE

(b) Distribution of Notice of Bar Dates and Meeting of Creditors; Certificate of Service

The Debtor shall distribute to added creditors the following:

- (2) Unless the schedule of post-petition debts was filed and creditors were added before issuance of the notice of the meeting of creditors under the new chapter, a copy of the notice of the meeting of creditors under the new chapter with the Debtor's full SSN or ITIN.

Debtor shall file a certificate of service as to these documents that complies with S.D.Ind. B-9013-2.

B-2002-1. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, AND UNITED STATES TRUSTEE

(c) Limited Notice in Chapter 7 Cases

In Chapter 7 cases, ninety (90) days after the first date set for the meeting of creditors or, if a report of possible assets has been filed, ninety (90) days after the issuance of the Notice of Possible Assets, all notices required by Fed.R.Bankr.P.

2002(a), except the notice of the final report and of dismissal or denial of discharge, shall be mailed only to the trustee, the UST, creditors who have filed claims and creditors, if any, who are still permitted to file claims by reason of an extension granted under Fed.R.Bankr.P. 3002(c)(1) or (2).

(e) Returned and Undeliverable Mail

(1) Designation of Debtor as Return Addressee

The Clerk may instruct the Bankruptcy Noticing Center (“BNC”) to designate the Debtor as the return addressee for orders and notices, including the notice of the commencement of the case and meeting of creditors and any order confirming a plan, dismissing a case, or discharging a Debtor.

(2) Duty to Provide Accurate Address

The Debtor shall file a Notice of Change of Address for any creditor or party in interest whose address appears undeliverable based either on the Debtor’s receipt of returned mail or information received from the BNC. In addition, the Debtor shall distribute the documents required by S.D.Ind. B-1009-1(b)(2) to any creditor with a revised address. If the Debtor is unable to determine a correct address for a creditor or party in interest, the Debtor shall file a Notice of Unavailable Address specifying the creditor’s name and reporting that a correct address cannot be located.

(3) Returned Mail Received by the Clerk, Undeliverable Addresses Identified by Clerk’s Noticing Agent and Duty to Correct

Unless otherwise ordered, the Clerk shall docket any returned paper notices of the meeting of creditors received by the Court in an open case. The Debtor shall file a Notice of Change of Address for any such creditor, if the correct address can be identified, shall distribute the documents required by S.D.Ind. B-1009-1(b) to any creditor with a revised address, and shall file a certificate of service that complies with S.D.Ind. B-9013-2. All other returned mail received by the Clerk shall be discarded.

B-2003-1. NOTICE OF CONTINUED MEETING OF CREDITORS

(a) Notice When Meeting Continued Before Convened.

A Debtor's request to continue a meeting of creditors should be directed to the trustee in a Chapter 7, 12, or 13 case, and to the UST in a Chapter 11 case. The request should not be filed with the Court. The Debtor shall seek a continuance when the cause necessitating the continuance becomes known to the Debtor. When the continuance is sought before the meeting has been convened, and the trustee grants the request, the trustee shall file notice of the continued meeting date. The Debtor shall distribute notice of the continued meeting to all creditors, parties in interest, the trustee and the UST, and shall file a certificate of service that complies with S.D.Ind. B-9013-2.

If a trustee, *sua sponte*, continues a meeting before it has been convened, then the trustee shall file notice of the continued meeting date, distribute notice of the continued meeting to all creditors, parties in interest and the UST, and shall file a certificate of service that complies with S.D.Ind. B-9013-2.

**B-2014-1. EMPLOYMENT OF PROFESSIONAL PERSONS AND
TREATMENT OF RETAINERS IN CHAPTER 11 CASES**

(b) Employment Applications in Chapter 11 Cases

(1) Service of Notice and Hearing

The Employment Application (including supporting affidavit or verified statement of the Professional and any supplemental affidavit) shall be served on the Service List. Notice of the Employment Application, an objection deadline, and any hearing shall be distributed to the Notice List. Any creditor or other party in interest who wishes to resist the Employment Application must, on or before the objection deadline provided in the notice, file an objection and serve such objection upon the Applicant, the Professional, and the Service List. If no objection is filed by the objection deadline the Court may grant the Employment Application and approve the proposed employment without a hearing or further notice. If the Employment Application is granted the employment shall be effective as of the date the Employment Application was filed unless otherwise ordered by the Court.

(2) Conflicts

If a Professional seeks to resolve any potential conflict of interest concerning any other client or former client, the Professional shall comply with applicable Rules of Professional Conduct. All consents or waivers of conflicts of interest (“waivers”) shall be in writing. The Professional shall serve copies of all such waivers upon the Applicant and the Service List with the Employment Application or promptly following receipt by the Professional of a waiver.

(3) Disclosure of Compensation and Retainers

As part of the Employment Application, a Debtor and a proposed Professional shall obtain approval from the Court of an arrangement whereby a retainer paid by the Debtor to the Professional may be retained and applied to the satisfaction of such Professional’s fees and expenses. Those financial arrangements may include provisions similar to the following:

- (A) The retainer shall be applied to satisfy the Professional’s fees and expenses as they are approved by the Court pursuant to 11 U.S.C. §§330 and 331;
- (B) The Professional may hold the entire retainer without any application for payment of fees and expenses until final approval by the Court of such Professional’s final application for fees and expenses, with such allowed interim fees and expenses paid periodically from other estate assets;
- (C) Pursuant to subparagraph (b)(4) of this Rule, the Professional may draw against the retainer at specified intervals prior to the award of fees and expenses by the Court; and
- (D) Any other arrangement approved by the Court.

(4) Periodic Payment Procedure

Subject to prior Court approval, the Professional and the Debtor may agree to a streamlined procedure for periodic payment of fees and costs prior to allowance by the Court. “Payment” includes any transfer of funds from the Debtor to the Professional after the filing date. Any proposed procedure shall provide for payment of no more than 80% of requested fees but may provide for payment of 100% of expenses.

- (A) All such arrangements shall provide that prior to the fee draw the

Professional must file with the Clerk a Notice of Draw which sets forth the amount of the proposed draw and contains, as an attachment, a copy of the periodic billing which supports the amount of the draw.

- (B) A copy of the Notice of Draw shall be distributed to the Service List and, in addition, a copy of the relevant periodic billing shall be delivered to the UST. Failure of a party to object to the draw does not affect the party's right to object to the final allowance of fees and expenses. Court approval of the draw procedure is not approval of fees and expenses. All fees and expenses drawn are subject to disgorgement until the Court allows the final fee application of the Professional.

B-2015-1. REPORT OF OPERATIONS

(a) Operating Reports

For all Chapter 11 cases, and for Chapter 7 cases in which the trustee operates a business, the trustee or the Debtor shall file reports of operations, at intervals to be determined by the UST or any applicable rule, using forms approved by the UST. For all Chapter 12 cases, and for Chapter 13 cases in which the Debtor operates a business, the Debtor shall file reports of operations as required by the trustee, at intervals to be determined by the trustee or any applicable rule, using forms acceptable to the trustee.

(b) Distribution

The report shall be distributed to the UST, the Debtor, any trustee and counsel for the trustee, the Service List in a Chapter 11 case, and any party requesting service of the reports.

(c) Penalties for Failure to File

The failure to file operating reports may constitute cause for the conversion or dismissal of the case, or for the appointment (or removal) of a trustee.

B-2016-1. APPLICATIONS FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES

(b) Chapter 13 Cases

The following are guidelines for the circumstances under which the Court will, as part of the Chapter 13 plan confirmation process, approve fees of attorneys representing a Chapter 13 Debtor (“Counsel”). Counsel shall file a proof of claim both for fees awarded pursuant to these guidelines and for fees awarded after application.

- (4) If Counsel has filed an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,” but the maximum fee in (b)(2) above is not sufficient to fully compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The application shall be accompanied by time records supporting the additional fees or by an affidavit explaining why the standard fee is inadequate in the case.

- (6) If Counsel has elected to be compensated pursuant to these guidelines but the case is converted or dismissed prior to confirmation of a plan, absent contrary orders, the trustee shall pay to the Counsel, to the extent funds are available and subject to the trustee’s percentage fee, an administrative claim equal to 50% of the unpaid fee balance if a properly documented fee claim (for the entire fee balance) has been filed by Counsel and served upon the trustee. Under appropriate circumstances, Counsel may file an application (within fourteen [14] days of the dismissal or conversion) for allowance and payment of additional fees. The application shall be accompanied by an affidavit supporting award of the amount requested. Counsel shall not collect, receive, or demand additional fees from the Debtor for work already performed unless authorized by the Court, even after dismissal.

B-2070-1. MOTIONS FOR TURNOVER

A Chapter 7 trustee who files a motion for turnover shall provide the Debtor(s), counsel for the Debtor(s), if any, and the UST notice of the motion. That notice shall give twenty-one (21) days from the date of service for the filing of any objection. Along with the motion, the Chapter 7 trustee shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2.

B-3002.1-1. MOTIONS TO DEEM MORTGAGE CURRENT

After all payments have been made pursuant to the confirmed plan, a Chapter 13

Debtor may file a Motion to Deem Mortgage Current only as to any mortgage that is not subject to Fed.R.Bankr.P. 3002.1. The Chapter 13 Debtor shall provide the mortgage lender with a notice giving the lender twenty-one (21) days from the date of service to file an objection. Along with the motion, the Chapter 13 Debtor shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2.

B-3007-1. OBJECTIONS TO CLAIMS: NOTICE

(c) Filing; Certificate of Service

The moving party shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2. The objection, notice, and certificate of service may be combined into one document. A sample of a combined objection, notice, and certificate of service is available on the Court's website. If no proper response to the objection is filed, the Court may sustain the objection without further notice or hearing.

B-3015-1. FILING AND DISTRIBUTION OF CHAPTER 13 PLANS

(a) Form of Plan

Chapter 13 plans and amended plans shall use the applicable Model Plan form approved by the Court. The Model Plan is available on the Court's website.

(b) Extension of Time to File Plan

A motion to extend the time to file a Chapter 13 plan must be filed within fourteen (14) days after the commencement of the case.

(c) Distribution of Plans and Amended Plans

The Chapter 13 trustee appointed in the case shall distribute the original plan, the first and second amended plans and any related notice, and file a certificate of service that complies with S.D.Ind. B-9013-2. Debtors shall distribute any third amended or subsequent plan and any related notice, and file a certificate of service that complies with S.D.Ind. B-9013-2.

B-3015-2 DISTRIBUTION OF CHAPTER 12 PLANS

The Debtor in a Chapter 12 case shall distribute any plan, amended plan, or motion to modify a plan, and any related notice, and shall file a certificate of service that complies with S.D.Ind. B-9013-2.

B-3015-3 FILING AND DISTRIBUTION OF PRE-CONFIRMATION AND POST-CONFIRMATION MODIFICATIONS TO CHAPTER 13 PLANS

(a) Pre-Confirmation Modifications

- (1) Agreed Modifications with Creditor: Filing and Notice. If the Debtor, a creditor, and the trustee agree upon a modification to the plan before confirmation, and that modification only affects the treatment of the creditor agreeing to the change, then the parties shall file an agreement, a stipulation, or a modification not requiring notice. Notice to creditors of the modification is not required. Any such agreement will not result in a separate order, as the subsequent confirmation order will be deemed an approval of the plan as modified by agreement.
- (2) Agreed Modifications with Trustee: Filing and Notice. If the Debtor and the trustee agree upon a modification to the plan before confirmation that does not adversely affect the treatment of **any** creditor, then the parties shall file an agreement, stipulation, or modification not requiring notice. Notice to creditors of the agreement is not required. Any such agreement will not result in a separate order, as the subsequent confirmation order will be deemed an approval of the plan as modified by agreement.
- (3) Other Pre-Confirmation Modifications. Any pre-confirmation modification that affects the treatment of creditors that have not agreed to the modification requires the filing of an amended plan which shall be distributed by the trustee or the Debtor pursuant to S.D. Ind. B-3015-1.

(b) Post-Confirmation Modifications

A proposed modification of a confirmed plan shall be filed as a Motion to Modify Plan. The movant shall distribute notice of the filing and of any hearing or deadline for objections and shall file a certificate of service that complies with S.D.Ind. B-9013-2.

B-3018-1. BALLOTS; VOTING ON PLAN - CHAPTER 11

(a) Distribution of Plan

Upon the approval or conditional approval of the disclosure statement, unless otherwise ordered by the Court, within seven (7) days the party filing the plan (the “Plan Proponent”) shall distribute copies of the plan, the disclosure statement (unless none is required under 11 U.S.C. § 1125(f)(1)), and ballot(s) to all creditors and parties in interest, along with the notice of the hearing on confirmation. The Plan Proponent shall file within fourteen (14) days after the approval or conditional approval of the disclosure statement a certificate of service that complies with S.D.Ind. B-9013-2.

(b) Submission of Ballots and Balloting Report

(3) Filing and Service

The certification and the balloting report shall be filed with the Court at least three (3) days before the confirmation hearing. Copies of the report shall be distributed to the UST, the Service List, and parties filing objections to the plan.

B-3022-1. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS NOT AN INDIVIDUAL

After the estate has been fully administered, the Plan Proponent or other entity administering the confirmed plan shall file an application for a final decree. The application shall include the percentage paid or proposed to be paid to general unsecured creditors in the plan.

B-3022-2. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS AN INDIVIDUAL

(a) Application for Final Decree: Payments Completed

If the Debtor in a Chapter 11 case is an individual, and has completed all plan payments, then the Debtor shall file an application for final decree. The application for final decree shall include the percentage paid to general unsecured creditors in the plan. If the Debtor is otherwise eligible, the Court shall issue a discharge as soon as practicable.

B-4001-1. MOTIONS FOR RELIEF FROM STAY AND MOTIONS TO EXTEND OR IMPOSE THE STAY

(a) Relief from Stay or Co-Debtor Stay

(2) Notice; Disposition

(A) Chapters 7, 12, and 13

In cases pending under any chapter except Chapter 11, notice of the motion shall be distributed by the movant to the Debtor, parties that have entered an appearance, any trustee, and the UST, except as otherwise provided by S.D.Ind. B-2002-1(c). If the motion also seeks abandonment, notice must be distributed to all creditors and parties in interest. The notice shall allow fourteen (14) days from the date of service to file objections. Along with the notice, the moving party shall file a copy of the motion and a certificate of service that complies with S.D.Ind. B-9013-2. A sample notice is available at the Court's website. If no proper response to the motion is filed, the Court may grant relief from the stay without further notice or hearing. At any hearing on the motion the Debtor or objecting party has the burden of establishing any payment alleged to have been made but not set forth in the payment history.

(B) Chapter 11

In cases pending under Chapter 11, unless the Court has previously entered a case management order covering preparation and distribution of notices, movant should contact the Courtroom Deputy to discuss who will prepare and distribute the notice and determine if a hearing is needed. Hearing date and time will be provided by the Courtroom Deputy. Notice of the motion shall be distributed to the Debtor, parties that have entered an appearance, any creditors committee or if no committee has been appointed, the twenty largest unsecured creditors, any trustee, and the UST. If the motion also seeks abandonment, notice must be distributed to all creditors and parties in interest. After distribution, the movant shall file a certificate of service that complies with S.D.Ind. B-9013-2. The certificate of service must be filed prior to any hearing the Court has set on the motion.

(b) Extend or Impose the Stay

(2) Motion Filed More than Ten Days After Filing Date

- (C) The movant shall file a certificate of service that complies with S.D.Ind. B-9013-2 on or before the hearing date.

B-4003-2. LIEN AVOIDANCE MOTIONS

(a) Requirements: All Motions

Any Debtor seeking to avoid a lien pursuant to either 11 U.S.C. §§522(f) or 1322(b) shall file a separate written motion as to each alleged lien holder. The motion may be combined with the notice required by subparagraph (d). A sample notice and motion are available on the Court's website. The motion shall identify:

- (1) the lien to be avoided and its approximate amount;
- (2) the amount, listed separately, of all other liens on the property which the Debtor will not seek to avoid, and a list of the liens on the property which the Debtor will seek to avoid.
- (3) if applicable, the amount of the impaired exemption; and
- (4) the value of the subject collateral.

(e) Filing and Certificate of Service

Along with the motion, the Debtor shall file with the Court a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2.

B-4004-1. DISCHARGE IN CHAPTER 12 INDIVIDUAL AND CHAPTER 13 CASES

(a) Trustee's Notice of Completion

For all individual Chapter 12 cases and all Chapter 13 cases filed on or after October 17, 2005, the Chapter 12 or 13 trustee shall file a Notice of Plan Completion after all payments have been received. Sample forms are available on the Court's website.

(b) Debtor's Required Pleadings

Within thirty (30) days after the trustee files the notice of completion, the Debtor shall file a Motion for Entry of Discharge and a Certification of Eligibility for Discharge. Each Debtor in a joint case shall file a separate Certification. Sample forms are available on the Court's website.

(c) Service and Notice

The Debtor shall serve a copy of the Motion for Entry of Discharge and a Certification of Eligibility for Discharge on the trustee and any entity to whom the Debtor owes a domestic support obligation. The trustee shall have twenty-one (21) days from the date of filing to object to the Motion or the Certification. If the Debtor owes a domestic support obligation, the Debtor shall distribute to the holder of that obligation a notice giving the holder twenty-one (21) days from date of service to file an objection to the entry of discharge. A sample notice is available on the Court's website. The Debtor shall file a certificate of service as to the notice that complies with S.D.Ind. B-9013-2.

(d) Closing and Reopening

If no motion for entry of discharge is filed, the case may be closed without entry of a discharge after filing of the trustee's final report. If the motion for entry of discharge is filed after the case has been closed, the Debtor must also file a motion to reopen the case. A filing fee to reopen the case must be paid with the motion.

(e) Denial of Discharge

If a notice of ineligibility for discharge has been filed in a Chapter 13 case by an interested party or a similar notice is placed on the docket by the Court, asserting that the Debtor is not eligible for a discharge because of 11 U.S.C. §1328(f), then the Court shall not issue a discharge to the Debtor at the conclusion of the case, unless the Debtor has objected to the notice of ineligibility and the Court has determined that the notice is incorrect.

B-5071-1. CONTINUANCES

Unless otherwise ordered by the Court, all requests to continue a scheduled hearing, conference or trial must be made by written motion. The motion to

continue shall indicate whether the opposing party consents to the continuance. If the movant has been unable to reach the opposing party, the motion shall recite what efforts were made to contact the opposing party.

B-6004-1. PROCEDURE FOR SALE OF ASSETS OUTSIDE THE ORDINARY COURSE PURSUANT TO 11 U.S.C. §363

(a) Applicability of Local Rule

This rule applies to any motion to approve the sale of assets, outside the ordinary course, pursuant to 11 U.S.C. §363 (the “Motion to Sell”), including motions filed by a trustee or a Debtor..

(b) Employment of Professionals

The movant shall file a separate application to employ any broker, auctioneer, or other professional to be retained to assist with any sale. The retention of liquidators, auctioneers, and appraisers is also governed by B-6005-1.

(c) Motion to Sell: Contents and Additional Requirements

(1) Private Sale

(A) Generally

Any Motion to Sell by private sale shall identify:

- (i) the property to be sold,
- (ii) the prospective purchaser (“Prospective Purchaser”);
- (iii) the sales price and an estimate of the net proceeds to be received by the estate (including a deduction for any exemption);
- (iv) a brief summary of all material contingencies to the sale, together with a copy of the agreement, if available;
- (v) a description of the manner in which the property was marketed for sale, and a description of any other offers to purchase;
- (vi) a description of any known relationships between the Prospective Purchaser and its insiders and the Debtor and

its insiders or the trustee; and

- (vii) a disclosure if the property to be sold contains personally identifiable information and, if so, the measures that will be taken to comply with 11 U.S.C. §363(b)(1).

(B) Additional Requirements in Chapter 11 Cases. Any Motion to Sell in a Chapter 11 case that proposes the sale of all or substantially all of the Debtor's assets shall include, in addition to the requirements in subparagraph (c)(1), the following:

- (i) If schedules have not been filed by the Debtor, a summary of the Debtor's debt structure, including the amount of the Debtor's secured debt, priority claims, and general unsecured claims;
- (ii) A statement setting forth any relationship or connection the Debtor (including its insiders) will have with the Prospective Purchaser after the consummation of the sale, assuming it is approved; and
- (iii) If a creditors' committee, or its equivalent, existed pre-petition, the identity of the members of the committee and the companies with which they are affiliated and the identity of any counsel.

(2) Private Sale by Agent in Business of Selling Similar Property

If the trustee or Debtor employs an agent to sell estate property that is in the business of selling such property in a 'commercially reasonable manner' that would satisfy Indiana Code §26-1-9.1-610, then the Motion to Sell shall include information to support the determination that the agent is in the business of selling similar property in a commercially reasonable manner. If the information regarding the agent is provided in the Motion to Sell, then the Motion need not provide the information required by (c)(1)(A)(ii) through (vi) or (c)(1)(B)(ii) in the Motion to Sell, but shall provide that information in the report of sale.

(3) Auction

Any Motion to Sell by auction shall identify the auctioneer, and the date, time and place of the auction. If the auction will use bid procedures not approved by the Court as part of an order authorizing the retention of an auctioneer, then the movant shall also comply with subparagraph (e)

below.

(4) Sale with Prospective Purchaser Identified but Bids Considered

Any Motion to Sell that identifies a Prospective Purchaser but provides for consideration of additional bids shall comply with subparagraph (c)(1). Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the 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 any other entity that expressed to the movant an interest in the purchase of all or a material portion of the assets to be sold within ninety (90) days prior to the filing of the sale motion, the offers made by them (if any), and the nature of the offer. If the sale will use bid procedures not approved by the Court as part of an order authorizing retention of an auctioneer, then the movant shall also comply with subparagraph (e) below.

(d) Notice

(1) Generally

Unless otherwise ordered by the Court, the movant shall distribute notice of any hearing or of any deadline to object to a Motion to Sell or a Motion for Bid Procedures, and shall file a certificate of service that complies with S.D.Ind. B-9013-2. A motion, notice, and certificate of service may be combined into one document. A sample combined motion to sell, notice, and certificate of service is available on the Court's website.

(2) Contents of Notice

If the movant elects to send notice separate from the motion, then the notice shall contain all of the contents required by subparagraph (c) for that particular motion.

(3) Chapter 7, 12, and 13 Cases

In a Chapter 7, Chapter 12, or Chapter 13 case, the movant shall distribute notice that provides twenty-one (21) days after the date of service for objections to be filed.

(4) Chapter 11 Case

In a Chapter 11 case, the movant shall contact the Courtroom Deputy to obtain direction as to whether the Court desires a 21-day notice with

opportunity to object to the motion or a notice of the hearing date.

(e) Bid Procedures: Motion and Notice

(1) Motion for Bid Procedures

If the Motion to Sell contemplates use of bid procedures not approved by the Court as part of an order authorizing retention of an auctioneer, then the movant shall file separately a motion to establish bid procedures (“Motion for Bid Procedures”) on the same day as the Motion to Sell.

(2) Notice

The movant shall be responsible for distributing notice of the Motion for Bid Procedures. The movant shall contact the Courtroom Deputy to obtain direction as to whether the Court desires a 21-day notice with opportunity to object to the motion or a notice of the hearing date. The notice for the hearing on, or the opportunity to object to, a Motion for Bid Procedures must describe the proposed bidding procedures. If a proposed purchase agreement exists, the moving party shall describe the terms of the sale proposed, when a copy of the actual agreement will be available, and from whom it may be obtained.

(3) Post-Sale Procedures

If a sale with bid procedures approved by the Court under subparagraph (d)(1) of this rule results in a sale to a party other than the identified Prospective Purchaser, then the movant shall file a Motion to Approve Sale Pursuant to Bid Procedures. That motion shall identify the successful purchaser and the change in terms resulting from the use of the bid procedures. The motion shall include any request for approval of a topping or breakup fee. If no such fee is proposed, the Court may approve the motion without hearing. If a topping or breakup fee is proposed, the Court will issue notice and opportunity to object or will set the motion for hearing.

(f) Report of Sale

After a private sale approved by the Court under subparagraph (c)(1) or (2) has been completed, the movant shall file a report of sale pursuant to Fed.R.Bankr.P. 6004(f)(1). Unless otherwise ordered by the Court, after an auction the auctioneer shall file the report.

(g) Compensation of Professionals

After the sale has been completed, unless otherwise ordered by the Court, the movant shall file a separate application to award or approve compensation and reimbursement of expenses for that professional. No payment shall be made to the professional until the Court has entered an order on the application.

B-6007-1. ABANDONMENT OF PROPERTY

(b) Trustee's Notice of Abandonment

In Chapter 7 cases where the trustee files a notice of abandonment more than one day after filing a notice of possible assets, the trustee shall distribute the notice to parties in interest and all creditors, except as otherwise provided in S.D.Ind. B-2002-1(b). The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the notice, the trustee shall file a certificate of service that complies with S.D.Ind. B-9013-2. A sample notice is available on the Court's website.

(c) Motion to Abandon Filed by Party in Interest

A motion to abandon filed by a party in interest shall be served on the Debtor and parties in interest. Notice of the motion shall be distributed to the Debtor, parties in interest, and all creditors, except as otherwise provided by S.D.Ind. B-2002-1(b). The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the motion, the moving party shall file a copy of the notice and a certificate of service that complies with S.D.Ind. 9013-2. A sample notice is available on the Court's website.

B-6008-1. REDEMPTION OF PROPERTY

(b) Filing and Certificate of Service

Along with the motion, the Debtor must file with the Court a copy of the notice and a certificate of service that complies with S.D.Ind. 9013-2.

B-7005-2. FILING OF DISCOVERY MATERIALS

Discovery materials (whether discovery requests, responses, or deposition

transcripts) may not be filed with the court except in the following circumstances:

- (a) Relevant to Certain Motions. A party seeking relief under Fed. R. Civ. P. 26(c) or 37, or by way of a pretrial motion that could result in a final order on an issue, must file with the motion those parts of the discovery materials relevant to the motion.
- (b) For Anticipated Use at Trial. When a party can reasonably anticipate using discovery materials at trial, the party must file the relevant portions at the start of the trial.
- (c) Materials Necessary for Appeal. A party seeking for purposes of appeal to supplement the record with discovery materials not previously filed may do so by stipulation of the parties or by court order approving the filing.

B-7006-1. EXTENSIONS OF TIME

(a) Initial Extensions

In every adversary proceeding pending in this Court in which a party wishes to obtain an initial extension of time not exceeding twenty-eight (28) days within which to file a responsive pleading or a response to a written request for discovery or request for admission, or response to a motion, the party shall contact counsel for the opposing party, or if the opposing party is not represented by counsel, the opposing party, and solicit that person's agreement to the extension. In the event that person does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall file a notice with the Court reciting the lack of objection to the extension or the fact that the person could not with due diligence be reached. The notice shall state the original due date and the date to which the time is extended. No further filings with the Court nor action by the Court shall be required for the extension.

B-7007-1. [deleted]

B-7026-2. FORM OF CERTAIN DISCOVERY DOCUMENTS

- (a) Form of Discovery Requests. A party propounding written discovery under Fed. R. Civ. P. 33, 34, or 36 must number each interrogatory or request sequentially and supply the written discovery to the responding party in an editable word processing format.
- (b) Form of Discovery Responses. A party responding (by answer or objection) to written discovery must fully quote each interrogatory or request immediately before each response and number each response to correspond with the

interrogatory or request.

B-7027-1. [deleted]

B-7030-1. CONDUCT OF DEPOSITIONS

(a) Questions About an Asserted Privilege

An attorney may question a deponent who refuses to answer a question on the basis of privilege about information related to the appropriateness of the privilege, including whether:

- (1) the privilege applies under the circumstances;
- (2) the privilege has been waived; and
- (3) circumstances exist to overcome a claim of qualified privilege.

(b) Private Conference Regarding a Pending Question

A deponent's attorney may not initiate a private conference with the deponent during the deposition about a pending question except to determine whether to assert a claim of privilege.

(c) Raising Objections with the Court

A party may recess a deposition to submit an objection by phone to a judicial officer if the objection:

- (1) could cause the deposition to be terminated; and
- (2) can be resolved without submitting written materials to the court.

(d) Scheduling Depositions

Attorneys will make a good faith effort to schedule depositions in a manner that avoids scheduling conflicts. Unless agreed by counsel or otherwise ordered by the court, no deposition will be scheduled on less than fourteen (14) days' notice.

B-7036-1. REQUESTS FOR ADMISSIONS

No party may serve on any other party more than 25 requests for admission without leave of court. Requests relating to the authenticity or genuineness of documents are not subject to this limitation. Any party desiring to serve additional

requests for admission must file a written motion setting forth the proposed additional requests for admission and the reason(s) for their use.

B-7037-1. DISCOVERY DISPUTES

(a) Required Actions Prior to Court Involvement

Prior to involving the court in any discovery dispute, including disputes involving depositions, counsel must confer in a good faith attempt to resolve the dispute. If any such dispute cannot be resolved in this manner, counsel are encouraged to contact the chambers of the assigned Judge to determine whether the Judge is available to resolve the discovery dispute by way of a telephone conference or other proceeding prior to counsel filing a formal discovery motion. When the dispute involves an objection raised during a deposition that threatens to prevent completion of the deposition, any party may recess the deposition to contact the Judge's chambers.

(b) Requirements of Motion to Compel

In the event that the discovery dispute is not resolved at the conference, counsel may file a motion to compel or other motion raising the dispute. Any motion raising a discovery dispute must contain a statement setting forth the efforts taken to resolve the dispute, including the date, time, and place of any discovery conference and the names of all participating parties. The court may deny any motion raising a discovery dispute that does not contain such a statement.

(c) Pro Se Parties

Discovery disputes involving pro se parties are not subject to this rule.

B-7041-1. DISMISSAL FOR FAILURE TO PROSECUTE

The court may dismiss an adversary proceeding if:

- (a) the plaintiff has not taken any action for 6 months;
- (b) the Judge assigned to the case or the Clerk has given notice to the parties that the case will be dismissed for failure to prosecute it; and
- (c) at least twenty-eight (28) days have passed since the notice was given.

B-7055-1. DEFAULT

(a) Application for Entry of Default

A party seeking an entry of default from the clerk pursuant to Fed.R.Bankr.P. 7055(a) must file an application seeking such relief. Such application must be accompanied by an affidavit indicating that the defendant(s) has failed to plead or otherwise defend and that the defendant(s) is not protected by the Servicemembers Civil Relief Act of 2003 and is not a minor or incompetent person.

(b) Motions for Default Judgment

Notwithstanding Fed.R.Bankr.P. 7055(b)(1), a party seeking a default judgment shall present a motion to the Judge, rather than to the Clerk. If the claim to which no response was made is for a “sum certain,” then the motion shall be accompanied by an affidavit showing the principal amount due and owing, not exceeding the amount sought in the claim, plus interest, if any computed by the movant, with credit for all payments received to date clearly set forth, and costs, if any, pursuant to 28 U.S.C. §1920. If the amount of the claim is not readily ascertainable or if the amount requested in the motion exceeds the amount stated in the claim, the Court may conduct a hearing on the motion for default judgment.

(c) Certificate of Service

Both the application for entry of default and motion for default judgment must be accompanied by a certificate of service that complies with S.D.Ind. B-9013-2.

B-7056-1. SUMMARY JUDGMENT PROCEDURE

(a) Movant’s Obligations

A party seeking summary judgment must file and serve a supporting brief and any evidence (that is not already in the record) that the party relies on to support the motion. The brief must include a section labeled “Statement of Material Facts Not in Dispute” containing the facts:

- (1) that are potentially determinative of the motion; and
- (2) as to which the movant contends there is no genuine issue.

(b) Non-Movant’s Obligations

A party opposing a summary judgment motion must, within twenty-eight (28) days after the movant serves the motion, file and serve a response brief and any

evidence (that is not already in the record) that the party relies on to oppose the motion. The response must include a section labeled “Statement of Material Facts in Dispute” that identifies the potentially determinative facts and factual disputes that the party contends demonstrate a dispute of fact precluding summary judgment.

(c) Reply

The movant may file and serve a reply brief within fourteen (14) days after a response is served.

(d) Surreply

A party opposing a summary judgment motion may file a surreply brief only if the movant cites new evidence in the reply or objects to the admissibility of the evidence cited in the response. The surreply must be filed and served within seven (7) days after the movant serves the reply and must be limited to the new evidence and objections.

(e) Citations to Supporting Facts

A party must support each fact the party asserts in a brief with a citation to a discovery response, a deposition, an affidavit, or other admissible evidence. The evidence must be in the record or in an appendix to the brief. The citation must refer to a page or paragraph number or otherwise similarly specify where the relevant information can be found in the supporting evidence.

(f) Oral Argument or Hearing

Unless a party has requested a hearing, the court **may** decide summary judgment motions without oral argument or hearing.

(g) Notice Requirement for *Pro Se* Cases

A party seeking summary judgment against an unrepresented party must serve that party with a notice that:

- (1) briefly and plainly states that a fact stated in the moving party’s Statement of Material Facts and supported by admissible evidence will be accepted by the court as true unless the opposing party cites specific admissible evidence contradicting that statement of material fact; and
- (2) sets forth the full text of Fed.R.Civ.P. 56 and this rule; and
- (3) otherwise complies with applicable case law regarding required notice to

pro se litigants opposing summary judgment motions.

(h) Compliance

The court may, in the interest of justice or for good cause, excuse failure to comply strictly with this rule.

B-7065-2. MOTIONS FOR PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

(a) Adversary Proceeding Required

Prior to submitting a motion for a temporary restraining order or for a preliminary injunction, an adversary proceeding shall be initiated by the filing of a complaint pursuant to Fed.R.Bankr.P. 7001(7).

(b) Motion for Temporary Restraining Order or for Preliminary Injunction

A motion for a temporary restraining order or for preliminary injunction shall be made by a document separate from the complaint and shall be accompanied by:

- (1) a separate memorandum in support of the motion;
- (2) a declaration or affidavit by the movant or counsel for the movant showing compliance with Fed.R.Bankr.P. 7065 regarding notice to opposing parties;
- (3) a copy of the filed complaint.

(c) Proposed Order

Along with the motion for temporary restraining order or preliminary injunction, the movant shall upload an appropriate proposed order.

B-9006-1. PROCEDURE FOR OBTAINING SHORTENED AND/OR LIMITED NOTICE OF NON-FIRST DAY MOTIONS

(d) Service and Distribution of 9006(c) Request, Underlying Motion and Order Shortening Notice and/or Setting Expedited Hearing

(1) General Requirements

The movant shall serve, by fax, e-mail or hand delivery, the 9006(c) Request and the Underlying Motion, along with the Order Shortening Notice and/or Setting Expedited Hearing, on the Service List, any party that has, or claims to have, an interest in the property to be affected by the relief requested in the Underlying Motion, parties required to receive notice under the applicable Federal Rule of Bankruptcy Procedure, and any other party as directed by the Court. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with instructions for obtaining all documents on the movant's website or by e-mail. If the matter is a contested matter within an adversary proceeding, service of the 9006(c) Request and the Underlying Motion shall be made in the manner described above but only upon the parties to the adversary proceeding and any other party as directed by the Court.

(2) Permissibility of Service by Overnight Delivery

Service by overnight delivery is acceptable if sent at least 48 hours before any deadline or hearing in the notice.

(e) Certificate of Service

Prior to the hearing on, or the deadline for filing objections to, the Underlying Motion, the movant shall file a certificate of service that complies with S.D.Ind. B-9013-2 certifying that copies of the 9006(c) Request, Underlying Motion and Order Setting Emergency Hearing and/or Expedited Notice were sent to all parties required to receive notice.

B-9013-3. FIRST DAY MOTIONS IN CHAPTER 11 CASES

(d) Service of First Day Motions and Notice

The Debtor shall serve copies of all First Day Motions and notice of the hearing on the initial Service List, known counsel for any party, and named respondents. Notice of the hearing and copies of the First Day Motions shall be served by fax, e-mail, or hand delivery. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with a statement as to the total number of pages in the document and instructions for obtaining all documents on the movant's website or by e-mail. Prior to the hearing, the Debtor shall file a certificate of service that complies with S.D.Ind. 9013-2. Failure to give timely notice may result in relief being denied or the hearing continued.

B-9014-1. APPLICABILITY OF ADVERSARY PROCEEDING RULES TO CONTESTED MATTERS

Unless otherwise ordered by the Court, the following adversary proceeding rules apply in contested matters other than motions to dismiss or convert a case:

7026-1	Discovery Disclosures and Conferences
7026-2	Filing of Discovery Materials
7030-1	Depositions
7036-1	Requests for Admissions
7037-1	Discovery Disputes
7041-1	Dismissal for Failure to Prosecute
7056-1	Summary Judgment

B-9019-1. STIPULATIONS AND SETTLEMENTS

(a) Notice

(1) When a Hearing Has Been Set

When parties reach a settlement in a matter that has been set for hearing, the parties shall promptly advise the Court of the settlement and, within the time promised or as required by the Court, shall file the appropriate pleadings and any proposed order concerning the settlement. The Court may extend the time for filing upon request. Failure to file the settlement pleading may result in dismissal of the matter at issue.

(2) Objection Deadline

When approval of a settlement or compromise is required by Fed.R.Bankr.P. 9019, the parties to the agreement shall file a motion to approve the settlement in the bankruptcy case. Notice of the proposed settlement shall be served on creditors, any trustee, and the UST in accordance with Fed.R.Bankr.P. 2002 and to any other entity as the Court may direct. The notice shall allow twenty-one (21) days from the date of service to file objections to the settlement.

(3) Filing; Certificate of Service

The moving party shall file a copy of the notice and a certificate of service

that complies with S.D.Ind. B-9013-2. The motion, notice, and certificate of service may be combined into one document. (A sample combination motion, notice, and certificate of service is available on the Court's website). If no proper objection is filed, the Court may approve the settlement without further notice or hearing.

(b) Adversary Proceedings

(1) Generally

Except as set forth in (3) of this section, if an adversary proceeding is settled before an answer has been filed, the parties may file a stipulation of dismissal. No Court order is entered on that stipulation. However, if the agreement of the parties resulting in dismissal contains conditions precedent or subsequent, then the parties shall file an agreed judgment. The Court shall enter a separate order on that judgment, after notice, if required.

(2) Settlements Under Fed.R.Bankr.P. 9019(a) or (b)

When approval of a settlement or compromise is required by Fed.R.Bankr.P. 9019(a) or (b), the trustee or debtor-in-possession shall file a motion to approve the settlement in the bankruptcy case and shall serve notice. The trustee or debtor-in-possession shall file a copy of the notice and a certificate of service that complies with S.D.Ind. B-9013-2. Once the motion is granted, the parties to the adversary proceeding shall then dismiss the adversary proceeding or file an agreed judgment so that the adversary may be closed.

(3) Settlements of Complaints to Deny or Revoke Discharge

Settlements of complaints to deny or revoke discharge are governed by S.D. Ind. B-7041-2.

B-9070-1. DISPOSITION OF EXHIBITS

(a) Custody During Pendency of Action

Any item offered into evidence in a case will be placed in the Clerk's custody. Unless the court orders otherwise, these items may not be claimed from the Clerk until the case is disposed of as to all issues, including appeals.

(b) Claiming Items After Disposition of Action

The party that offered the items into evidence must claim them from the Clerk:

- (1) if the case is not appealed, within ninety (90) days after the case is disposed of as to all issues;
- (2) if the case is appealed, within twenty-eight (28) days after the mandate of the reviewing court is filed in the Clerk's office and the case is disposed of as to all issues, unless otherwise ordered.

(c) Procedure for Claiming Items

No motion or order is necessary to claim the items. The party withdrawing them must give the Clerk a detailed receipt when the items are withdrawn. The Clerk must file the receipt in the cause.

(d) Failure to Claim Items

If the parties fail to claim the items within the deadline in subdivision (b), the Clerk may dispose of them in any manner directed by the court.

(e) Withdrawal of Original Records and Papers

No one may withdraw an original pleading, paper, record, model or exhibit from the Clerk's custody except as provided by this rule or by court order.