



**U.S. Department of Justice**

Office of the United States Trustee

*Region 3*

*District of Delaware*

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IN RE: CHAPTER 11

Debtor(s). CASE NO.

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**OPERATING GUIDELINES  
FOR CHAPTER 11 CASES**

The United States Trustee is required to supervise the administration of chapter 11 cases pursuant to 28 U.S.C. §586(a)(3). These operating guidelines and reporting requirements for chapter 11 cases must be followed so that the United States Trustee can properly supervise the administration of this case. Accordingly, the debtor's failure to comply with the operating and/or reporting requirements set forth below may result in the dismissal or conversion of this case to a case under chapter 7 of the Bankruptcy Code.

The United States Trustee reserves the right to modify these guidelines from time to time. Any request for a waiver of any requirement must be in writing stating the reasons for the request. The United States Trustee will determine whether a waiver should be granted or denied based upon the circumstances of the case.

**1. Books and Records**

The debtor's books and records must be closed as of the petition filing date. New books and records must be set up to reflect post-petition business.

**2. Bank Accounts**

Upon the filing of the petition, the debtor must immediately close all of its existing bank accounts and open new bank accounts which must be (i) designated as debtor in possession accounts ("DIP Accounts") and (ii) maintained subject to the following conditions:

- a. All money of the bankruptcy estate must be deposited in the DIP Accounts, provided that (i) one DIP Account shall be maintained solely for the purpose of setting aside estate

monies required for the payment of taxes, including, but not limited to, federal, state, local and payroll taxes, and (ii) the debtor must maintain a separate DIP Account for cash collateral in accordance with Section 363(c)(4) of the Bankruptcy Code.

b. All DIP Accounts must be maintained with financial institutions whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). If the aggregate DIP Account balances with any one financial institution are expected to exceed the current FDIC insurance limits of \$250,000.00 per depositor, the debtor must immediately contact the United States Trustee to discuss how the debtor plans to comply with the Bankruptcy Code Section 345 requirement concerning the collateralization of uninsured deposits.

c. Checks for all DIP Accounts must bear the name of the debtor, the designation "Debtor in Possession," the bankruptcy case number, and the type of account and must be pre-numbered by the bank. The debtor must send to the United States Trustee a voided original check for each opened DIP Account.

d. Money Market accounts are to be opened pursuant to Local Rule 4001-3 Investment in Money Market Funds. There is "cause" for relief from the requirements of 11 U.S.C. §345(b) where money of the estate is invested in an open-end management investment company, registered under the Investment Company Act of 1940, that is regulated as a "money market fund" pursuant to Rule 2a-7 under the Investment Company Act of 1940; so long as the debtor has filed with the Court (i) a statement identifying the fund; and (ii) the fund's certification, which shall be accompanied by its currently effective prospectus as filed with the Securities and Exchange Commission, that the fund:

- (a) Invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements;
- (b) Has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor's or Moody's;
- (c) Has agreed to redeem funds shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of Federal Reserve Banks or the New York Stock Exchange; and
- (d) Has adopted a policy that it will notify its shareholders 60 days prior to any change in its investment or redemption policies under (a) and (c) above.

e. The debtor must serve copies of all monthly bank statements on the United States Trustee within 15 days of receipt from the bank.

### **3. Maintenance and Proof of Insurance**

The debtor is required to maintain the following insurance coverage, as appropriate: general comprehensive liability; property loss from fire, theft, water, or other extended coverage; workers' compensation; vehicle, products liability; fidelity bonds for employees; and such other coverage as is customary in the debtor's business.

Within 15 days after the filing of the petition, the debtor shall provide to the United States Trustee proof of its insurance coverage. Such proof of coverage shall consist of certificates of insurance or other verified documents showing that each policy of insurance required for the estate is in full force and effect, and shall disclose the type and extent of coverage, effective dates, name of insurance carrier, and name, address, and telephone number of agent. The debtor is responsible for including the address of the United States Trustee on the cancellation notice for each insurance policy. Upon the expiration or other termination of any coverage, the debtor shall immediately provide the United States Trustee with proof of replacement coverage.

### **4. Taxes**

All tax returns and reports for post-petition obligations shall be timely filed and accompanied by payment in full of any liability. Such taxes include, but are not limited to, federal and state payroll withholding taxes, FICA taxes, federal and state unemployment insurance, real property taxes, and sales and use taxes. The debtor shall timely deposit sufficient funds in the DIP tax account to pay any payroll tax liability. The debtor shall timely file all pre-petition tax returns, but shall not pay the tax due.

### **5. Reporting Requirements**

- a. **Initial Report (“Form IR or IR (RE)”)**. Within 15 days of the filing date of the petition, the debtor shall submit such report to the United States Trustee. This obligation does not pertain to small business cases that are defined under 11 U.S.C. §101(51D).
- b. The debtor is required to file a **Monthly Operating Report (“MOR”)** for each month until confirmation. After a Plan is confirmed, the debtor must prepare a **Post-Confirmation Quarterly Summary Report** for each quarter until the case is converted, dismissed, or closed. Unless otherwise agreed upon, the debtor shall submit a copy to the United States Trustee within 20 days following the end of the reporting period.

## 6. United States Trustee Quarterly Fees

Debtors in chapter 11 cases must pay a quarterly fee to the United States Trustee Program for each calendar quarter, or portion thereof, between the date of filing the petition and the date the case is converted, dismissed, or closed.

### A. PRE-CONFIRMATION

The quarterly fee is calculated by totaling the debtor's disbursements that are required to be reported on the Monthly Operating Report for each month of the calendar quarter, or portion thereof, according to the schedule below<sup>1</sup>. A minimum fee of \$325.00 is due even if there are no disbursements during a calendar quarter. There is no proration of the fee.

**IMPORTANT: When the debtor receives its "Chapter 11 Quarterly Fee Statement", the statement may reflect an "Estimated Balance Due" based on: a) reported disbursement history, b) initial financial data submitted when the case was filed, or c) an estimation done by the United States Trustee Program. It is the debtor's responsibility to calculate and pay the actual fees due.**

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TOTAL QUARTERLY DISBURSEMENTS	QUARTERLY FEE
\$0 to \$14,999.99	\$325.00
\$15,000 to \$74,999.99	\$650.00
\$75,000 to \$149,999.99	\$975.00
\$150,000 to \$224,999.99	\$1,625.00
\$225,000 to \$299,999.99	\$1,950.00
\$300,000 to \$999,999.99	\$4,875.00
\$1,000,000 or more	1% of quarterly disbursements or \$250,000, whichever is less

Quarterly fees are due no later than one month following the end of each calendar quarter. Failure to pay quarterly fees may result in the conversion or dismissal of the case. Payment of that quarter's fees and any past due fees and interest, if applicable, must be made before the effective date of a confirmed plan of reorganization and quarterly fees will continue to accrue until the case is converted, dismissed, or closed. Failure to pay these fees may result in a motion by the United States Trustee to convert the case to a chapter 7 case.

A "Chapter 11 Quarterly Fee Statement" from the United States Trustee Program is mailed to the debtor or other designated party for each calendar quarter before the payment due date. Chapter 11 quarterly fees may be paid online at <https://www.pay.gov/public/form/start/672415208> or by mailing the tear off portion of the statement and a check, made payable to "United States Trustee".

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<sup>1</sup> The Fee Schedule may also be found at: <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

**The address to use to mail quarterly fee payments is:**

United States Trustee Payment Center  
P.O. Box 6200-19  
Portland, OR 97228-6200

**The address to use for overnight delivery is:**

U.S. Bank  
Attn: Government Lockbox – U.S. Trustee Payment Center 6200-19  
17650 N.E. Sandy Blvd.  
Portland, OR 97230-5000

**The addresses shown above are a lockbox at a bank. Do not use these addresses for service of process, correspondence, or any purpose other than paying quarterly fees. Any other correspondence or documents sent to the lockbox other than the payment form will be destroyed.**

**Each quarterly fee must be timely paid. Failure to receive a “Chapter 11 Quarterly Fee Statement” from the United States Trustee Program does not excuse timely payment. Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case pursuant to 11 U.S.C. § 1112(b)(4)(K) (for cases filed on or after October 17, 2005) or 11 U.S.C. § 1112(b)(10) (for cases filed before October 17, 2005).**

**NOTICE TO DEBTORS MAKING PAYMENT BY CHECK**

Payment of the quarterly fee by check will be converted to an electronic funds transfer (“EFT”). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will be shown on your regular account statement.

Your original check will not be returned. We will destroy the original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make a transfer up to two (2) times.

**B. POST-CONFIRMATION**

On January 26, 1996, Congress enacted Public Law 104-99, which extended the accrual of quarterly fees beyond confirmation until a case is converted, dismissed, or closed. The required remittance is based on all disbursements made by the debtor during each quarter. The fee schedule set forth above equally applies to post-confirmation disbursements.

The "Post-Confirmation Quarterly Summary Report" referenced above allows the United States Trustee to monitor the appropriate receipt of quarterly fees after confirmation.

**C. NOTICE OF INTEREST ASSESSMENT**

Pursuant to 31 U.S.C. §3717 the United States Trustee Program assesses interest on unpaid chapter 11 quarterly fees charged in accordance with 28 U.S.C. §1930(a)(6). Interest assessed on past due amounts will appear on the quarterly statements mailed to debtors. The interest rate charged is the rate in effect as determined by the Treasury Department at the time the chapter 11 account becomes past due. If payment of the full past due amount is received within 30 days of the date of the notice of the initial interest assessment, the interest will be waived.

**FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR  
DISMISSAL OF A CHAPTER 11 CASE, PURSUANT TO 11 U.S.C.  
§1112(b)(4)(K)**

**NOTICE**

**DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. §1930(A)(6)**

Please be advised that, pursuant to the Debt Collection Improvement Act of 1996, Public Law 104-134, Title III, §31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. §3701, the United States Trustee intends to use the debtor's Taxpayer Identifying 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 debt, 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; (4) engage private collection agencies to collect the debt; and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

**7. Pre-Petition and Post-Petition Debt**

The debtor may not pay any pre-petition obligations unless authorized by the

Bankruptcy Code or by Court order. The debtor must pay all obligations arising out of its operations after the filing of the petition in full when due.

**8. Sale of Estate Property and Incurring Debt**

The debtor must obtain prior approval of the Court to use, sell, or lease property of the estate, except in the ordinary course of business. The debtor may not use cash collateral, as defined by 11 U.S.C. §363(a), without the consent of the secured creditor or approval by the Court.

The debtor must obtain Court approval before it may incur unsecured or secured debt other than in the ordinary course of business.

**9. Employment and Compensation of Professionals**

The employment of professionals (including, but not limited to lawyers, accountants, appraisers, or auctioneers) must be approved by the Court 11 U.S.C. §327. Generally, professionals will not be compensated for services rendered prior to Court approval. No payments may be made to such professionals without Court authorization after notice to creditors and a hearing 11 U.S.C. §330. A corporate debtor must be represented by an attorney; such debtor may not appear pro se.

**10. Change of Address or Telephone Number**

The debtor must notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within 10 days of the change.