



U.S. Department of Justice

Office of the United States Trustee

780 Regent Street - Suite 304
Madison, WI 53715
(608) 264-5522

TO: DEBTORS IN POSSESSION, TRUSTEES AND THEIR COUNSEL
FROM: THE UNITED STATES TRUSTEE
SUBJECT: **CHAPTER 11 OPERATING INSTRUCTIONS AND REPORTING REQUIREMENTS**

The United States Code, Title 28, Section 581(a)(11) provides for the appointment of a United States Trustee for the Northern District of Illinois and the State of Wisconsin. 28 U.S.C. §586(a)(3) provides that the United States Trustee shall supervise the administration of Chapter 11 cases within the districts. Sections 1106 and 1107 of Title 11 of the United States Code (hereinafter "the Bankruptcy Code") require the Trustee or Debtor In Possession (hereinafter "DIP") to furnish such information regarding the case as the United States Trustee requires.

The following requirements of the United States Trustee are applicable for all DIPs in a Chapter 11 case under the Bankruptcy Code. **FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL RESULT IN A MOTION OR APPLICATION TO THE BANKRUPTCY COURT FOR APPROPRIATE RELIEF, INCLUDING DISMISSAL OF THE CASE, CONVERSION TO ANOTHER CHAPTER OF THE BANKRUPTCY CODE, APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER, OBJECTION TO ATTORNEY'S FEE, OBJECTION TO DISCHARGE AND/OR ASSESSMENT OF COSTS, FEES, PENALTIES, OR DAMAGES AGAINST INDIVIDUALS OR OTHER ENTITIES FOR SUCH NONCOMPLIANCE.**

OPERATING INSTRUCTIONS AND REPORTING REQUIREMENTS

1. RECEIPT AND VERIFICATION. In order to ensure appropriate compliance with the Operating Instructions and Reporting Requirements (hereafter referred to as "OIRR") it is imperative that counsel carefully review these requirements with the DIP immediately upon receipt. The DIP and counsel shall acknowledge receipt of the OIRR and furnish to the United States Trustee verification that they have read, understand and agree to perform in accordance with the requirements by executing the enclosed verification and returning it within five (5) days [*See Attached EXHIBIT "A"*]. This receipt needs to be completed only once. If the DIP is a married couple filing jointly, a separate receipt & verification needs to be executed by each spouse.

2. BANK ACCOUNTS, BOOKS, AND RECORDS. Immediately upon the filing of the Chapter 11 case, the DIP is required to close previous bank accounts and open one or more accounts designated as Debtor In Possession accounts. "Debtor In Possession" (**not** "DIP") shall be imprinted on the face of all checks issued by the Debtor. All money received by the DIP must be deposited into the DIP account. All disbursements made by a Debtor must be made by check or draft drawn on the DIP account.

The DIP is required to complete and sign the Bank Account Declaration of Debtor [*See Attached EXHIBIT "B"*].

All DIP funds and bank accounts must be collateralized in accordance with the provisions of 11 U.S.C. §345. Debtors shall notify the United States Trustee when DIP funds at a banking institution exceed the insured limitation of \$250,000.00 per customer.

Pre-petition books and records of the debtor should be closed as of the date of the filing of the petition. Thereafter new books and records should be kept for the DIP.

Prior to the Initial Debtor Interview, all debtors are to provide to the United States Trustee copies of the debtor's two most recently filed income tax returns, with all schedules and attachments, as well as

balance sheets and profit and loss statements for the year-to-date period ending with the petition date and the two prior fiscal years.

3. TAX DEPOSITS. The DIP shall set aside all monies required to be withheld from employees or collected from others for taxes under any law of the United States or any other governmental unit during the pendency of the proceeding [see Bankruptcy Rule 2015(a)(3)]. The DIP shall pay all federal taxes due to the Internal Revenue Service through a bank or other authorized financial institution, as prescribed by Circular E, Employer's Tax Guide.

Note that under 28 U.S.C. § 960, any officers and agents conducting any business under authority of a United States court are subject to all Federal, State, and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation. Taxes are required to be paid on or before the due date of the tax under applicable non-bankruptcy law.

4. PROOF OF INSURANCE COVERAGE. All DIPs must maintain adequate insurance and pay all post-petition premiums when due. Within five days of the filing of the petition, the DIP must furnish to the Office of the United States Trustee an Insurance Statement summarizing all insurance policies [*See Attached EXHIBIT "C"*] and Certificates of Liability and Property Insurance [*See Attached EXHIBIT "D" and "D-1"*] for each policy. The certificate should clearly list the DIP's name and case number. Such insurance shall include worker's compensation, general liability, fire, theft, and motor vehicle insurance, together with all other insurance coverage normally and customarily used in the business. The Property Insurance Certificate should have attached a Schedule of Covered Property.

The debtor shall instruct its insurer(s) to list the United States Trustee as a certificate holder. Upon expiration or termination of any insurance coverage, the debtor shall immediately notify the United States Trustee and provide proof of renewal or replacement coverage. Section 1112(b)(4)(C) provides that failure to maintain appropriate insurance that poses a risk to the estate or to the public is cause for dismissal or conversion of the case chapter 7. It is the responsibility of the Debtor to provide

the required proof of insurance coverage, and failure to do so may result in the U.S. Trustee filing a motion to dismiss or convert this case. However, the Office of the United States Trustee also asserts and reserves the right to contact the DIP's insurance companies and agents directly to obtain proof of insurance coverage without further notice to the DIP.

5. INVENTORY. If the Bankruptcy Court so directs, the DIP shall conduct a physical inventory of all its real and personal property as of the filing of the petition. The DIP must file the complete inventory with the Bankruptcy Court and transmit a copy to the United States Trustee within 30 days [see Bankruptcy Rule 2015(a)(1)].

6. USE OF ESTATE PROPERTY. Section 363 of the Bankruptcy Code permits the DIP to use estate property in the ordinary course of business. Estate property may *not* be used to pay professional fees, including those of attorneys and accountants, or *pre-petition* debts, including claims of secured creditors and landlords, except pursuant to order of Court. Further, to the extent that a secured creditor has a lien on cash or its equivalent in the DIP's possession, the DIP may not use such cash except with the secured creditor's consent or pursuant to order of the Court. Failure to abide by these requirements may result in the United States Trustee's requesting the Court to terminate your status as DIP and place estate property in the hands of a Court approved trustee.

7. MONTHLY OPERATING REPORTS. For financial reporting purposes, a Chapter 11 DIP is a different entity from that which existed prior to the commencement of the bankruptcy. The monthly operating report ("report") required by the United States Trustee to be filed by all Chapter 11 DIPs is designed to reflect changes in the financial position of a DIP during the pendency of a Chapter 11 case. Each report is a sworn statement by the respective DIP and must be as accurate as possible.

The initial report filed by a DIP in its Chapter 11 case should cover the period from the date of the commencement of the bankruptcy case to the end of the month in which the case was commenced; however, if the order for relief is after the 15th day of a calendar month, the activity for the remainder of this first month can be included in the report for the next calendar month. The opening balance for

inventory, cash and receivables in the initial report should reflect the DIP's financial condition as of the date the case commenced. Liabilities of the DIP should always start at zero, since the DIP is a "new" reporting entity. Pre-petition liabilities should not be included in the DIP reports.

The monthly report must be dated and signed by the DIP. Reports with the scanned original signature of an officer, member, or owner of the DIP shall be filed with the Court, using the Electronic Case Filing (ECF) System. Monthly reports shall be filed not later than the 21st of each month following the period covered by that report. **Reports must be complete, signed, contain all necessary attachments and be filed with the Court before they will be deemed to have met the reporting requirements.**

8. REPORTS OF FINANCIAL INFORMATION ON ENTITIES IN WHICH THE ESTATE HOLDS A CONTROLLING OR SUBSTANTIAL INTEREST. Bankruptcy Rule 2015.3 requires DIPs to file financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation and in which the estate has a controlling interest. The appropriate form (Official Form 426) must be filed on the case docket and can be found on the United States Courts' website at: <http://www.uscourts.gov/file/22509/download> . The reports must include a valuation of the entity, financial statements (balance sheet, income statement, and cash flow statements), and a description of operations. These reports must be filed with the court seven days prior to the First Meeting of Creditors. The reports then need to be updated and filed with the court every six months until a plan is confirmed, or the case is converted or dismissed.

9. QUARTERLY FEES. DIPs are required to pay a fee for each calendar quarter during which your case is pending. The quarterly fee amount is based on the disbursements made during that particular quarter. Quarterly fees are not prorated. A minimum fee of \$325.00 is due each quarter even if no disbursements are made. The due date for payment is 30 days after the quarter ends. Thus, the fees for the quarter of January, February, and March are due by April 30th. The fees for the quarter of April, May and June are due by July 31st. The fees for the quarter of July, August, and September are

due by October 31st and the fees for the quarter of October, November, and December are due by January 31st. Even if your case is being jointly administered with another case, you must remit a separate fee for each case. The UST fee schedule printed below is the schedule of fees at the time this document was prepared. However, it is subject to change and you should check online for the current schedule at <https://www.justice.gov/ust/chapter-11-quarterly-fees>. Please note that the online fee schedule is the official schedule and this printed schedule is for sample reference purposes only.

FEE SCHEDULE

<u>Total Quarterly Disbursements</u>	<u>Quarterly Fee</u>
\$0 to \$14,999.99	\$ 325.00
\$15,000.00 to \$74,999.99	\$ 650.00
\$75,000.00 to \$ 149,999.99	\$ 975.00
\$150,000.00 to \$ 224,999.99	\$ 1,625.00
\$225,000.00 to \$ 299,999.99	\$ 1,950.00
\$300,000.00 to \$ 999,999.99	\$ 4,875.00
\$1,000,000.00 or more	1% of quarterly disbursements or \$250,000.00, whichever is less.

MAILING YOUR PAYMENT: *During the pendency of your Chapter 11 case, quarterly fees should be paid to the order of "U.S. Trustee" and mailed to the United States Trustee Payment Center. Effective May 15, 2019, that address is: United States Trustee Payment Center, P.O. Box 6200-19, Portland, OR 97228-6200. This address also appears on the instructions and payment form included with the monthly quarterly fee statement. The Payment Center is not a United States Trustee office; it is a bank that only processes your payment. **The Payment Center does not read any notes or supplemental material you may send with your payment. Failure to remit timely payments may result in your being served with a "Notice Of Unpaid Fees And Impending Collection Actions."** [See *Attached Exhibit "G"*]. Interest will be charged on unpaid quarterly fees, pursuant to 31 U.S.C. 3717.*

If you seek to voluntarily dismiss your case, you must tender a copy of the check representing payment of the quarterly fee together with a completed U.S. Trustee Quarterly Fee Statement [EXHIBIT "E"] to the United States Trustee prior to your case being dismissed. Failure to tender the quarterly fee may result in the United States Trustee's opposing dismissal of the case and requesting instead conversion to Chapter 7 liquidation.

Failure to pay the quarterly fee is cause for the involuntary conversion or dismissal of your case. 11 U.S.C. §1112(b)(4)(K). Filing a false report may subject you to civil liability under 31 U.S.C. § 3729 (a)(7) and to criminal penalties under 18 U.S.C. § 1001 and § 1621. All fees must have been paid, or the plan must provide for the payment of the fees on its effective date, for a Plan of Reorganization to be confirmed by the Court. 11 U.S.C. §1129(a)(12). **Failure to pay quarterly fees by the effective date will be considered grounds for the revocation of confirmation under 11 U.S.C. §1144.**

Finally, please take note that a Chapter 11 debtor's failure to pay quarterly fees to the United States Trustee pursuant to 28 U.S.C. §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, §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.

10. POST-CONFIRMATION QUARTERLY REPORTS. Although monthly operating reports are not required for periods after confirmation, the Debtor or other plan proponent is required to file quarterly reports on the status of plan payments [*See Attached EXHIBIT "F"*] and the Quarterly Fee Statement [*EXHIBIT "E"*]. See Bankruptcy Rule 2015(a)(5). These reports are due 30 days after the calendar quarter ends. So, for example, if the plan is confirmed on June 20th, the final operating report covers the period from June 1st to June 20th. The first report on the status of plan payments will be due on July 31st and should cover the period from June 21st through June 30th. *These reports must be timely filed by all post-confirmation Chapter 11 debtors until the case has been converted, dismissed or closed by final decree.*

Questions regarding these Operating Instructions and Reporting Requirements should be referred to the bankruptcy analyst or paralegal assigned to your case. The Office of the United States Trustee reserves the right to require additional information as may be necessary for the administration of the case.

Revised: 4/19

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF

RECEIPT AND VERIFICATION

TO: PATRICK S. LAYNG, UNITED STATES TRUSTEE

CASE NAME: _____

CASE NO.: _____

I, _____ declare under penalty of perjury that I am the duly authorized representative of the debtor in possession designated to operate the business of _____, and as such I hereby acknowledge receipt from the United States Trustee of the Operating Instructions and Reporting Requirements. I have read and understand the instructions and agree to comply with said instructions.

SIGNED: _____

DATED: _____

I, _____, being counsel for the debtor in possession, have reviewed the Operating Instructions and Reporting Requirements with the person signing above.

SIGNED: _____

DATED: _____

BANK ACCOUNT DECLARATION OF DEBTOR IN POSSESSION

Case Name: _____

Case Number: _____

I hereby declare under penalty to perjury that all pre-petition bank accounts of _____
_____ as listed below were closed on _____.

Bank Name	Name on Account	Account No.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I further hereby declare under penalty of perjury that all monies have been transferred to the following Debtor-in-Possession bank accounts:

Bank Name	Name on Account	Account No.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I declare under penalty of perjury that the information provided above and on any attachment hereto is true to the best of my knowledge and belief.

Date

Signature of Debtor or Debtor Representative

Title of signer, if applicable

Printed Name of signer

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF _____
_____ DIVISION

CASE NAME: _____ CASE NO.: _____

U. S. TRUSTEE QUARTERLY FEE STATEMENT
Pursuant to Fed. R. Bankr. P. 2015(a)(5)

FOR CALENDAR QUARTER ENDING _____, 20__

DISBURSEMENTS*

1.	<u>MONTH</u>	<u>DISBURSEMENT</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**TOTAL DISBURSEMENTS
FOR QUARTER** \$ _____

- | | | |
|----|---|----------|
| 2. | QUARTERLY FEE OWED PURSUANT TO
28 U.S.C. §1930(A)(6) | \$ _____ |
| 3. | QUARTERLY FEE PAID
(Attach proof of payment) | \$ _____ |
| 4. | AMOUNT OF UNPAID FEES (IF ANY) | \$ _____ |

I, _____, acting as the duly authorized agent for the Debtor In Possession (Trustee) (Plan Administrator) declare under penalty of perjury under the laws of the United States that I have read and certify that the figures, statements, disbursement itemizations, and account balances as listed in this U.S. Trustee Quarterly Fee Statement are true and correct as of the date of this report to the best of my knowledge, information and belief.

DATED: _____
_____ For the Debtor in Possession (Trustee) (Plan Administrator)

(Print or type name and capacity of person signing this Declaration).

* For periods subsequent to plan confirmation, this includes payments pursuant to the confirmed plan as well as all other disbursements.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF _____
_____ DIVISION

CASE NAME: _____ CASE NO.: _____

U. S. TRUSTEE QUARTERLY REPORT ON STATUS OF PLAN PAYMENTS
FOR CALENDAR QUARTER ENDING _____, 20__

1. Were any payments required to be made under the plan this past calendar quarter? yes _____ no _____
2. If yes, were all required payments made? yes _____ no _____
3. If not, on a separate schedule, state the name, address and telephone number of each unpaid creditor, the amount due and the reason payment was not made.

I, _____, acting as the duly authorized agent under the confirmed plan declare under penalty of perjury under the laws of the United States that I have read and certify that the information listed in this U.S. Trustee Quarterly Report on Status of Plan Payments is true and correct as of the date of this report to the best of my knowledge, information and belief.

DATED: _____

For the Debtor in Possession (Trustee) (Plan Administrator)

(Print or type name and capacity of person signing this Declaration)



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
AND NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION

CASE NAME: _____ CASE NO.: _____

Office of the U.S. Trustee
780 Regent Street, Suite 304
Madison, WI 53715

Notice Date:
Account Number:
Amount Due:

NOTICE OF UNPAID FEES AND IMPENDING COLLECTION ACTIONS

According to the accounts receivable records, you owe the above amount to the United States Trustee in unpaid quarterly fee charges. If you do not pay this debt or take other action described below before _____, the United States Trustee will submit your debt to the U.S. Department of Treasury for further collection. Interest, penalties, and other charges for costs may be added to the amount you owe. Payment must be sent to the above address.

Once your debt is sent to the Department of Treasury, Treasury will take all authorized collection actions, including reporting the debt to credit reporting agencies and engaging private collection agencies as necessary. The debt will also be submitted to the Treasury Offset Program which means the debt will be deducted from eligible payments that are owed to you by the federal government, including but not limited to tax refunds. The Treasury Offset Program is authorized by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996. You may not receive another notice before your payment is offset.

Before we submit your debt to the Treasury Offset Program, we are required to tell you the following: (1) you may inspect and copy our records related to your debt; (2) you may request a review of our determination that you owe this debt; and (3) you may enter into a written repayment agreement if it is acceptable to the United States Trustee. If you are interested in these options, please send a written request to the above address.

If you make or provide any knowingly false or frivolous statements, representations, or evidence, you may be liable for penalties under the False Claims Act (31 U.S.C. §§ 286, 287, 1001, and 1002), or other applicable statutes.

If you have any questions about this letter or your rights, you should immediately contact your local field office at the above address.