

OPERATING INSTRUCTIONS AND REPORTING REQUIREMENTS

FOR SMALL BUSINESS CHAPTER 11 CASES

Section 586(a)(3) of Title 28 of the United States Code provides that the United States Trustee shall supervise the administration of chapter 11 cases within the region for which such United States Trustee is appointed. Pursuant to that section, Daniel M. McDermott, the United States Trustee for Region 9, Ohio/Michigan, has issued the following requirements for chapter 11 debtors and trustees.

Timely compliance with each of the following requirements is mandatory. Failure to comply with any requirement may result in the filing of a motion for dismissal or conversion of the case or a motion for appointment of a chapter 11 trustee or examiner.

Any request for amendment to or modification of any of these requirements must be made in writing and approved in writing by the Office of the United States Trustee.

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1. GENERAL REQUIREMENTS

a. The debtor is required to comply in all respects with the Bankruptcy Code and the Bankruptcy Rules and any applicable local rules promulgated by the United States Bankruptcy Court.

b. Notices and copies of all pleadings, stipulations and proposed orders must be served upon the United States Trustee as required by The Federal Rules of Bankruptcy Procedure (FRBP). Such documents should be sent to the Office of the United States Trustee, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Suite 441, Cleveland, Ohio 44114-1240.

c. The debtor must pay, in full when due, all obligations arising after the filing of the petition ("postpetition"). This includes not only general business expenses, but all postpetition obligations including:

- (1) Wages;**
- (2) FICA taxes, both employees' and employers' portions;**
- (3) Withheld federal, state and local payroll taxes, and**
- (4) All other taxes, including real property taxes and sales taxes.**
- (5) United States Trustee fees and Court costs.**

d. The debtor shall file all federal, state and local tax returns when due, or shall procure obtain an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the Court.

e. The debtor may not pay any professionals, such as attorneys, accountants, or appraisers, without court order.

f. The debtor may not pay obligations arising before the date of filing of the petition ("prepetition"), except as allowed by the Bankruptcy Code, local rules, or by order of the Court.

g. The debtor shall promptly notify the United States Trustee, in writing, of any and all changes of address of the debtor during the pendency of the case.

2. BOOKS AND RECORDS

The books and records of the debtor should be closed as of the date of the filing of the petition. Provision must be made for separate accounting with respect to prepetition and postpetition accounts and transactions.

3. BANK ACCOUNT REQUIREMENTS

a. All prepetition bank accounts over which the debtor has possession, custody, control, ownership or access must be closed immediately upon the filing of the chapter 11 petition. At the initial interview, the debtor shall deliver to the United States Trustee declaration

Form A. Immediately upon receipt, the debtor shall provide to the United States Trustee copies of the final statements for closed accounts, the initial statements for the required newly opened accounts and a voided copy of the first check from each account.

b. Immediately upon the filing of the petition, a minimum of three new bank accounts must be opened by the debtor. These new accounts should be detailed on declaration **Form A** attached to these requirements. The three mandatory new accounts are general, payroll and tax accounts as follows:

General Account: All revenues and receipts and all other income (including wages) received by the chapter 11 debtor shall be deposited into this account. Under no circumstances may a debtor engage in cash or any other transactions that are not deposited into this account.

Payroll Account: At the time payroll is due to be paid, an amount equal to net payroll should be transferred from the General Account to this account, from which payroll is to be made.

Tax Account: Sufficient funds to cover tax liabilities must be deposited into this account from the General Account as they accrue. They must be timely paid in the manner specified by the appropriate taxing authorities.

c. The signature cards for the new bank accounts shall clearly indicate that the debtor is a "debtor in possession." The face of the checks must contain the case name and number, must clearly indicate that the debtor is a "debtor in possession," and this same information should be on the bank statements issued on each account. The debtor is obligated to ensure that the bank is directed to send a copy of the monthly bank statements (only) to the Office of the United States Trustee. **Banks refusing to perform this service may not hold the funds of bankruptcy estates subject to these requirements.**

d. It is the responsibility of the debtor to insure that all accounts or investments in excess of \$100,000 are adequately protected by the pledge of securities or purchases of bonds by the financial institution in compliance with Section 345 of the United States Bankruptcy Code. **Proof of such bonds or pledges must be supplied by the financial institution along with copies of the monthly bank statements.**

e. After the opening of the initial debtor in possession accounts as specified in (a) above, no additional debtor in possession bank accounts or any other bank accounts shall be opened by or on behalf of the debtor during the pendency of the chapter 11 proceedings without the prior authorization of the Office of the United States Trustee and/or the United States Bankruptcy Court.

4. INSURANCE REQUIREMENTS

a. Unless the United States Trustee otherwise directs, the following types of insurance must be maintained and premiums paid when due:

- (1) **If the debtor has tangible assets susceptible to casualty loss (fire, theft, weather, vandalism, etc.), casualty insurance must be maintained.**
- (2) **If the debtor has employees, workers' compensation insurance and unemployment insurance must be maintained.**
- (3) **If the debtor conducts business operations, general liability and, if appropriate, product liability insurance must be maintained.**
- (4) **Any other coverages customary in the industry or business, including liquor liability coverage.**

b. The United States Trustee must be provided with proof that the required insurance is being maintained. In fulfillment of this requirement, the debtor shall provide the United States Trustee with a copy of the first page of the binder of all policies at the initial interview. A certificate of insurance from the insurance agent must be provided, indicating the expiration date of each policy and naming the United States Trustee as certificate holder.

c. The loss/payee beneficiary should be changed to add: "name, debtor in possession." Affirmations that insurance coverages remain current must be filed with the monthly operating reports.

d. The debtor shall provide notice to the United States Trustee of any change, cancellation or expiration of insurance coverage.

5. COMPENSATION OF PRINCIPALS, OFFICERS AND DIRECTORS

a. All compensation or other consideration paid or to be paid from the assets of the estate to principals, officers and directors, must be disclosed to the United States Trustee at the initial interview. The disclosure should detail the name and position of the individuals employed along with a detailed description of the duties. **Attached Form B** should be utilized to provide this information.

b. The disclosure should detail the amount of compensation paid on a weekly or monthly basis and all perquisites, benefits and considerations of any kind the individual will receive; e.g. use of company vehicles, payment of life or health insurance premiums, reimbursement of expenses.

c. The disclosure should also detail the individual's salary history for the year immediately preceding the filing of the chapter 11 petition.

6. INITIAL DEBTOR INTERVIEW

a. The debtor and counsel must attend an initial interview as soon as practicable after the filing of the petition or appointment of the trustee. The designated principal(s) most familiar with the debtor's financial affairs must attend the initial meeting.

b. The purpose of the initial interview is to afford the United States Trustee an early opportunity to ascertain the nature and status of the proceeding, establish the financial reporting

requirements appropriate for the case, and to answer questions pertaining to these requirements.

c. This interview will be scheduled by the Office of the United States Trustee generally within ten working days after the filing. The interview will usually be held at the debtor's place of business.

d. At the conclusion of the interview, the debtor and counsel will be required to sign certification **Form C** indicating that they have received, understand and agree to comply with the requirements of the United States Trustee.

e. In some instances, the United States Trustee may arrange for the debtor and counsel to meet with the creditors' committee, in order to facilitate the administration of the case.

f. The debtor is required to produce the following documents at the initial debtor interview:

1. Proof of the establishment of new bank accounts:

- (a) **General Operating Account;**
- (b) **Payroll Account, and**
- (c) **Tax Account.**

2. A declaration from the debtor (**Form A**) verifying the closing of all prepetition bank accounts and stating the date each account was closed and that all monies were transferred to the new accounts.

3. Proof of the following insurance coverages:

- (a) **General Comprehensive Public Liability Insurance;**
- (b) **Fire and Theft Insurance;**
- (c) **Workers' Compensation Insurance;**
- (d) **Vehicle Insurance; and,**
- (e) **Any Other Insurance Coverage Customary in the Industry or**

Business.

4. All federal income tax returns and personal property tax returns (last two years) with all schedules and attachments.

5. Copies of the current year-to-date financial statements and copies of financial statements for the last two fiscal years.

6. Disclosure statement of compensation paid to principals, officers and directors (**Form B**).

7. LIST OF CREDITORS, SCHEDULES AND STATEMENT OF AFFAIRS

a. The debtor must comply with FRBP 1007. This rule requires the debtor to file

schedules and a statement of financial affairs with the Clerk of the U.S. Bankruptcy Court. A complete list of all creditors and their addresses should be set forth in Schedules D, E, and F.

b. Failure to file all required bankruptcy schedules and the statement of financial affairs within 15 days of the date of filing or to obtain an extension of time from the court may result in the filing of a motion to dismiss or convert the case or in the alternative, the appointment of a trustee or examiner.

c. The debtor must file a separate list with the petition containing the names, addresses, phone numbers and amounts of claims of the twenty largest unsecured creditors. FRBP 1007(d). This list should not contain the names of creditors who are "insiders," as that term is defined in section 101(31) of the Bankruptcy Code. In addition, the debtor must file a list of all equity security holders of the debtor including complete names, addresses and telephone numbers.

8. CREDITOR'S MEETINGS

a. Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. Notice of this meeting, which is scheduled by the United States Trustee, is sent to all creditors by the clerk of court. Where the debtor remains in possession, all principals, officers and directors and employees familiar with the financial affairs and operation must attend. Corporate debtors must be accompanied by legal counsel conversant in the proceeding. **Please note: The debtor in possession must bring to the Section 341 first meeting of creditors the original signed corporate resolution authorizing the filing of the bankruptcy and the original signed bankruptcy petition, schedules, and Statement of Financial Affairs.**

b. After notice has been mailed, a meeting cannot be cancelled or rescheduled to accommodate conflicts with the schedules of debtors, their counsel and other individuals required to attend the meeting. After the initial creditors' meeting, the United States Trustee may continue the meeting to another date and time until the case is dismissed or converted or a plan is confirmed.

9. PERIODIC STATUS CONFERENCES

Subsequent to the conduct of the creditors' meeting, the United States Trustee may conduct periodic status conferences with the debtor, their counsel, the creditors' committee and their counsel. The purpose of these conferences is to ascertain the financial status of the operations and to determine when a plan may be filed.

10. PLAN OF ACTION AND CASH PROJECTION

The debtor may be required to provide the United States Trustee with a detailed written strategy for effectuating a successful business reorganization. The debtor's plan of action must include a six (6) month projection of cash receipts and disbursements.

11. QUARTERLY FEES

a. All chapter 11 cases are subject to the United States Trustee Quarterly Fee. This fee funds the performance of the administrative responsibilities of the United States Trustee and was considered an important factor in the passage of the Bankruptcy Judges, United States Trustee and Family Farmer Bankruptcy Act of 1986, (P.L. 99-554).

b. The fee must be paid to the United States Trustee for every quarter (including any fraction thereof), from the time the petition is filed until the date of entry of an order dismissing or converting the case or closing a confirmed case. Post-confirmation cases continue to owe quarterly fees pursuant to Public law 104-99. The fee is applicable to each and every case commenced under chapter 11 regardless of whether the case has been administratively consolidated with any other case.

c. Cases pending during even one day during a quarter will be required to pay the fee applicable to that entire quarter.

d. The debtor is responsible for the prompt and full payment of this fee. The amount varies depending upon the dollar value of **all disbursements** made during the calendar quarter; however, a minimum fee of \$325.00 is due each quarter even if no disbursements are made during the quarter.

e. All quarterly fees must be paid before a chapter 11 plan can be confirmed. Section 1129(a)(12) of the Code states: "The Court shall confirm a plan only if all of the following requirements are met. . .All fees payable under section 1930, as determined by the court as the hearing on the confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan."

f. Each debtor will receive a bill regarding the fee approximately 2 weeks prior to each of the due dates noted below. Each bill contains a "tear off" payment stub which should be returned along with the debtor's or trustee's check to the following address:

U.S. Trustee
P.O. Box 530202
Atlanta GA 30353 - 0202

g. Please make all checks payable to the "U.S. Trustee". The debtor's or trustee's account number, which can be obtained from the statement, should be written on the face of the check. Direct all correspondence and questions regarding your account to Ken Goodman, (216) 522-7800, ext 242.

h. If any check is returned marked "Insufficient Funds", all future quarterly fee payments must be made by cashier's check, certified funds or postal money order.

QUARTERLY FEE SCHEDULE

<u>DISBURSEMENT RANGE</u>	<u>QUARTERLY FEE</u>
\$ 0 to \$14,999.99	\$ 325
\$ 15,000 to \$74,999.99	\$ 650
\$ 75,000 to \$149,999.99	\$ 975
\$150,000 to \$224,999.99	\$ 1,625
\$ 225,000 to \$299,999.99	\$ 1,950
\$300,000 to \$999,999.99	\$ 4,875
\$1,000,000 to \$1,999,999.99	\$ 6,500
\$2,000,000 to \$2,999,999.99	\$ 9,750
\$3,000,000 to \$4,999,999.99	\$10,400
\$5,000,000 to \$14,999,999.99	\$13,000
\$15,000,000 to \$29,999,999.99	\$20,000
\$30,000,000 or more	\$30,000

QUARTERLY FEE DUE DATES

	<u>Quarter</u>	<u>Ending</u>	<u>Due Date for</u> <u>Payment</u>
1st Quarter	Jan-Feb-Mar	March 31	April 30
2nd Quarter	Apr-May-Jun	June 30	July 31
3rd Quarter	Jul-Aug-Sep	Sept 30	Oct 31
4th Quarter	Oct-Nov-Dec	Dec 31	Jan 31

PENALTIES: FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF THE CASE UNDER 11 U.S.C. SECTION 1112(b)(10). FILING A FALSE REPORT MAY SUBJECT YOU TO CIVIL LIABILITY UNDER 31 U.S.C. SECTION 3729(a)(7) AND TO CRIMINAL PENALTIES UNDER 18 U.S.C. SECTION 1621.

Finally please take notice that a Chapter 11 debtor's failure to pay quarterly fees to the United States Trustee pursuant to 28 U.S.C. Section 1930 has additional significant legal consequences. Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, Section 31001i(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. Section 3701, the United States Trustee intends to use the debtor's Taxpayer Identification Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent date, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies, (3) send collection notices to the debtor, (3) engaged private collection agencies to collect the debt, and (5) engaged the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

12. OPERATING REPORTS

a. **The debtor-in-possession must file copies of the Official Form 25C Small Business Monthly Operating Report with the court and provide a copy with original signatures to the Office of the United States Trustee by the 20th day of each month.** The reports shall cover the preceding month. FRBP 2015. In addition, copies of such reports should be served upon the chairperson of the creditors' committee(s) and counsel, if a committee has been appointed.

b. The operating reports are used by the United States Trustee to monitor the progress of cases. Also, they enable interested parties to assess whether the business is operating at a sufficient level of profitability to demonstrate feasibility of reorganization.

c. The United States Trustee reserves the right to require the debtor to file more detailed or additional reports in order to monitor their financial affairs. 28 U.S.C. Sec. 586(a)(3) and FRBP 2015. This determination will be made at the initial meeting with the United States Trustee and throughout the progress of the case. Such decisions will be based on the overall complexity or other factors present in the case which, in the judgment of the United States Trustee, warrant imposition of additional reporting requirements.

13. PRE AND POST PETITION TAXES

a. Prepetition.

Any prepetition tax return due, but not filed, as of the date of the petition for which there is any tax due, must be filed with the appropriate taxing authority. It is the responsibility of the debtor to ascertain whether there are such unfiled returns and to amend schedules to reflect them as is appropriate.

b. Postpetition.

All postpetition taxes required to be paid and all postpetition tax returns required to be filed by the laws of the United States Trustee or any other state or political subdivision thereof, must be paid and filed by the debtor in a timely manner as required by the respective taxing authorities.

With respect to postpetition taxes accruing during the pendency of a case for

which there is no specific prepayment requirement, but which enjoy a priority lien or encumbrance against assets of the estate as they accrue (most notably real estate taxes), a cash deposit must be made to the tax account on a monthly prorated basis.

14. OTHER REQUIREMENTS

In addition to the requirements of the United States Trustee detailed above, your attention is called to the following provisions of the Bankruptcy Code and Rules that may impact upon the viability of this proceeding:

- a. **Use of Cash Collateral.** Cash collateral may not be used by the debtor without the consent of the secured creditor or court authorization after notice and hearing. 11 U.S.C. Sec. 363(c)(2). Cash collateral is defined as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest. 11 U.S.C. Sec 363(a). Separate cash collateral accounts must be established and maintained by the debtor. 11 U.S.C. Sec. 363(c)(4).

The United States Trustee requires service of a copy of any such pleadings, stipulations and proposed orders filed with the court. FRBP 9034(f). In emergencies, such documents may be served by telefax at (216) 522-7193.

- b. **Obtaining Credit.** The debtor may not obtain credit or incur unsecured debt, other than in the ordinary course of business, without court authorization after notice and hearing. 11 U.S.C. Sec 364(b). Section 364(c) of the Bankruptcy Code requires court authorization after notice and hearing before obtaining credit or the incurring of debt with priority over certain administrative expenses. Section 364(c) and (d) of the Bankruptcy Code require court authorization after notice and hearing before obtaining credit or the incurring of debt to be secured by a lien on property of the estate.

The United States Trustee requires service of a copy of any such pleadings, stipulations and proposed orders filed with the court. FRBP 9034(f). In emergencies, such documents may be served by telefax at 216-522-7193.

- c. **Use, Sale or Lease of Property of the Estate.** Section 363(b) of the Bankruptcy Code provides for the use, sale, or lease of property of the estate when such use, sale or lease is not in the ordinary course of business, only after notice and hearing.

The United States Trustee requires service of a copy of any such pleadings, stipulations and proposed orders filed with the court. FRBP 9034(f). In emergencies, such documents may be served by telefax at 216-522-7193.

- d. **Periodic Reports Concerning Related Entities (Form B26)**
Rule 2015.3 of the Federal Rules of Bankruptcy Procedure provides the debtor

shall file periodic financial reports of the value, operations and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. FRBR 2015.3(2). The report shall be filed no later than five (5) days before the first date set for the §341 meeting of creditors and every six (6) months thereafter.

The United States Trustee requires service of a copy of any such pleadings, stipulations and proposed orders filed with the court. FRBP 9034(f). In emergencies, such documents may be served by telefax at 216-522-7193.

15. Web Sites:

Additional information may appear on the United States Trustee's web site:

<http://www.usdoj.gov/ust/index.htm>