

**ADVISORY COMMITTEE  
ON  
BANKRUPTCY RULES**

**TUCSON, ARIZONA  
MARCH 21-22, 2002**



## ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 21-22, 2002  
Tucson, Arizona

### Agenda

#### Introductory Items

1. Approval of minutes of March 2001 meeting.
2. Report on the January 2002 meeting of the Committee on Rules of Practice and Procedure (Standing Committee). (The Chairman and the Reporter will provide an oral report.)
3. Report on the January 2002 meeting of the Committee on the Administration of the Bankruptcy System. (This will be an oral report.)

#### Action Items

4. Consideration of comments received to the preliminary draft of proposed amendments to Rules 1007, 2003, 2009, 2016, proposed new Rule 7007.1, and Official Forms 1, 5, and 17, published August 2001.
5. Consideration of preliminary draft of proposed privacy-related amendments to Rule 1005 (Caption) and to Official Forms 1,3, 5, 6, 7, 8, 9, 10, 16A, 16C and 19, published January 2002, and the comments received to date. Preliminary draft of official forms contains additional amendments to Official Forms 5 and 10 not related to privacy.
6. Consideration of revised proposal to amend Rule 2014 concerning Employment of Professional Persons.
7. Consideration of amendments to Official Form 6, Schedule G - Executory Contracts and Unexpired Leases to provide for notice to the other party to the contract or lease.
8. Consideration of amendments to Rule 4003 suggested by Bankruptcy Judge Barry Russell concerning allocations of burdens of proof.
9. Consideration of suggestion of the Bankruptcy Judges Advisory Group for amending Rule 4008 to set deadline for filing a reaffirmation agreement.
10. Consideration of suggestion to amend Rule 5002(a) to conform to the limitations on employment of a judge's relative set forth in the Code of Conduct for United States Judges.

14. Report on implementation of electronic filing in the bankruptcy courts and the model local rules for electronic filing of documents approved by the Judicial Conference in September 2001.
15. Suggestions concerning claims handling procedures from ABA Business Bankruptcy Committee, Subcommittee on Claims.
16. Progress chart of proposed amendments.

Administrative Matters

*Next meeting reminder:* October 9-10, 2002, Cape Codder Resort, Hyannis, MA.

17. Discussion of date and location for March 2003 meeting.



## ADVISORY COMMITTEE ON BANKRUPTCY RULES

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Subcommittees – February 2002

### Subcommittee on Forms

Chairman: Judge James D. Walker, Jr.

Members: Judge Christopher M. Klein  
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Eric L. Frank, Esquire  
J. Christopher Kohn, Esquire  
James J. Waldron, ex officio

### Subcommittee on Style

Chairman: Professor Alan N. Resnick

Members: Judge Christopher M. Klein  
Professor Mary Jo Wiggins

### Subcommittee on Attorney Conduct and Health Care

Chairman: Judge Robert W. Gettleman

Members: Judge Ernest G. Torres  
Judge Mark B. McFeeley  
Howard L. Adelman, Esquire  
K. John Shaffer, Esquire

### Subcommittee on Technology and Cross Border Insolvency

Chairman: Judge Thomas S. Zilly

Members: Judge Bernice B. Donald  
Judge Norman C. Roettger, Jr.  
Judge Mark B. McFeeley

Subcommittee on Privacy and Public Access

Chairman: Howard L. Adelman, Esquire

Members: Judge Robert W. Gettleman  
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Subcommittee on Consumer Issues

Chairman: Eric L. Frank, Esquire

Members: Judge Bernice B. Donald  
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Subcommittee on Business Issues

Chairman: Professor Alan N. Resnick

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Liaisons

Liaison to Advisory Committee on Civil Rules

Judge A. Thomas Small

Liaison to Joint Technology Committee (of Standing Committee)

Judge Thomas S. Zilly  
Professor Jeffrey W. Morris, ex officio

Liaison to Ad Hoc Working Group on Attorney Conduct (of Standing Committee)

Judge Robert W. Gettleman  
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## ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 15 -16, 2001  
New Orleans, Louisiana

### Draft Minutes

The following members attended the meeting:

Bankruptcy Judge A. Thomas Small, Chairman  
District Judge Robert W. Gettleman  
District Judge Bernice B. Donald  
District Judge Norman C. Roettger, Jr.  
District Judge Thomas S. Zilly  
Bankruptcy Judge A. Jay Cristol  
Bankruptcy Judge James D. Walker, Jr.  
Bankruptcy Judge Christopher M. Klein  
Professor Mary Jo Wiggins  
Professor Alan N. Resnick  
Eric L. Frank, Esquire  
Howard L. Adelman, Esquire  
K. John Shaffer, Esquire  
J. Christopher Kohn, Esquire

Professor Jeffrey W. Morris, Reporter, attended the meeting. District Judge Ernest C. Torres was unable to attend. District Judge Thomas W. Thrash, Jr., liaison to the Committee on Rules of Practice and Procedure (Standing Committee), attended. District Judge Adrian G. Duplantier, former chairman of the Committee attended part of the meeting, and Bankruptcy Judge Donald E. Cordova, a former member, also attended. Bankruptcy Judge Dennis Montali attended as a representative of the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee). Peter G. McCabe, Secretary to the Standing Committee and Assistant Director of the Administrative Office of the United States Courts (Administrative Office), also attended.

The following additional persons attended the meeting: Martha L. Davis, Acting Director of the Executive Office for United States Trustees (EOUST); James J. Waldron, Clerk, United States Bankruptcy Court for the District of New Jersey; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office; Patricia S. Ketchum, Bankruptcy Judges Division, Administrative Office; and Robert Niemic, Research Division, Federal Judicial Center.

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee. Votes and other action taken by the Committee and assignments by the chairman appear in **bold**.

## Introductory Matters

The Chairman welcomed the members, liaisons, advisers, and guests who were attending their first meeting.

### **The Committee approved the minutes of the September 2000 meeting.**

The Chairman reported that he and the Reporter had attended the January 2001 meeting of the Standing Committee, but that there were no actions taken affecting the Committee.

Judge Gettleman said he and the Reporter had attended the January 2001 meeting of the Standing Committee's working group on attorney conduct. The group discussed a draft Federal Rule of Attorney Conduct (FRAC 1) that would prescribe "dynamic conformity" with the attorney conduct rules of the state in which the federal court is located. Professor Morris said that Congress may require the judiciary to prescribe rules on attorney conduct and that the Department of Justice would prefer a uniform national rule governing its attorneys. He added that if a FRAC 1 ever is prescribed there may be a need to develop a FRAC 2 for bankruptcy courts, but that the Committee does not need to take any action now.

Professor Morris said he also attended a meeting of the mass torts working group of the Advisory Committee on Civil Rules which is considering amendments to Civil Rule 23 governing class actions. The proposals the group is considering, he said, include establishing an appointment process for an attorney for a class. Other proposals include affording greater preclusive effect to a court's order refusing to certify a class and any order de-certifying a class or approving a settlement.

## Action Items

The Committee took up consideration of the comments to the preliminary draft amendments that were published in August 2000.

Rule 2014. The Reporter summarized the comments the Committee had received, and noted that the proposed amendments to Rule 2014 also had been the focus of the Committee's public hearing, held January 26, 2001, in Washington, DC. Commentators who opposed the proposed amendments included Chief Judge Carolyn Dineen King, United States Court of the Appeals for the Fifth Circuit, and Judge Edith Hollan Jones, a member of that Court. Professor Morris said that Professor Todd Zywicki, George Mason University Law School, who testified at the hearing, had reiterated many of the views expressed by Judge King and Judge Jones. All had opposed revising the current rule's standard of the disclosure of "all connections" with the parties, parties in interest in the case, and the professionals employed by them to the published proposal that would require disclosure of those connections "relevant to determining whether the person is disinterested under § 101."



Some Committee members said that they were surprised that some commentators interpreted the proposed amendment as designed to restrict the disclosures a professional must make and noted that at least one witness at the hearing, Robert A. Greenfield, Esquire<sup>1</sup>, had said he did not consider the proposed amendment to require less disclosure than the current rule. Some members noted that the existing rule is not being complied with, that professionals already screen out connections they believe are not relevant, such as “an old fraternity brother who is president of a major creditor, a credit card issued by a creditor bank that has an outstanding balance, or a life insurance policy with a creditor.” One member said professionals, especially those who are members of large firms, do so to avoid filing 2-inch thick disclosures full of mostly trivial connections which can overwhelm the court and the United States trustee with information. Chairman Small said he had sent a transcript of the hearing to Judge Jones and had received a second letter from her that indicated she might be amenable to some amending of the “all connections” standard. Based on a conversation, he said, he believed Judge Jones might accept a “relevant” standard for attorneys and accountants employed by parties and parties in interest and something in between “all” and “relevant,” something that is “not de minimus,” as to principals.

A member pointed out that a debtor’s attorney often does not know the identities of the attorneys and accountants for the various creditors and cannot appropriately obtain this information. Yet, the existing rule does not contain any mitigating phrase like “to the best of the professional’s knowledge” with the respect to the disclosure statement to be submitted by the professional, although the applicant (*e.g.*, the debtor) is required to disclose only “to the best of the applicant’s knowledge.” (See Rule 2014(a).)

Professor Morris said the Subcommittee on Attorney Conduct, Including Rule 2014 Disclosure Requirements, had met in January by conference call and during the afternoon before the meeting and had determined that the best way to meet the comments opposing the proposed amendments was to present to the Committee the two re-drafts contained in the agenda book and certain further modifications, which Professor Morris described. The subcommittee’s objectives were to propose relevancy standards for attorneys and accountants employed by creditors and other parties in interest and to reassure Judge Jones and others that the Committee is not proposing to lower the standard for disclosure. Professor Resnick expressed concern about using two standards. He asked why “relevant” would not work for creditors if it would work for attorneys. Professor Morris said the sense of the subcommittee was that a connection with a party is more serious than a connection with someone who merely represents a party. Judge Cristol said there seemed to be a clear understanding at the hearing, and among the bench and bar generally, that the attorney remains at risk should the court later determine that the person has a conflict of interest (11 U.S.C. § 327(c)) or is not disinterested (11 U.S.C. § 328(c)). Judge Gettleman said the “debacles” under the existing rules, (See In re Leslie Fay), show that the goal should be to draft a rule that will be complied with. Mr. Adelman said he disagreed with Judge

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<sup>1</sup>Mr. Greenfield, of Stutman, Treister & Glatt, Los Angeles, CA, appeared on behalf of the National Bankruptcy Conference.

King and Judge Jones that lawyers will underdisclose if the amendments published by the Committee are adopted. Rather, he said, they will overdisclose, and Judge Duplantier added that overdisclosure effectively equals no disclosure.

Judge Duplantier suggested borrowing the language used in 28 U.S.C. § 455 as the standard for disqualifying a judge from deciding a case, that the individual's "impartiality might reasonably be questioned." Mr. Shaffer suggested that such an adaptation possibly could be phrased as "connections that may cause the court or a party in interest reasonably to question whether the person is disinterested." **The Chairman asked the Reporter to prepare a new draft for the following day's session that would incorporate the changes approved by the subcommittee and the language suggested by Mr. Shaffer.**

Ms. Davis inquired whether, under the second draft rule developed in response to the comments, an attorney would disclose "an adverse interest." Judge Montali responded that if the adverse interest were de minimus, the judge would approve the employment anyway. More troublesome, he said, are the applications that state that the attorney is disinterested and holds no adverse interest "except," and the disclosures that follow clearly show connections that are more than de minimus and interests that are adverse.

Judge Gettleman called the Committee's attention to a provision in the re-drafts that would require the attorney or other professional to disclose the procedures used to develop the information in the statement and said the subcommittee was uncertain whether including such a provision would require republication. Ms. Davis said the United States trustees would like to have the information, but that she was unsure whether requiring it in every case would be productive. Judge Small said he does not think conflict-checking procedures should be disclosed at the time the employment is approved, because it might imply approval of the procedures and compromise any later decision that a particular undisclosed connection or conflict requires the termination of the employment and disgorgement of fees. Judge Walker said he would be unable to assess the adequacy of an attorney's conflict-checking procedures without substantial information about the nature and depth of the law firm's database and would prefer not to have the information unless a party objects to the employment. Judge Small agreed that the professional's conflict-checking process properly is a defense to be considered only if an objection is raised.

Professor Resnick, on behalf of Bankruptcy Judge Allan L. Gropper, a new judge in the Southern District of New York, raised a question about subdivision (c) of the rule, the provision that specifies the service list for the application. Judge Gropper was concerned, he said, because it might conflict with the customary practice in his district whereby the judge will sign an interim retention order on the first day of the case, when there has not been time to serve those named on the service list. Professor Morris responded that the Committee Note already states that the court can act without a hearing, that a party can object, and that the court can vacate the order. He said the Committee always has assumed that the court would act on the first day. Professor Resnick requested that the Committee Note be amended to add that the court can act before the parties

have been served. Judge Cristol said a court that has concerns about the timing of service can put in its order that any party can object and request and immediate hearing.

Mr. Frank noted that in the re-drafts the requirement that an attorney provide the information required to be disclosed under § 329(a) of the Code had been deleted. He said he was not convinced that Rule 2016(b) is adequate for the situation in which an application for employment would be filed under Rule 2014. The statement prescribed in Rule 2016(b) is not required to be filed for 15 days after the case is commenced, he said, and is intended to provide the court with information about fees paid in cases in which fee applications are not filed. **There was no objection to his suggestion that the provision referring to § 329(a) be restored.** Professor Wiggins noted that in the first re-draft, at tab 5a, page 16, line 22, there was an unnecessary “that.” The Reporter said he was aware of several similar lines and intended to review the entire amended rule, once the Committee had approved the substance, for the purpose of deleting all extraneous “thats.” He noted also that all amendments approved by the Committee would be reviewed by the Style Subcommittee and by the Standing Committee’s Style Subcommittee.

On the second day of the meeting, the Committee considered a new draft that the Reporter had prepared based on the Committee’s discussion. The Reporter explained that the new draft contained a subdivision (b)(3) that included the phrase “not de minimus” and provided three alternative subdivisions (b)(4) on the theme of “reasonably questioning.” Professor Resnick said he would strike subdivision (b)(3) (“not de minimus”) and proceed only with one of the versions of subdivision (b)(4). He noted that in all other respects, this action would retain the published draft. Mr. Adelman said the Committee should keep lines 24-26 of subdivision(b)(3), keeping disclosure of any interest in the debtor and avoiding variation from the statutory standard for “disinterested” in § 101 of the Code. In addition, he said, the Committee should keep one of the versions of subdivision (b)(4). In response to a question about whether the word “reasonably” is redundant in the context of the rule, Professor Resnick said it would require broader disclosure than would “relevant,” because the lawyer or other professional could not be conclusory or subjective but would have to think about what others could or might consider as questionable. **A motion to proceed using lines 24 - 26 and lines 33 -35 passed without objection, subject to review by the style subcommittee.** Thus subdivision (b)(3) through (b)(4) would read:

- (3) any interest in, relationship to, or connection the person has that is not de minimus with the debtor;
- (4) any interest, connection, or relationship the person has that may cause the court or a party in interest to reasonably question whether the person is disinterested under § 101;

Rule 9014(d). The Reporter said the proposed amendment to Rule 9014(d) had drawn the largest number of comments, most of them opposed to the change. The Committee’s intent, in

referencing Civil Rule 43(a), to emphasize the similarity between contested matters initiated by motion and civil trials, appeared to have been misunderstood by some commentators. In civil actions, motions governed by Rule 43(e) are not comparable to motions that initiate contested matters in bankruptcy cases, because motions in civil actions generally do not result in final resolution of the underlying matter. Many courts, however, have a long-standing practice of accepting direct testimony by affidavit, subject to the right of the opposing party to conduct live cross examination of the witness. Moreover, both the Ninth Circuit and the Second Circuit have authorized this practice. The Chairman suggested that changing the Rule 43(a) reference to simply "Rule 43" would accommodate those who had opposed the amendment. Judge Donald agreed that the Chairman's approach would provide needed flexibility without disturbing what courts are doing now. Judge Small said the Committee also could delete any reference to Rule 43 and state that testimony should be taken as in an adversary proceeding, leaving Rule 9017 to prescribe the procedure. Judge Klein asked why Rule 9014 needs to say anything when Rule 9017 unquestionably applies. Professor Resnick responded that the reason is historical; the Committee decided several years prior to the meeting that a contested matter is litigation and, if there is a factual dispute, it should be heard according the trial rules. He added that, rather than refer simply to "Rule 43," he would prefer to state that testimony in a contested matter should be taken as in an adversary proceeding. Judge Zilly said, if there are some facts at issue--such as competing valuations--but no material issue, the use of affidavits alone should be permitted, rather than requiring the parties to bring in a distant witness. **A motion was made to amend the preliminary draft to add the word "material" in line 33 and delete the reference to Rule 43(a).** Judge Zilly said the motion still would deprive parties of the ability to stipulate that the matter should be determined on affidavits. He said **the phrase "at trial" also should be deleted so the rule would require testimony simply "as in an adversary proceeding," and there was no objection to amending the motion.** Professor Resnick said, if the phrase "at trial" were deleted from the rule, the reference to Rule 43(a) should remain in the Committee Note. Others disagreed. After further discussion, **the motion passed by a vote of 7 to 4. A motion to delete from the Committee Note the sentence referring to Rule 43(a) failed by a vote of 3 to 8. A sentence will be added to the note concerning agreement of the parties to submission of a matter on affidavits.**

**The Committee, by consensus, approved one new rule and amendments to the following rules as published for comment: Rule 1004, new Rule 1004.1, Rule 2004, Rule 2015, Rule 4004, Rule 9014(e) and Rule 9027.**

Official Form 1. In light of the concern about possible self-incrimination expressed in the comment on the form as published, Mr. Shaffer suggested amending proposed Exhibit "C" to delete from numbered paragraph 2 the word "dangerous." **The Committee approved the form as so amended and further approved requesting the Judicial Conference to prescribe an effective date of December 1, 2001, to permit publishers and bankruptcy software vendors to print and distribute the form. The Committee also approved adding a checkbox labeled "Clearing Bank" to the form to conform to amendments to the Bankruptcy Code creating a new subchapter under which these entities can be liquidated.**

Official Form 15. At its September 2000 meeting, the Committee approved an amendment to the form to conform it to an amendment to Rule 3020 that is expected to become effective December 1, 2001. **The Committee approved requesting the Judicial Conference to prescribe an effective date for the form of December 1, 2001,** to match the expected effective date of the amendment to Rule 3020.

Official Form 5 and Official Form 17. The Bankruptcy Administration Committee had requested the Committee to consider amending the involuntary petition form (Official Form 5) and the notice of the appeal form (Official Form 17) to include a notice that a child support creditor or child support creditor's representative who files a form stating the details of the child support debt, its status, and "other characteristics" is exempt from paying filing fees. The Director of the Administrative Office has issued a form that a child support creditor or child support creditor's representative can use for the purpose of qualifying for the filing fee waiver. **The Committee approved proposed amendments with the addition of the phrase "in connection with the filing of the involuntary petition" at the end of the notice on Official Form 5 and the moving of the notice to the second page of the form, and with the further insertion of the words "filing or docketing" before the word "fee" on Official Form 17.**

Rule 2003(b) and Rule 2009. The Reporter explained that the proposed amendments would conform the rules to the newly enacted provisions of the Bankruptcy Code concerning the liquidation of uninsured State banks that operate as multilateral clearing organizations ("Clearing Banks"). After a short discussion, **the Committee approved the Reporter's draft amendments subject to review by the Style Subcommittee.** As these amendments only conform the rules to statutory changes, Mr. Rabiej said publication would not be necessary.

Rule 1007 and New Rule 7007.1. The Reporter introduced the proposed new rule, as modified by the Subcommittee on Attorney Conduct Including Rule 2014 Disclosure Requirements, during its January conference call and at a meeting on March 14. The proposal was drafted at the direction of the Standing Committee acting at the request of the Committee on Codes of Conduct. The Advisory Committee on Civil Rules and the Advisory Committee on Criminal Rules published similar draft rules in August 2000, he said, and had not received any adverse comment.

The subcommittee had decided to limit the scope of the rule to adversary proceedings only, Professor Morris said, because in many circumstances that arise in contested matters it would be difficult – or even impossible – to obtain compliance and afford the court time to review the volume of disclosures that could be received. In motions seeking relief from the automatic stay, for example, the motion may be filed on behalf of a national organization by a local attorney who does not have access to the information required. There is no requirement in Rule 9014 that a party file a response, and bankruptcy cases present many situations – such as multiple liens on the same collateral, settlements, plan confirmations – in which affected creditors fail to respond or respond shortly before the commencement of a hearing, effectively preventing the disclosure rule from operating. Moreover, Rule 9014 would authorize the

presiding judge to direct that Rule 7007.1 should apply in any particular contested matter in which disclosures appeared to be warranted. The subcommittee determined that the debtor should make its disclosures at the beginning of the case, so the judge could review them before signing the orders presented on the first day of the case. A proposed amendment to Rule 1007 had been drafted to accomplish that, the Reporter said.

The subcommittee's draft language differs in certain respects from that published by the other advisory committees, the Reporter noted. The subcommittee limited disclosures to any nongovernmental corporation to prevent entities such as Amtrak from having to file disclosures. The subcommittee chose the phrase "equity interests" rather than "stock," he said, because the definition of "corporation" in § 101 of the Bankruptcy Code includes entities that do not issue stock. The subcommittee also changed the reportable ownership interest to ten percent of any class of equity interests, because ownership of 90 percent of one class might not amount to ten percent ownership of the whole but still would be significant. The subcommittee determined that interests owned "directly or indirectly" should be disclosed and would propose that as an improvement on the drafts already published. The subcommittee deleted any reference to a parent corporation, because the members could not think of any ten percent ownership situation that would not include a parent. The subcommittee also deleted the phrase limiting the corporate owners that must be disclosed to those that are "publicly held," because many organizations that have broad distribution of equity interests are not publicly traded. Finally, Professor Morris said, the subcommittee changed the title of the rule from "Disclosure Statement," used in the civil and criminal drafts, to the more informative "Corporation Ownership Disclosure Statement."

Judge Gettleman said the Committee Note should mention that the debtor is required to make similar disclosures under Rule 1007, and Professor Resnick noted that the Committee Note retains a reference to publicly traded corporations. Judge Montali expressed concern about limiting the rule to adversary proceedings. He said if a judge acts in a "big" motion or signs first day orders, but information later shows that judge should have been disqualified, the court system could be subject unfavorable publicity. **A motion to limit the scope of the rule to adversary proceedings passed by a vote of 6 to 5.**

A member suggested adding "or local rule" to the draft language of Rule 7007.1(a)(2) concerning additional information that may be required by the Judicial Conference. Other members, however, said attorneys and parties will not know where to find any Judicial Conference requirements. It is unwise, they said, to put in a rule that there may be something else the person needs to check. **A motion to delete subdivision (a)(2) and the final sentence of the Committee Note passed by a vote of 10 to 0.** The consensus was that the Committee Note should be edited, particularly in paragraph 3, to reflect the Committee's actions, and that the note could retain a mention that the Judicial Conference might add further disclosure requirements.

The Chairman asked the Reporter to send our changes and explanations to the other Advisory Committees in time for their April 2001 meetings in the form of comment and suggestions they might want to consider in connection with their own drafts. Professor Morris

said he would include in those materials his concern for the length of time it would take to amend the rule to implement and make public any further requirements the Judicial Conference might prescribe in the future.

**The Committee approved the draft amendments to Rule 1007 concerning disclosure by the debtor.** If approved by the Standing Committee, new Rule 7007.1 and the amendments to Rule 1007 would be published for comment in August 2001.

Official Forms - Individual Privacy. At its September 2000 meeting the Committee determined to publish for comment amendments to the official forms that would require only the last four digits of a debtor's Social Security number or debtor's account number to be disclosed. Official Forms marked with these potential amendments were presented for consideration. Judge Cristol said the last four digits often are used as PIN numbers and could be a source of mischief when files are posted on the Internet. Mr. Waldron said he had some concern that the last four digits are not unique enough, and Mr. Kohn noted that some responses to the judiciary's request for comment on privacy policy proposals said they are not. Mr. Heltzel said that redacting or selectively holding back information is extremely difficult with paper or imaged documents. He also said the electronic files system would be giving creditors other pieces of information, such as aliases and addresses, to match up and arrive at a correct identification. Mr. Kohn responded that having to use other information would require the Internal Revenue Service to perform "manual triangulation" to arrive at a correct identification and that, while engaged in that task, would be exposed to liability for stay violation, as would other creditors. Mr. Kohn added that it should be sufficient to exclude only part of the Social Security number but continue to require the full Taxpayer ID Number used by corporations and other employers. He suggested this could be done by switching the order in which the request for the numbers is stated on the form, so that it would read "Taxpayer ID Number / Last Four Digits of Social Security Number."

Judge Walker said he and other members of the Subcommittee on Privacy and Public Access had looked at the forms for what disclosures might be eliminated, but did not find much. He suggested that one approach might be to permit a debtor to file a "privacy disclosure document" that a proper party could access, but that would not be public without further court order. This document would contain the Social Security number and any other information from the schedules or statement of financial affairs that the debtor might want to keep private, and that preparing the document would make the debtor think about the sensitivity of the information the debtor is making public. Professor Resnick said the Committee probably would be amending the official forms extensively to conform to the pending bankruptcy reform legislation. He suggested delaying publication of the privacy-related amendments until the legislation-driven amendments also are ready.

Rule 6, Federal Rules of Appellate Procedure(FRAP). At its March 2000 meeting the Committee approved requesting the Advisory Committee on Appellate Rules to amend FRAP 6 to include a reference to Bankruptcy Rules 9019 and 7041, to prevent settlements at the circuit court level from becoming final without notice to other creditors in the bankruptcy case. Judge

Small said the Appellate Advisory Committee had agreed to the request but wanted the Committee to provide a specific proposed amendment. Judge Montali asked whether the proposed language would cause the court of appeals to think it has to do something; Rule 9019 directs the parties to give notice and obtain approval from the bankruptcy court, he said. Mr. Kohn expressed concern about the bankruptcy court's jurisdiction to act without a formal remand; he suggested going forward with the proposed amendment but notifying the Appellate Advisory Committee of the problem. Professor Wiggins questioned whether FRAP 6 is the appropriate location for the amendment; she suggested FRAP 33 (settlement) and FRAP 42 (voluntary dismissal). Judge Cordova said the Reporter's draft should be rearranged to make it clear that Rule 9019 applies to appeals and Rule 7041 to dismissals. Professor Resnick suggested amending FRAP 6 to say simply that Rules 9019 and 7041 apply, **and there was no objection.** The Committee could then amend Rule 7041 to broaden it to include settlements of appeals. Mr. Niemic said he meets regularly with the chief mediators for the courts of the appeals and can attest that they know about Rule 9019. The mediation programs operated by the courts of appeals have grown, however, and knowledge of the bankruptcy rule has become uneven with that growth. He said that FRAP 33, the rule that applies to mediators, may be the best place for the amendment. **The Chairman directed the Reporter to proceed with the FRAP 6 amendment as modified and recommend to the Appellate Advisory Committee that it also put the same language or a cross-reference in FRAP 33 and FRAP 42.**

Rule 7026. The Reporter said Rule 7026 was before the Committee in order to determine whether it should be amended in light of the December 1, 2000, amendments to Civil Rule 26 that removed the opt-out provisions under which courts formerly could exempt parties from certain discovery requirements such as mandatory initial disclosures and a mandatory meeting before the scheduling conference. Under the philosophy that federal rules should be consistent, Mr. Frank and other members said Civil Rule 26 as amended should apply in adversary proceedings without modification. Judge Cristol said, since the purpose of Rule 26 is to prevent delay, he would favor a modification allowing local rules to provide for shorter times than are specified in Rule 26. Judge Cordova said Rule 26 does not require the parties or the court to take the full time and does not prohibit shortening the times. The rule only prohibits extending the prescribed times, he said. Judge Klein noted that Rule 26(a) contains a list of case types that are excepted from the mandatory disclosure requirements, including student loan cases. Mr. Kohn said the United States attorneys would like to see the exception extended to bankruptcy proceedings, because application of Rule 26 otherwise would slow these matters down in the bankruptcy courts. **The consensus was to leave Rule 7026 unchanged.**

Rule 9014. With respect to the application of Rule 26 to contested matters, **the Committee approved inserting on line 6 of the Reporter's draft, at the beginning of the new sentence, "Unless the court directs otherwise."** Under generally accepted vocabulary conventions in the rules, the verb "order" means the court can act only on a case-by-case basis. The verb "direct," however, means the court can act either on a case-by-case basis or by issuing a local rule, unless the national rule limits the court's discretion with a modifying phrase such as "in a particular matter," (used in lines 14 - 15 of the Reporter's draft). The Committee Note



should say the verb “directs” was chosen to signal that the court may regulate the application of Rule 26 to contested matters by local rule or on a case-by-case basis. Accordingly, proposed amendments to Rule 9014 would provide that subdivisions (a)(1), (a)(2), (a)(3), and (f) of Rule 26 would not apply in contested matters unless the court “directs otherwise.” The consensus was that these modifications are appropriate and defensible, because of the need for speedy resolution in contested matters. These amendments would be published for comment in August 2001.

## Information Items

Bankruptcy Case Files on the Internet -- Privacy Considerations. Judge Montali, who is the Bankruptcy Administration Committee's alternate liaison to the Privacy Subcommittee of CACM, described for the Committee the alternative policy options concerning which that subcommittee had recently sought comment. The general policy options offered for comment were 1) no policy, 2) continuation for electronic files of the policy in effect for paper files, 3) redefining the contents of the "public file" to better accommodate privacy interests, and 4) limiting the level of remote access to certain categories of information. The bankruptcy files options on which comment was solicited were 1) requiring less information on schedules and statements, 2) creating an "estate" or "administrative" file that would be available only to parties in interest, 3) reducing Social Security and other account numbers to only the last four digits, and 4) seeking amendment of § 107(b) of the Code to broaden a judge's authority to seal documents to include privacy as a reason. He noted that bankruptcy case files are the only ones that are public by statute; the Judicial Conference has more latitude to make policy concerning files in other types of cases.

Contemporaneously with the Committee meeting, the Privacy Subcommittee was holding a public hearing in Washington, DC, to receive oral comments to supplement the 240 written comments that had been submitted. The hearing was scheduled to be taped by C-Span and might be broadcast, although no date had been specified, he said. The Subcommittee planned to meet following the hearing to begin formulating its recommendations to the Judicial Conference. These are scheduled to be reviewed by other interested committees, including the Standing Committee, at their June meetings, and to be presented to the Judicial Conference in September. Mr. McCabe added that the Subcommittee may decide that one policy does not suit all types of cases and, for example, might recommend different treatment for criminal files than for bankruptcy files. Enforcing any policy, he said, will be a continuing challenge, as it is impossible to control what happens to information once it is in the hands of third parties.

Model Local Rules for Electronic Case Filing. Ms. Ketchum reported that CACM also had formed a subcommittee to develop model local rules for electronic case filing. The first meeting of the subcommittee would be held April 6, 2001, and she expected that any proposed model rules drafted by the subcommittee would be presented to the Committee for its review and comment.

## Administrative Matters

The Committee discussed how it might organize the work that would be needed in the likely event that major bankruptcy reform legislation would be enacted within weeks following the meeting. The pending bills contain provisions for an effective date of 180 days after enactment. The consensus was that suggested interim rules for local adoption would be necessary, together with new and amended forms. There was further consensus that interim rules should be approved at least by the Standing Committee and perhaps by the Judicial Conference.

Official Forms, both new and amended, that were required by the legislation or otherwise implemented it could either be approved without public comment or issued as interim forms, with feedback from users serving as the equivalent of formal comment. Mr. Rabiej said the Judicial Conference could act on as little as two days' notice, if necessary. He suggested advising the Standing Committee at its June meeting of the Committee strategy for implementing the legislation and using mail ballots for any approvals that might be required afterwards.

Ms. Davis said the EOUST had developed a draft form for means testing. She said the form had not been cleared yet by the Department of Justice, but she would bring it to the Committee once that had been accomplished. She said completing the form properly would depend on the debtor's ability to do math. Judge Small asked about whether the EOUST also might have a standard chapter 11 plan form it could offer the committee, but she said no such form is available. Professor Resnick said he had met two or three years prior, in connection with an earlier version of the bankruptcy reform legislation, with a committee of United States trustees organized by a previous director of the EOUST, and that some members of that committee had provided him with copies of local chapter 11 plan forms. He said he would attempt to locate these in his files.

Professor Morris said he had drafted a memorandum to the Chairman suggesting topical areas of the reform legislation that might be assigned to various subcommittees once the final version of the legislation is known. Professor Resnick said another approach that the Reporter and Chairman might consider would be to start with the existing rules and go through them part by part to see which ones need to be amended. He said that method had been effective in amending the rules to implement the 1986 legislation and would avoid having two groups working on the same rule from different perspectives. He said he was unsure whether the rule-oriented approach would serve better than starting with the statutory provisions this time, however. Mr. Rabiej said he was arranging to contract with up to three consultants to work with the Committee in drafting the rules and amendments and forms that would be required.

The Chairman invited the members to contact him concerning their areas of interest as he would be forming the necessary subcommittees during the weeks following the meeting.

The Committee agreed to March 21-22, 2002, as the dates for its spring 2002 meeting and discussed Tucson, Arizona, Santa Fe, New Mexico, and the Monterey and Napa Valley areas of California as possible meeting sites.

Respectfully submitted,

Patricia S. Ketchum





These will be oral reports.







MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: PUBLIC COMMENTS ON PROPOSED AMENDMENTS  
DATE: FEBRUARY 27, 2002

In August 2001, the Standing Committee published amendments to Bankruptcy Rules 1007, 2003, 2009, and 2016 as well as new Rule 7007.1 for public comment. Amendments to Official Forms 1,5, and 17 also were published for comment. The comment period closed on February 15, 2002, and we received only five comments. Most of the comments were addressed to Rules 1007 and 7007.1, and one person commented on the proposed amendment to Rule 2016.

**Rules 1007 and 7007.1**

Mr. Thomas J. Yerbich (01-BK-001) of Anchorage, Alaska, made several comments on Rule 1007. First, he recommended the deletion of a portion of the rule that had not been amended. Specifically, he called for the deletion of the reference that permits the debtor to avoid filing a list of creditors if he or she files a schedule of liabilities. Since this portion of the rule was not amended or under consideration for change, Mr. Yerbich's comments on this aspect of the rule are not pertinent to our current consideration, but we will consider them at another time if we consider further amendments to Rule 1007. As to the amended portion of Rule 1007, Mr. Yerbich suggested that the obligation to file the corporate disclosure statement should apply in involuntary cases as well as in voluntary cases. The problem with that suggestion is that the parties initiating the involuntary proceeding would not have access to the information necessary to complete the statement. Finally, Mr. Yerbich suggested that parties be given 30 days to file a

supplement to the corporate disclosure statement rather than the obligation to file promptly as set out in the proposed rule.

Judge Walter Shapero (Bankr. E.D. Mich.) (01-BK-003) submitted extensive comments on the corporate disclosure rule. He suggested that the rule could be improved by expanding its reach to include more entities within the parameters of the provision. For example, he proposed that the rule be amended to require disclosure of both direct and indirect corporate ownership. He also questioned whether the rule might be extended beyond the petition and adversary proceedings to contested matters and to require similar disclosures of the corporate ownership of members of a creditors committee. Ironically, the Advisory Committee considered and initially recommended some of the proposals included in Judge Shapero's comments. In the end, and after lengthy consideration with the Standing Committee, we concluded that at least initially it is especially important to maintain as consistent a set of corporate disclosure rules as possible with the Civil, Criminal, and Appellate Rules versions of the corporate disclosure rule.

Judge Philip H. Brandt (Bankr. W.D. Wash.) (01-BK-004) also commented on the proper scope of the proposed Rule 7007.1. He noted that the reporting requirement should extend beyond corporations to require comparable disclosures by limited liability companies and similar entities. Once again, this is an issue the Advisory Committee considered at some length. Earlier versions of the proposed new rule included language that would have covered these other entities. However, upon consultation with the Standing Committee, and in the interest of maintaining as consistent a rule as possible with the other Federal Rules, the Advisory Committee concluded that the initial version of the rule should follow as closely as possible the language and scope of the other rules.

The Federal Bar Association of Michigan (01-BK-005) also submitted a comment on the proposals. Its full statement was, “The Committee supports the proposed amendments.”

The comments received on Proposed Rule 7007.1 and the amendment to Rule 1007 generally suggested that the rules could be improved by expanding their reach. These comments were made by sitting Bankruptcy Judges who argued that a more wide reaching rule would enhance judges’ ability to recuse themselves in proper circumstances. The Advisory Committee certainly concurs in this position, but the overriding concern of the Standing Committee in its consideration of the issue was to present as consistent a pattern of disclosure as possible throughout the appellate, civil, criminal, and bankruptcy rules. Moreover, the other rules committees already had received approval of their versions of the corporate disclosure rule, so there was less opportunity for presenting different or alternative proposals on the issue. Given these significant concerns for consistency in the rules, I would recommend that the Advisory Committee approve the rules as drafted and present them to the Standing Committee for its approval and recommendation for final adoption by the Judicial Conference.

#### **Rule 2016**

Ms. Becki B. Dillon of Sarasota, Florida, (01-BK-002) submitted comments on the proposed amendment to Rule 2016. The amendment implements § 110(h)(1) of the Code and requires petition preparers to file a disclosure statement of their fees. Ms. Dillon did not object to the addition of the new subdivision (c) of the rule. Instead, she suggested some other changes to the Official Forms and Rules (put the bankruptcy petition preparer’s certificate on a form separate from the petition; require creditors to serve the debtor and debtor’s counsel with a copy of their proof of claim). Since there were no negative comments on Rule 2016, I recommend that the

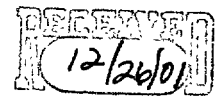
Advisory Committee approve the amendment and present it to the Standing Committee for its approval and recommendation for final adoption by the Judicial Conference.

**Rules 2003 and 2009, and Official Forms 1, 5, and 17**

We received no comments on the proposed amendments to Rules 2003 and 2009, and Official Forms 1, 5, and 17. Consequently, I recommend that the Advisory Committee approve those amendments as published for presentation to the Standing Committee for its approval and recommendation for final adoption by the Judicial Conference.



01-BK-001



"Thomas J. Yerbich"  
<tjy@gci.net>

12/24/2001 08:54 PM  
Please respond to tjy

To: Rules\_Comments@ao.uscourts.gov  
cc:  
Subject: Proposed Amendments FRBP

Specific Comments:

Rule 1007. Two points. (1) Recommend deletion of the phrase "unless the petition is accompanied by a schedule of liabilities" at the end of the first sentence in paragraph (a)(1). Most, if not all, districts require a petition be accompanied by a matrix that includes the name and address of all creditors in all cases at all times. It is my understanding that prompt electronic transmission of creditor data to the Bankruptcy Notification Center makes it imperative that a matrix in scanable format, separate from Schedules D, E, & F, be submitted. This requirement not only technically conflicts with Rule 1007 but makes 1007 contrary to actual practice. Consequently, it should be deleted and left to local practice.

(2) Should not paragraph (b)(2), related to involuntary petitions, also be amended to require the same disclosure for the same reasons as the disclosure is required in a voluntary case?

Rule 7007.1: Recommend that the term "promptly" used in connection with the filing of a supplemental statement be replaced with a discrete specific time, probably 30 days. In many cases, the adversary action is being prosecuted or defended by outside counsel, who is not privy to corporate reorganization matters. There may be, indeed in my experience generally is, a delay in providing this information to outside counsel. [This recommendation also applies to Rule 1007(a)(1)]

Submitted by:

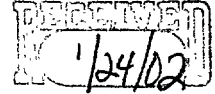
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Law Office Thomas J. Yerbich  
329 F Street, Suite 210  
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e-mail: yerblaw@alaska.com  
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"Rod Dillon"  
<rdillon1@mindspring.  
com>

01/24/2002 12:13 PM

To: <Rules\_Support@ao.uscourts.gov>  
cc:  
Subject: comment on proposed bankruptcy rules amendments



01-BK-  
002

I am unable to send electronically my comments as set forth on your form, and am taking this route to hopefully get my comments heard. My information as requested on your electronic form is as follows:

Mrs. Becki B. Dillon, CLAS, CBA  
2831 Ringling Blvd., Ste. 210-D  
Sarasota, FL 34237  
phone: 941-365-4507  
fax: 941-365-4548  
e-mail: rdillon1@mindspring.com

As a Certified Legal Assistant with additional certification as a Bankruptcy Specialist, and having in excess of 19 years experience with preparation of bankruptcy documents under the supervision of a bankruptcy attorney, I have several comments to make regarding the Official Forms and the Bankruptcy Rules:

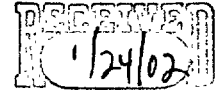
1. While I understand non-attorneys (bankruptcy preparers) must file a certification, I find it offensive to the professional community that we must include this non-attorney certification on the documents. It would be most appreciated if the non-attorney certification were on a separate page, to be included as an exhibit, such as you did with the Exhibit C in the last revision. In addition, I think it would be a good idea for the non-attorney preparer to certify, under oath, that they in fact did not provide legal advice to the debtor.

2. As a paralegal who is intensely involved with Chapter 13 bankruptcy matters, I cannot understand why creditors, who must file claims in order to receive payment under a Chapter 13 plan, are not required to provide a copy of the Proof of Claim to the Debtor/Debtor's attorney. It would be of great assistance to the debtor to be able to review the Proof of Claims when filed, to be able to attempt resolution to any disputed issues prior to filing a formal objection. As the law is now, the creditor is under no obligation to provide the debtor with a copy of the POC.

3. On a more personal experience note, I have worked with hundreds and hundreds of debtors since 1982, and in that time, the majority of them (I'd estimate at least 98%) are honest people who have simply gotten into financial distress for 1 of 3 reasons: loss of job, illness, or poor money management due to lack of education, most of which debt was incurred on "free" credit cards. To change the laws as is now being discussed in congress to deny these people the opportunity to get a fresh start is incomprehensible. We have had many Chapter 13 cases, for example, who having failed the first time, mostly because of illness or loss of job, were able to successfully complete a Chapter 13 repayment plan with a second filing, resulting in saving their home, their possessions and their dignity. Debtors are not "bad" people, and perhaps a more common sense approach in the changes to the bankruptcy laws would be met with acceptance.

Thank you for listening.

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SUITE 1950  
211 W. FORT STREET  
DETROIT, MICHIGAN 48226



01-BK-003

(313) 234-0040

OFFICE OF  
WALTER SHAPERO  
UNITED STATES BANKRUPTCY JUDGE

October 31, 2001

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

Re: Preliminary Draft of Proposed Amendment to Federal Rules of  
Bankruptcy Procedure 1007, and, new rule 7007.1

Dear Mr. McCabe:

I am responding to the Committee's invitation to make comments on the indicated amendments and/or new rules of bankruptcy procedure.

My initial comment is best understood in the context of the following example: assume the Corporation A is a publicly held corporation and that it owns 100% of the stock of Corporation B; which in turns owns 100% of the stock of Corporation C; which in turns owns 100% of the stock of Corporation D; assume further that Corporation D either itself files a bankruptcy proceeding, or, is or becomes a "party" to an adversary proceeding within that bankruptcy; assume further that the judge to whom those matters are assigned is a shareholder in publicly held Corporation A. As I understand and read the literal terms of the proposed new rule, Corporation D (the filing debtor) would be required only to identify its parent, Corporation C (and not either Corporation B or A). I do not believe that is sufficiently helpful in effectuating the purpose of the rule, which as I understand it is to help inform involved judges with regard to potential recusals on financial interest grounds. The example I have given you, by the way in terms of corporate and subsidiary layering in, my experience, likely the rule rather than the exception. I would therefore urge the adoption of a rule that would, in the example I have given cover the relationships between Corporations D, C, B and A. Possible ways of doing that would be (a) by adding the phrase "directly or indirectly" after the word "owns" on line 5 of the proposed new rule 7007.1; or, (b) by introducing the concept of "affiliation." This latter approach was adopted under Local Rule 83.4 of the United States District Court for the Eastern District of Michigan. The relevant provision of that rule states as follows:

(b) Financial Interest to be Disclosed.

(1) Whenever a corporation which is a party to a case is a subsidiary or affiliate of any publicly owned corporation not named in the case, counsel for the corporation which is a party must filed the



Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
October 31, 2001  
Page 2

statement of disclosure provided in (c) identifying the parent corporation or affiliate and the relationship between it and the corporation which is a party to the case. A corporation is considered an affiliate of a publicly owned corporation for purposes of this Rule if it controls, is controlled by, or is under common control with a publicly owned corporation. (emphasis added)

(A copy of the full rule is enclosed.) This might be the better approach and I urge that it be considered.

A second comment is that while it may be implicit (and it is certainly not explicit in the proposed rules), if the "party" is itself a publicly held corporation (and not the parent or an affiliate) such should be affirmatively stated or negated in the required disclosure.

Lastly, I am not sure if the Committee discussed extending the disclosure obligation beyond the debtor and a party to an adversary proceeding. In bankruptcy it appears to be well accepted that the concept of who is a "party" for recusal purposes extends to or includes members of a creditors' committee and to entities which seek affirmative relief of some sort by initiating what is considered a "contested matter" under Fed. R. Bank. P. 9014. First, I would urge the Committee to give consideration to therefore extending the disclosure obligation to entities who are the principals or employers of individuals who are appointed to official creditors' committees to be filed at the time of their appointment to the committee. The corporate identity of a committee member usually and only appears in what is generally an obscure document filed in the case by the United States Trustee which lists committee members and their affiliations - a document which most judges would not have occasion to look at or see, except in the context of having to examine that particular document for recusal purposes. Such examination however leaves the examining judge in the same position as he or she is in, when trying to deal with the name of the debtor or a party to an adversary proceeding. For instance, I enclose a copy of a document entitled "Appointment of Committee of Unsecured Creditors" filed recently in one of my chapter 11 cases. It is typical in my experience. As you can see the description of the entities represented is imperfect and much less complete than might be the case if the entity involved was named as either a debtor or a party to an adversary proceeding, and thus presents even more difficulty to a judge who must initially from that document try to make some recusal inquiries and decisions. Interestingly enough in this example two of the four individuals listed are attorneys. My guess is (though I could not find out without my own extensive investigation) that Hartford Fire Insurance Co. is in fact a subsidiary or affiliate of a publicly held company, as might be Michigan National Bank; and for all I know Cybersoft and Benefit Services, Inc. might also be. In this day and age, a company named "World Wide Bank and Financial Services, inc." could very well be a subsidiary of a subsidiary of a company named Delicious Foods & Hardware Co. (a publicly held entity). The existing business climate of mergers,

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
October 31, 2001  
Page 3

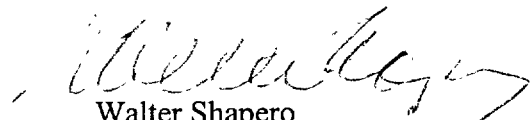
acquisitions, consolidations, purchases and general relaxation of who might be able to go into the banking and financing type businesses, as well as usage of purchased names or trademarks etc. should also inform the discussion and in fact enhance the need for such disclosures if the purposes to be served by them are to be fully achieved.

Extending the disclosure requirement to contested matters may be more difficult. Typical contested matters are motions to lift stays, or for adequate protection, often filed by large secured creditors which just as often as not may be related to or affiliated with a publicly held entity. Motions to deal with executory contracts of one kind or another are also in that category. A financial interest in such a moving party (other than the debtor or a committee member) in a contested matter would require recusal, but ordinarily only as to that particular matter (unlike a financial interest in the debtor or a member of the creditors' committee which would require recusal from the entire case). Obviously opening up the disclosure obligation to moving parties in contested matters, broadens the reach of the rule considerably and might present procedural or policy concerns. However, from the perspective of the potential recusing judge the problem is the same and to the extent the purpose of the rule is to deal with that problem, logic requires disclosure in that circumstance as well. While it might add to the obligations of the parties, a good policy argument can be made that whatever inconvenience might be attendant to having to make the disclosure, it is more than balanced by materially decreasing the likelihood of a later required recusal which might jeopardize or bring into question prior court actions.

In sum then, if the point of the rule and the disclosure is to minimize those situations where a judge becomes obligated to recuse but only after having made a number of rulings in the case (with all that such imports with respect to those rulings which were previously made) one would hope the rule would (a) encompass disclosures from all of those whose posture in the case or proceeding could lead to recusal and (b) require the disclosures to be made as soon as possible.

Thanking you for the opportunity to comment on the proposed rules, I am,

Very truly yours,

  
Walter Shapero  
United States Bankruptcy Judge

spm

**LR 83.4 Disclosure of Corporate Affiliations and Financial Interest**

**(a) Parties Required to Make Disclosure.** With the exception of the United States Government or agencies thereof, or a state government or agencies or political subdivisions thereof, all corporate parties to a civil case and all corporate defendants in a criminal case must file a Statement of Disclosure of Corporate Affiliations and Financial Interest. A negative report is also required.

**(b) Financial Interest to be Disclosed.**

(1) Whenever a corporation which is a party to a case is a subsidiary or affiliate of any publicly owned corporation not named in the case, counsel for the corporation which is a party must file the statement of disclosure provided in (c) identifying the parent corporation or affiliate and the relationship between it and the corporation which is a party to the case. A corporation is considered an affiliate of a publicly owned corporation for purposes of this Rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, lease, profit sharing agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the case, has a substantial financial interest in the outcome of the litigation, counsel for the party whose interest is aligned with that of the publicly owned corporation or its affiliate must file the statement of disclosure provided in (c) identifying the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(3) The duty of disclosure by the corporate parties described in this Rule is continuing.

**(c) Statement of Disclosure.** The statement of disclosure must be made on a form provided by the Clerk and filed, as part of the first pleading or paper filed by the party in this Court, or as soon as the party becomes aware of the corporate affiliation or financial interest, or as otherwise ordered by the judge to whom the case is assigned.

COMMENT: LR 83.4 is based on 6th Cir. R. 26.1. It is the responsibility of the courtroom deputy clerk for the judge to whom the case is assigned to monitor compliance with this Rule, including but not limited to sending out copies of the statement of disclosure to new defendants, third-party defendants, and others affected under (b).

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

FILED

2001 JUL 30 P 3:01

BANKRUPTCY COURT  
MICHIGAN-DETROIT

Case No. 01-53170-WS  
Chapter 11  
Hon. Walter Shapero

In Re:

Polar Maintenance Company, et. al.

Debtor(s)/

Joint Administration of Cases per order July 12, 2001

**APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS**

Pursuant to Sections 1102(a) and 1102(b) of the Bankruptcy Code, the following creditors of the above-named debtor, being among those holding the largest unsecured claims (or who were members of a committee organized before the order for relief under Chapter 11 of the Bankruptcy Code was entered, who were fairly chosen, and who were representative of the different kinds of claims to be represented), and who are willing to serve, are appointed to the Committee of Unsecured Creditors:

Tom Makuch for Hartford Fire Insurance Co. & Affiliates  
Hartford Plaza, T-19  
Hartford, CT 06115  
(860) 547-2406  
(860) 547-5712 fax

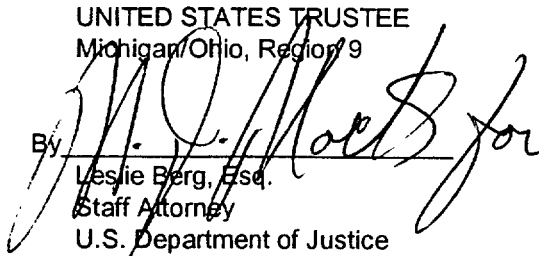
Dominic LaRocca for Cybersoft  
32500 Concord, Suite 340  
Madison Hts., MI 48071  
(248) 397-0000  
(248) 397-0013 fax

Ralph McDowell for Michigan National Bank  
Bodman, Longley & Dahling LLP  
100 Renaissance Center, 34<sup>th</sup> Floor  
Detroit, MI 48243  
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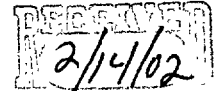
By

  
Leslie Berg, Esq.  
Staff Attorney  
U.S. Department of Justice  
Office of the U.S. Trustee  
211 W. Fort St.  
Suite 700  
Detroit, Michigan 48226  
(313) 226-7950

Date: July 30, 2001



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON



PHILIP H. BRANDT  
Chief Judge

SEATTLE CHAMBERS  
Park Place Building  
1200 Sixth Avenue, Room 309  
Seattle, WA 98101  
(206) 553-2128  
<http://www.wawb.uscourts.gov>

8 February 2002

01-BK-004

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

Re: Comment on Proposed FRBP 1007 and 7007.1

Dear Mr. McCabe:

The requirements should be imposed not only on corporations, but on the new varieties of limited liability entities, partnerships, and unincorporated associations: in short, all artificial entities (perhaps other parts of the rules could use similar elaboration, particularly FRBP 7004(b)(3) and FRCP 4(h)).

Very truly yours,

s/

Philip H. Brandt  
Chief Judge

cc: Hon. Thomas S. Zilly  
Hon. Christopher M. Klein

RECEIVED  
2/26/02

**Federal Bar Association  
Western Michigan Chapter**

(616) 454-5550 / (616) 454-7681 [fax]  
161 Monroe Avenue NW, Suite 203-B, Grand Rapids, MI 49503

01-CV-090

01-BK-005

01-CR-004

01-EV-012

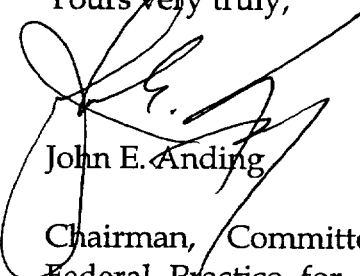
Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

*Re: Preliminary Draft Submitted on February 15, 2002*

Dear Mr. McCabe:

In our rush to meet the deadline, we submitted comments which contained several typographical errors. The enclosed correspondence corrects those errors. We apologize for any inconvenience this may have caused.

Yours very truly,



John E. Anding

Chairman, Committee on Rules of  
Federal Practice for the United States  
District Court for the Western District of  
Michigan.

cc: Member Hon. Joseph G. Scoville  
Member Stephen C. Bransdorfer  
Member Michael Cavanaugh  
Member Donald A. Davis  
Member David J. Gass  
Member Bradley K. Glazier  
Member Christopher G. Hastings  
Member Paul L. Mitchell  
Member Harold E. Nelson  
Member John D. Pirich  
The Honorable Robert Holmes Bell, Chief Judge

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

*Re: Preliminary Draft of Proposed Amendments to the Federal Rules of  
Practice and Procedures - Comments Due February 15, 2002*

Dear Mr. McCabe:

On behalf of the Standing Committee on Rules of Practice for the United States District Court for the Western District of Michigan, we submit the following comments on proposed amendments to the Federal Rules of Bankruptcy Procedure (Rule 107, 1007, 2003, 2016, 7007.1 et al), the Federal Rules of Civil Procedure (Rule 23, 51, 53 and 54), the Federal Rules of Criminal Procedure (Rule 35(c)) and the Federal Rules of Evidence (Rule 608(b) and 804(b)(3)). We treat each of the series of proposed amendments *seriatim*.

**PROPOSED AMENDMENTS TO THE BANKRUPTCY RULES**

The Committee supports the proposed amendments.

**PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE**

**RULE 23.** Our Committee views the proposed changes to Rule 23 as both extensive, and in large part, controversial. While the objectives identified by the Committee as underpinning the proposed amendments were to “protect against improvident certification” and to “protect the interests of class members once class action is filed” some of the proposed amendments may, in fact, undermine these objectives and otherwise further exacerbate the concerns held about the class action mechanism generally. Indeed, we see the philosophy that emerges from the proposed amendments as protracting class action litigation by providing additional opportunities for defendants to challenge the status of the case as a class action, including new opportunities to challenge the class definition, selection of counsel and the propriety of

fees sought by class counsel after resolution of the case on the merits. The proposals also invite bifurcation of the discovery into class and substantive discovery. Finally, the proposed amendments identify conflicting priorities in advocating prompt determination of certification, while requiring that any decision on certification recite in definitive fashion all claims, issues and defenses to be litigated as part of the class action. Finally, the introduction of a class counsel appointment process for all class actions equates the appointment of counsel to a barnyard auction that invites a parade of horrors which will only further erode the integrity of the legal profession in the eyes of the public to be served.

We reflect below our more detailed observations on each of the proposed amendments.

**Rule FRCP 23(c)(1)(A).** The language of the Rule is relatively noncontroversial. Our concern rests with the language in the note which encourages bifurcation of discovery into class and substantive discovery. While there may be circumstances where such bifurcation is appropriate, the language of the note suggests that on this issue, class actions fit into a “cookie cutter” model where only “controlled” discovery into substantive issues is appropriate. The experience of our Committee members shows that artificially bifurcating discovery into class and substantive issues in many instances not only protracts the litigation but discourages early settlement negotiations because defendants are emboldened by their ability to protract discovery on the class issues as part of an overall strategy of prolonging finality with the consequent accelerating of plaintiffs’ costs.

Such a “cookie cutter” approach is unproductive and betrays the objectives set out by the Committee as underpinning the proposed amendments. The Court should be left to exercise its discretion on a case by case basis as to whether discovery in the early stages of litigation should be limited to class issues only, or the extent to which discovery on substantive issues should be pursued contemporaneous to class certification. Thus, we recommend reformulation of the note to delete language directing the Court’s exercise of discretion in this area.

**Rule FRCP 23(c)(1)(B).** The language of the proposed amendment relating to the contents of the notice in large part codifies existing practice. However, the language that requires the notice to definitively detail issues, claims and defenses at the certification stage is inconsistent with early resolution of the class certification issue. Because issues, claims and defenses in class litigation evolve, like other litigation, a requirement that these areas be delineated in detail in the initial class notice is unrealistic. This requirement it will also complicate the certification decision making process by burdening both parties (principally the plaintiff) with defining issues, and claims at a stage in the litigation where they cannot be definitively identified. We



recommend deletion of this section of the amendment and substitution of language requiring a general statement of the claims. This is consistent with existing practice.

*Rule FRCP 23(e)(1)(a)*. The amendments to the provisions that require approval of the court for precertification settlements with individual class representatives undermines the objective of eliminating improvident certifications of class actions. The realization that a matter does not qualify as a class often becomes apparent to plaintiff's counsel early in the case following filing and initial discovery from the defendant. At this stage, it may become obvious that numerosity or one of the other criteria for certification simply do not exist. Often, this results in a quiet and prompt resolution of what was initially pleaded as class action.

The proposed amendment creates a disincentive to prompt resolution of individual claims and in the process burdens the Court with cases that ostensibly must be treated as class cases simply because that is the way the initial complaint is titled.

*Rule FRCP 23(e)(3)*. This proposed amendment is one of the two most controversial amendments proposed by the Committee. Providing class members with yet another option to opt out of the class will substantially protract class litigation and undermine one of the principal objectives behind Rule 23, judicial efficiency. This proposed amendment, in practical terms, means that even after the legal issues have been resolved the defendant can ride the hope that the class mechanism might yet fail because class members may choose to reverse their earlier decision to remain a member of the class, thus defeating numerosity. In the real world, the opportunity for defeating numerosity when the alternative is being stuck with substantial liability, raises the stakes for the defendant to such a degree that it may encourage unsanctioned and improper communications with class members concerning their decision to opt out. The likelihood that this abusive practice would become more prevalent cannot be understated. While unsanctioned class communication is an issue in connection with class members' early opportunity to opt out, at that stage defendants, in weighing the risk of unsanctioned communication, are less likely to engage in such activity because the option of defeating the class on the legal issues remains open. However, allowing an opt out decision to be made at the conclusion of litigation, after all of the issues have been resolved against the defendant, dramatically changes the calculus for the defendant in weighing whether to pursue unsanctioned communications.

There is a yet more pernicious side effect to the proposed amendment. By giving class members the ability to opt out of the class, the amendment all but eviscerates the "objection" process. In practical terms, a class member unhappy with the proposed settlement will not file an objection but simply opt out. In doing so, the remaining class members are denied the benefit that the objection, once raised and resolved, would have on the overall proposed class settlement. In essence, the amendment would substitute an opt out option for the "objection" option.

For the foregoing reasons, our Committee opposes adoption of the proposed amendments to this provision.

Rule FRCP 23(g)(2)(C). The proposed amendments to this section of the Rule are troubling. First, we are not persuaded that the existing procedure for approval of class counsel is “broken,” and thus see no reason for the “fix” proposed in the amendments. Indeed, in our Committee’s view, the proposed “fix” creates a new set of concerns that outweigh any benefit that might be taken from the procedures contemplated by the amendments. In addition, the amendments induce a “best bid” concept that will reflect poorly on a profession already under fire for making purely economic based decisions without regard to professional responsibilities. Finally, the proposal creates an auctioneer atmosphere where the judge can exercise his discretion to choose among lawyers in appointing class counsel. Reserving such discretion to the judge could create arbitrary appointments that will be yet another occasion for appellate review.

We turn first to the existing process. Under current practice, the suitability of counsel can be tested both by counsel for the defendant, as well as the court, based on criteria that relates predominantly to the ability of counsel to adequately serve the interests of the class representatives and the class as a whole. While under this system there are certainly instances where the Court’s judgment in finding counsel adequate may be questioned, introducing new criteria which is economically driven adds nothing to the integrity of the decision making. Indeed, the selection process under the proposed amendments will inevitably drift over time toward a purely economic decision by the Court. Our profession should refrain from building into assessments about the suitability of counsel how much they anticipate charging the class, and instead focus on the legal expertise and experience necessary to assure that the class interests are adequately protected.

The introduction of the “lowest bidder” concept also creates the specter of class action counsel monitoring filings across the country, only to then come in and be part of the bidding process for appointment to a particular type of case. Putting aside the implications this process has for the integrity of the profession, there are two other major shortcomings. First, it interferes with the ability of the victimized class representative to select counsel of their choice, subject only to determination by the Court that counsel is suitable to represent the other members of the class. There are ethical implications to the infringements on this right as contemplated by the amendments. In addition, the uncertainty created by the amendments as to who inevitably will serve as class counsel will deter lawyers who are not “big players” in class action practice from offering representation to victimized plaintiffs in the class action area. This will reduce access by victimized individuals to lawyers with expertise in handling class actions and in the process eliminate the competition for class work that the proposed amendments purport to create.

In addition to the above, the formulation of this new rule concerning appointment of counsel will require the development of an entirely new body of case law that will need to address such questions as:

1. What is the appropriate bounds of the judge's exercise of discretion in choosing counsel?
2. What weight should be given to the various criteria that the judge is to focus on, and specifically how much weight is to be given to the economic proposal versus the experience of the petitioning class counsel?
3. What if any deference is to be given to the preference of the class representative who initiated the action and chose counsel?
4. In this market based approach, what weight should be given to objections of defense counsel based on the economics of class counsel's proposal?

This list is just a start. Indeed, the list of issues that will have to be litigated under the proposed amendment will be as long as the litigator's imagination is boundless.

In short, the amendments in this area do not advance the interests of the class members, the practicing bar, or the efficient administration of justice.

**Rule FRCP 23(h)**. The amendments in this area are simply unnecessary. Details about the nature of the attorney fees being sought can be incorporated in the notices sent to class members under the other provisions of Rule 23. Introducing an entirely separate procedure for approving attorneys' fees creates delay and redundancy that is both expensive and inefficient.

**RULE 35**. Our Committee adopts the position of the State Bar of Michigan's Committee on U.S. Courts. In short, we consider the proposed amendments unnecessary and ill advised.

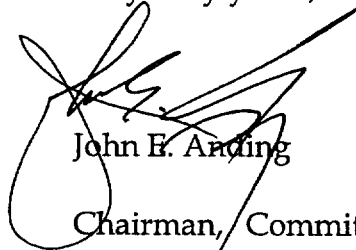
The balance of the proposed changes to both the Federal Rules of Civil Procedure and Federal Rules of Evidence are, in the view of our Committee, uncontroversial and we therefore offer our support.

In closing, a few words are appropriate as a follow-up to our observations concerning the proposed amendments to Rule 23. We view the objectives behind the amendment, as articulated by your Committee, as worthy. There is little question that the amendments are proposed in response to the hue and cry heard from individuals both within and outside of our profession about abuses that exist in class action litigation. However, we see the proposed amendments as "eliminating the pesky

mosquito with a sledge hammer." Such an approach not only eliminates sound elements of the existing Rule 23, but in the process creates collateral damage that practitioners and the bench may spend years recovering from as a body of case law is developed to sort out the new, and in our view, more pernicious problems created by the proposed amendments.

We encourage the committee to exercise restraint and withhold from its submission the more problematic amendments we have identified above.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Anding", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

John E. Anding

Chairman, Committee on Rules of Federal Practice for the United States District Court for the Western District of Michigan.

cc: Member Hon. Joseph G. Scoville  
Member Stephen C. Bransdorfer  
Member Michael Cavanaugh  
Member Donald A. Davis  
Member David J. Gass  
Member Bradley K. Glazier  
Member Christopher G. Hastings  
Member Paul L. Mitchell  
Member Harold E. Nelson  
Member John D. Pirich  
The Honorable Robert Holmes Bell, Chief Judge





MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: COMMENTS ON PRIVACY AMENDMENTS TO OFFICIAL FORMS  
DATE: FEBRUARY 27, 2002

The Advisory Committee decided at the September 2000 meeting in Harriman, New York, to propose amendments to the Official Forms that would limit the disclosure of any personal identifiers such as an individual's social security number and any account number to the final four digits of those numbers wherever they appeared in the Forms. One of the reasons for the Committee's action was to initiate consideration of these issues by the users of the bankruptcy system to generate comments on the advisability and feasibility of restricting these identifying numbers to provide added protection of the privacy of participants in the system. Although the Committee decided to propose the amendments, it also concluded that with the impending passage of significant bankruptcy reform that would likewise require wholesale changes in the Forms, publication of the "privacy amendments" to the Forms would be withheld and instead would be folded into any changes to reflect the enactment of the bankruptcy reform legislation. Two things happened. Bankruptcy reform legislation stalled in Congress, thereby obviating any need to publish forms in response to legislation. Second, and more importantly, in September 2001, the Judicial Conference approved a new policy regarding Privacy and Public Access to Electronic Case Files. That policy includes among other things that personal identifiers disclosed in bankruptcy case files be limited to the final four digits of those numbers.

Given the Judicial Conference action and the lack of any enacted bankruptcy reform

legislation, the Advisory Committee approved for publication amendments to Bankruptcy Rule 1005 and a number of Official Forms consistent with the Committee's decision in September 2000. We received expedited authority to publish proposed amendments to the Rule and Official Forms, and they were published in January, 2002, with a public comment period deadline of April 22, 2002. Not surprisingly, we have not yet received any comments on these proposed amendments. The notice of the publication did state that the Advisory Committee will be meeting on March 21-22, 2002, and encouraged commentators to submit their comments prior to the meeting, if possible. If any comments are received prior to the meeting, they will be distributed at the meeting along with a summary of their contents.

The Judicial Conference's Committee on Court Administration and Case Management acted through its Subcommittee on Privacy and Public Access to Electronic Court Files when it studied and then proposed the policy ultimately adopted by the Conference in September 2001. That Subcommittee received nearly 250 comments on the issues from a wide variety of persons and groups. The Subcommittee's request for comments, and the comments themselves, are available on the internet at [www.privacy.uscourts.gov](http://www.privacy.uscourts.gov). Since the proposed policy applies to all cases within the federal judicial system, many of the comments were not pertinent to the Bankruptcy Rules or Forms. The Judicial Conference did receive many comments that addressed specifically the impact of the proposed policy on the operation of the bankruptcy system. These comments came primarily from representatives of creditor interests and law enforcement agencies including the Department of Justice. The bulk of these comments expressed significant concerns about the ability to identify debtors accurately in order to collect claims as well as to avoid inadvertent violations of the automatic stay. Comments from law enforcement officials



also expressed concerns about the impact of the limitations on their efforts to prevent and prosecute bankruptcy crimes. Most of the comments in favor of the restrictions were from groups who were formed around the concept of privacy protection. I will include a detailed description of these comments together with the comments received in response to the proposed amendments to Rule 1005 and the Forms once the comment period closes.





## **Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files**

**Approved by the Judicial Conference of the United States  
September 2001**

The Judicial Conference of the United States requested that its Committee on Court Administration and Case Management examine issues related to privacy and public access to electronic case files. The Committee on Court Administration and Case Management formed a special subcommittee for this purpose. This subcommittee, known as the Subcommittee on Privacy and Public Access to Electronic Case Files, consisted of four members of the Committee on Court Administration and Case Management: Judge John W. Lungstrum, District of Kansas, Chair; Judge Samuel Grayson Wilson, Western District of Virginia; Judge Jerry A. Davis, Magistrate Judge, Northern District of Mississippi; and Judge J. Rich Leonard, Bankruptcy Judge, Eastern District of North Carolina, and one member from each of four other Judicial Conference Committees (liaison Committees): Judge Emmet Sullivan, District of Columbia, liaison from the Committee on Criminal Law; Judge James Robertson, District of Columbia, liaison from the Committee on Automation and Technology; Judge Sarah S. Vance, Eastern District of Louisiana, liaison from the Committee on the Administration of the Bankruptcy System; and Gene W. Lafitte, Esq., Liskow and Lewis, New Orleans, Louisiana, liaison from the Committee on the Rules of Practice and Procedure. After a lengthy process described below, the Subcommittee on Privacy and Public Access to Electronic Case Files, drafted a report containing recommendations for a judiciary-wide privacy and access policy.

The four liaison Committees reviewed the report and provided comments on it to the full Committee on Court Administration and Case Management. After carefully considering these comments, as well as comments of its own members, the Committee on Court Administration and Case Management made several changes to the subcommittee report, and adopted the amended report as its own.

### **Brief History of the Committee's Study of Privacy Issues**

The Committee on Court Administration and Case Management, through its Subcommittee on Privacy and Public Access to Electronic Case Files (the Subcommittee) began its study of privacy and security concerns regarding public electronic access to case file information in June 1999. It has held numerous meetings and conference calls and received information from experts and academics in the privacy arena, as well as from court users, including judges, court clerks, and government agencies. As a result, in May 2000, the Subcommittee developed several policy options and alternatives for the creation of a judiciary-wide electronic access privacy policy which were presented to the full Committee on Court Administration and Case Management and the liaison committees at their Summer 2000 meetings. The Subcommittee used the opinions and feedback from these committees to further refine the policy options.

In November 2000, the Subcommittee produced a document entitled "Request for Comment on Privacy and Public Access to Electronic Case Files." This document contains the alternatives the Subcommittee perceived as viable following the committees' feedback. The Subcommittee published this document for public comment from November 13, 2000 through January 26, 2001. A website at

[www.privacy.uscourts.gov](http://www.privacy.uscourts.gov) was established to publicize the comment document and to collect the comments. Two hundred forty-two comments were received from a very wide range of interested persons including private citizens, privacy rights groups, journalists, private investigators, attorneys, data re-sellers and representatives of the financial services industry. Those comments, in summary and full text format, are available at that website.

On March 16, 2001, the Subcommittee held a public hearing to gain further insight into the issues surrounding privacy and access. Fifteen individuals who had submitted written comments made oral presentations to and answered the questions of Subcommittee members. Following the hearing, the Subcommittee met, considered the comments received, and reached agreement on the policy recommendations contained in this document.

## Background

Federal court case files, unless sealed or otherwise subject to restricted access by statute, federal rule, or Judicial Conference policy, are presumed to be available for public inspection and copying. See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) (holding that there is a common law right "to inspect and copy public records and documents, including judicial records and documents"). The tradition of public access to federal court case files is also rooted in constitutional principles. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575-78 (1980). However, public access rights are not absolute, and courts balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The authority to protect personal privacy and other legitimate interests in nondisclosure is based, like public access rights, in common law and constitutional principles. See *Nixon*, 435 U.S. at 596 ("[E]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes").

The term "case file" (whether electronic or paper) means the collection of documents officially filed by the litigants or the court in the context of litigation, the docket entries that catalog such filings, and transcripts of judicial proceedings. The case file generally does not include several other types of information, including non-filed discovery material, trial exhibits that have not been admitted into evidence, drafts or notes by judges or court staff, and various documents that are sometimes known as "left-side" file material. Sealed material, although part of the case file, is accessible only by court order.

Certain types of cases, categories of information, and specific documents may require special protection from unlimited public access, as further specified in the sections on civil, criminal, bankruptcy and appellate case files below. See *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (noting that technology may affect the balance between access rights and privacy and security interests). To a great extent, these recommendations rely upon counsel and litigants to act to protect the interests of their clients and themselves. This may necessitate an effort by the courts to educate the bar and the public about the fact that documents filed in federal court cases may be available on the Internet.

It is also important to note that the federal courts are not required to provide electronic access to case files (assuming that a paper file is maintained), and these recommendations do not create any entitlement to such access. As a practical matter, during this time of transition when courts are implementing new practices, there may be disparity in access among courts because of varying technology. Nonetheless, the federal courts recognize that the public should share in the benefits of information technology, including more efficient access to court case files.

These recommendations propose privacy policy options which the Committee on Court Administration and Case Management (the Committee) believes can provide solutions to issues of privacy and access as

those issues are now presented. To the extent that courts are currently experimenting with procedures which differ from those articulated in this document, those courts should reexamine those procedures in light of the policies outlined herein. The Committee recognizes that technology is ever changing and these recommendations may require frequent re-examination and revision.

## **Recommendations**

The policy recommended for adoption by the Judicial Conference is as follows:

### **General Principles**

- There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.
- Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the Internet.
- Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.
- Except where otherwise noted, the policies apply to both paper and electronic files.
- Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.
- The availability of case files at the courthouse will not be affected or limited by these policies.
- Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

### **Case Types**

#### **Civil Case Files**

**Recommendation: That documents in civil case files should be made available electronically to the same extent that they are available at the courthouse with one exception (Social Security cases should be excluded from electronic access) and one change in policy (the requirement that certain "personal data identifiers" be modified or partially redacted by the litigants). These identifiers are Social Security numbers, dates of birth, financial account numbers and names of minor children.**

The recommendation provides for liberal remote electronic access to civil case files while also adopting some means to protect individual privacy. Remote electronic access will be available only through the PACERNet system which requires registration with the PACER service center and the use of a log in and password. This creates an electronic trail which can be retraced in order to determine who accessed certain information if a problem arises. Further, this recommendation contemplates that certain personal, identifying information will not be included in its full and complete form in case documents, whether

electronic or hard copy. For example, if the Social Security number of an individual must be included in a document, only the last four digits of that number will be used whether that document is to be filed electronically or at the courthouse. If the involvement of a minor child must be mentioned, only that child's initials should be used; if an individual's date of birth is necessary, only the year should be used; and, if financial account numbers are relevant, only the last four digits should be recited in the document. It is anticipated that as courts develop local rules and instructions for the use and implementation of Electronic Case Filing (ECF), such rules and instructions will include direction on the truncation by the litigants of personal identifying information. Similar rule changes would apply to courts which are imaging documents.

Providing remote electronic access equal to courthouse access will require counsel and pro se litigants to protect their interests through a careful review of whether it is essential to their case to file certain documents containing private sensitive information or by the use of motions to seal and for protective orders. It will also depend upon the discretion of judges to protect privacy and security interests as they arise in individual cases. However, it is the experience of the ECF prototype courts and courts which have been imaging documents and making them electronically available that reliance on judicial discretion has not been problematic and has not dramatically increased or altered the amount and nature of motions to seal. It is also the experience of those courts that have been making their case file information available through PACERNet that there have been virtually no reported privacy problems as a result.

This recommended "public is public" policy is simple and can be easily and consistently applied nationwide. The recommended policy will "level the geographic playing field" in civil cases in federal court by allowing attorneys not located in geographic proximity to the courthouse easy access. Having both remote electronic access and courthouse access to the same information will also utilize more fully the technology available to the courts and will allow clerks' offices to better and more easily serve the needs of the bar and the public. In addition, it might also discourage the possible development of a "cottage industry" headed by data re-sellers who, if remote electronic access were restricted, could go to the courthouse, copy the files, download the information to a private website, and charge for access to that website, thus profiting from the sale of public information and undermining restrictions intended to protect privacy.

Each of the other policy options articulated in the document for comment presented its own problems. The idea of defining what documents should be included in the public file was rejected because it would require the courts to restrict access at the courthouse to information that has traditionally been available from courthouse files. This would have the net effect of allowing less overall access in a technological age where greater access is easy to achieve. It would also require making the very difficult determination of what information should be included in the public file.

The Committee seriously considered and debated at length the idea of creating levels of access to electronic documents (i.e., access to certain documents for specific users would be based upon the user's status in the case). The Committee ultimately decided that levels of access restrictions were too complicated in relation to the privacy benefits which could be derived therefrom. It would be difficult, for example, to prohibit a user with full access to all case information, such as a party to the case, from downloading and disseminating the restricted information. Also, the levels of access would only exist in relation to the remote electronic file and not in relation to the courthouse file. This would result in unequal remote and physical access to the same information and could foster a cottage industry of courthouse data collection as described above.

Seeking an amendment to the Federal Rules of Civil Procedure was not recommended for several reasons. First, any such rules amendment would take several years to effectuate, and the Committee

concluded that privacy issues need immediate attention. There was some discussion about the need for a provision in Fed. R. Civ. P. 11 providing for sanctions against counsel or litigants who, as a litigation tactic, intentionally include scurrilous or embarrassing, irrelevant information in a document so that this information will be available on the Internet. The Committee ultimately determined that, at least for now, the current language of Fed. R. Civ. P. 11 and the inherent power of the court are sufficient to deter such actions and to enforce any privacy policy.

As noted above, this recommendation treats Social Security cases differently from other civil case files. It would limit remote electronic access. It does contemplate, however, the existence of a skeletal electronic file in Social Security cases which would contain documents such as the complaint, answer and dispositive cross motions or petitions for review as applicable but **not** the administrative record and would be available to the court for statistical and case management purposes. This recommendation would also allow litigants to electronically file documents, except for the administrative record, in Social Security cases and would permit electronic access to these documents by litigants only.

After much debate, the consensus of the Committee was that Social Security cases warrant such treatment because they are of an inherently different nature from other civil cases. They are the continuation of an administrative proceeding, the files of which are confidential until the jurisdiction of the district court is invoked, by an individual to enforce his or her rights under a government program. Further, all Social Security disability claims, which are the majority of Social Security cases filed in district court, contain extremely detailed medical records and other personal information which an applicant must submit in an effort to establish disability. Such medical and personal information is critical to the court and is of little or no legitimate use to anyone not a party to the case. Thus, making such information available on the Internet would be of little public benefit and would present a substantial intrusion into the privacy of the claimant. Social Security files would still be available in their entirety at the courthouse.

### Criminal Case Files

**Recommendation: That public remote electronic access to documents in criminal cases should not be available at this time, with the understanding that the policy will be reexamined within two years of adoption by the Judicial Conference.**

The Committee determined that any benefits of public remote electronic access to criminal files were outweighed by the safety and law enforcement risks such access would create. Routine public remote electronic access to documents in criminal case files would allow defendants and others easy access to information regarding the cooperation and other activities of defendants. Specifically, an individual could access documents filed in conjunction with a motion by the government for downward departure for substantial assistance and learn details of a defendant's involvement in the government's case. Such information could then be very easily used to intimidate, harass and possibly harm victims, defendants and their families.

Likewise, routine public remote electronic access to criminal files may inadvertently increase the risk of unauthorized public access to preindictment information, such as unexecuted arrest and search warrants. The public availability of this information could severely hamper and compromise investigative and law enforcement efforts and pose a significant safety risk to law enforcement officials engaged in their official duties. Sealing documents containing this and other types of sensitive information in criminal cases will not adequately address the problem, since the mere fact that a document is sealed signals probable defendant cooperation and covert law enforcement initiatives.

The benefit to the public of easier access to criminal case file information was not discounted by the



Committee and, it should be noted that, opinions and orders, as determined by the court, and criminal docket sheets will still be available through court websites and PACER and PACERNet. However, in view of the concerns described above, the Committee concluded that individual safety and the risk to law enforcement personnel significantly outweigh the need for unfettered public remote access to the content of criminal case files. This recommendation should be reconsidered if it becomes evident that the benefits of public remote electronic access significantly outweigh the dangers to victims, defendants and their families, and law enforcement personnel.

### **Bankruptcy Case Files**

**Recommendation: That documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; that § 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended as necessary to allow the court to collect a debtor's full Social Security number but display only the last four digits.**

The Committee recognized the unique nature of bankruptcy case files and the particularly sensitive nature of the information, largely financial, which is contained in these files; while this recommendation does provide open remote electronic access to this information, it also accommodates the privacy concerns of individuals. This recommendation contemplates that a debtor's personal, identifying information and financial account numbers will not be included in their complete forms on any document, whether electronic or hard copy (i.e., only the last four digits of Social Security and financial account numbers will be used). As the recommendation recognizes, there may be a need to amend the Bankruptcy Code to allow only the last four digits of an individual debtor's Social Security number to be used. The bankruptcy court will collect the full Social Security number of debtors for internal use, as this number appears to provide the best way to identify multiple bankruptcy filings. The recommendation proposes a minor amendment to § 107(a) to allow the court to collect the full number, but only display the last four digits. The names of minor children will not be included in electronic or hard copies of documents.

As with civil cases, the effectiveness of this recommendation relies upon motions to seal filed by litigants and other parties in interest. To accomplish this result, an amendment of 11 U.S.C. § 107(b), which now narrowly circumscribes the ability of the bankruptcy courts to seal documents, will be needed to establish privacy and security concerns as a basis for sealing a document. Once again, the experiences of the ECF prototype and imaging courts do not indicate that this reliance will cause a large influx of motions to seal. In addition, as with all remote electronic access, the information can only be reached through the log-in and password- controlled PACERNet system.

The Committee rejected the other alternatives suggested in the comment document for various reasons. Any attempt to create levels of access in bankruptcy cases would meet with the same problems discussed with respect to the use of levels of access for civil cases. Bankruptcy cases present even more issues with respect to levels of access because there are numerous interests which would have a legitimate need to access file information and specific access levels would need to be established for them. Further, many entities could qualify as a "party in interest" in a bankruptcy filing and would need access to case file information to determine if they in fact have an interest. It would be difficult to create an electronic access system which would allow sufficient access for that determination to be made without giving full access to that entity.

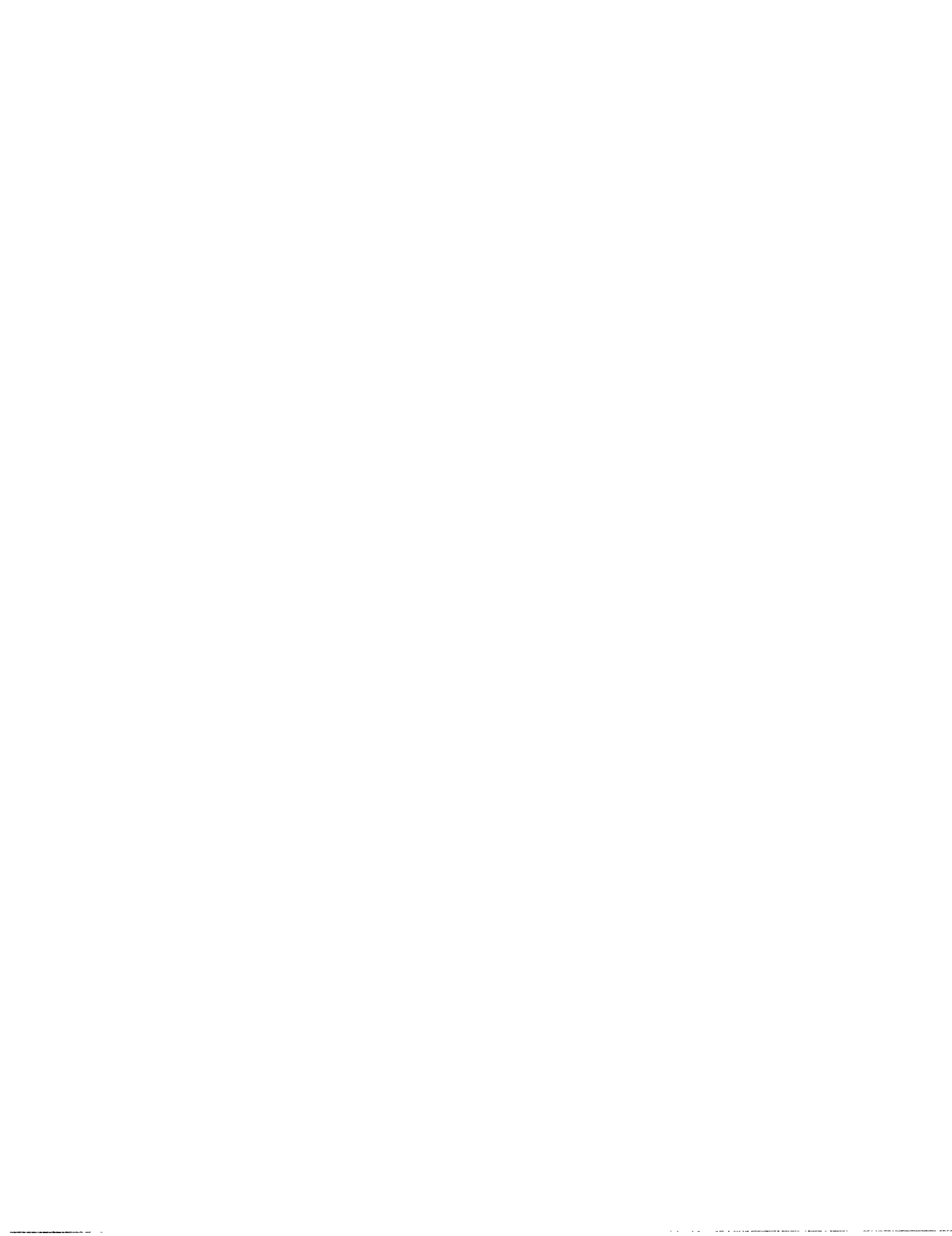
The idea of collecting less information or segregating certain information and restricting access to it was rejected because the Committee determined that there is a need for and a value in allowing the public

access to this information. Further, creating two separate files, one totally open to the public and one with restricted access, would place a burden on clerks' offices by requiring the management of two sets of files in each case.

### **Appellate Case Files**

**Recommendation: That appellate case files be treated at the appellate level the same way in which they are treated at the lower level.**

This recommendation acknowledges the varying treatment of the different case types at the lower level and carries that treatment through to the appellate level. For cases appealed to the district court or the court of appeals from administrative agencies, the documents in the appeal will be treated, for the purposes of remote electronic access, in the same manner in which they were treated by the agency. For cases appealed from the district court, the case file will be treated in the manner in which it was treated by the district court with respect to remote electronic access.





The proposed amendments to Rule 1005  
and to  
Official Forms 1, 3, 5, 6, 7, 8, 9, 10, 16A, 16C, and 19  
appear in the  
Preliminary Draft pamphlet\* dated January 2002,  
which is enclosed with this agenda book.

Please bring both the agenda book and the pamphlet  
with you to the meeting.

\* These materials also are posted on the Internet and can be viewed at  
<<http://www.uscourts.gov/rules>>.





MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: REVISION OF RULE 2014  
DATE: FEBRUARY 25, 2002

For a number of years, the Committee has considered amendments to Rule 2014 governing the approval of employment of professional persons. In March 2000, the Committee approved a revised version of Rule 2014 for notice and comment, and the Standing Committee authorized the publication of the proposed rule beginning in August 2000. We received a number of written comments on the proposal, and several persons testified at a public hearing in Washington in January 2001. The Committee considered the written comments and testimony and recommended to the Standing Committee that the rule be amended. The Standing Committee approved the rule as proposed, two members voting against the proposal.

The rule as revised would have required the disclosure of all connections with the debtor, as is required under the current rule; however, it would not have continued the obligation to disclose connections to creditors, parties in interest, or the attorneys and accountants for the debtor, creditors and parties in interest. In place of that former disclosure obligation, the proposed rule would have required disclosure of any connection that might cause the court or a party in interest to reasonably question whether the professional was disinterested. This combination of disclosure obligations took the place of a proposal considered by the Advisory Committee that would have required the disclosure of "any matters that are relevant to a determination that the professional is disinterested." Thus, the version of the Rule forwarded to



the Standing Committee and published for public comment was closer to the language and standards contained in existing Rule 2014 than was the Advisory Committee's initial proposal.

Rules approved by the Standing Committee are presented to the Judicial Conference for consideration at its Fall meeting. Prior to the Fall meeting, the Executive Committee of the Judicial Conference sets the agenda for the meeting. Matters placed on the consent calendar generally are approved without discussion, while matters placed on the discussion calendar face an uphill battle for approval. The nine member Executive Committee voted unanimously to place the matter on the discussion calendar. The unanimous vote suggested that the Judicial Conference likely would not adopt the proposal and forward it to the Supreme Court. Consequently, Judge Small and Judge Scirica concluded that the proposal should be withdrawn and the matter returned to the Advisory Committee for reconsideration. The conclusion was reached in part because a rejection of the proposed amendment would effectively prevent resubmission of another version of the rule for several years. Rather than send the proposal on to near certain defeat, the decision was made to reconsider, revise, and then resubmit a new proposal to amend Rule 2014.

The Subcommittee on Attorney Conduct met by teleconference on two occasions to consider the matter. The members of the Executive Committee of the Judicial Conference had expressed particular concern that the revised version of Rule 2014 would improperly reduce the extent of disclosure. Thus, the Subcommittee sought to revise the proposal to meet the concerns of the Executive Committee and still to improve the current rule. After the teleconferences, the Subcommittee agreed to an amended version of Rule 2014 as set out below. This version continues to include the stylistic changes and the requirement that professionals supplement their

declarations. The difference between this version of the proposed amendment and the version approved by the Standing Committee in June 2001 is in subdivisions (b)(3) and (4). Those subdivisions had formerly provided that the professional must disclose all connections with the debtor, but required disclosure of all connections with creditors, parties in interest and the attorneys and accountants of those persons only if the connections would cause the court or a party in interest to reasonably question whether the professional is disinterested. Objectors to the proposal believe that the scope of the disclosure would be inadequate. They assert in particular that the rule would place too much discretion in the hands of the professional making the disclosure. They have argued as well that an effective disclosure rule must require more disclosure than is technically sufficient to ensure that the person making the disclosure has not omitted necessary information. Given the nature of the concerns, and the depth of the conviction of those holding these views, the Subcommittee on Attorney Conduct is proposing that the subdivisions be reworked to reinstate creditors in subdivision (b)(3) thereby requiring the professional to disclose all connections to creditors as well as the debtor. The Subcommittee concluded that this expansion of the disclosure obligation balanced by other improvements in the rule would be preferable to the current version of Rule 2014.

If the Advisory Committee adopts the proposal of the Subcommittee on Attorney Conduct, the Committee needs to make a recommendation to the Standing Committee concerning its options. Typically, the initial version of an amendment or addition to the rules is proposed for public comment. Since we have already published for comment a version of Rule 2014 that included more substantial revision of the rule than the version set out below, it would seem proper to recommend to the Standing Committee that there is no need for another

publication of the proposed amendment. The changes in the proposal are the result of reconsideration by the Advisory Committee based on the written comments and oral testimony of interested parties. Therefore, if the Committee finds the proposal acceptable, we could propose that the Standing Committee adopt it as well for the purpose of proposing this version as the final version for adoption by the Judicial Conference.

There may be additional reluctance on the part of the Standing Committee or the Judicial Conference to adopt any disclosure rule that reduces the professional's obligation to make full disclosure. The Enron bankruptcy has focused attention on these matters, and the nature of the issues in the case (the close relationship between the debtor and its accountants and attorneys, among other things) could make both the Standing Committee and the Judicial Conference more skeptical of apparent reductions in the rules requiring disclosure of these connections. The financial difficulties facing Enron and the employment of professionals in that case are not directly applicable to Rule 2014, but the climate in which the proposal must be evaluated is certainly hyper sensitive to these general issues.

The Subcommittee on Attorney Conduct recommends the following version of Rule 2014 in substitution for the current version,

**Rule 2014. Employment of a Professional Person.**

1            (a)    APPLICATION FOR ORDER APPROVING  
2            EMPLOYMENT. An application for an order approving the  
3            employment of a professional person under §327, §1103, or §1114

4 of the Code shall be in writing and may be made only by the trustee  
5 or committee. The application shall state:

6 (1) specific facts showing why the employment is  
7 necessary;

8 (2) the name of the person to be employed and the  
9 reasons for the selection;

10 (3) the professional services to be rendered;

11 (4) any proposed arrangement for compensation; and

12 (5) that, to the best of the trustee's or committee's  
13 knowledge, the person to be employed is eligible under the Code  
14 for employment for the purposes set forth in the application.

15 (b) STATEMENT OF PROFESSIONAL. The application  
16 shall be accompanied by a verified statement of the person to be  
17 employed, made according to the best of that person's knowledge,  
18 information, and belief, formed after an inquiry reasonable under  
19 the circumstances, which shall state:

20 (1) that the person is eligible under the Code for  
21 employment for the purposes set forth in the application;

22 (2) any interest that the person holds or represents that  
23 is adverse to the estate;

24 (3) any interest in, relationship to, or connection the

25 person has with the debtor or any creditor;

26 (4) any other interest, relationship, or connection the  
27 person has that may cause the court or a party in interest to  
28 reasonably question whether the person is disinterested under  
29 § 101;

30 (5) any relationship the person has with the United States  
31 trustee, or with any employee of the United States trustee, for the  
32 region in which the case is pending;

33 (6) the information required to be disclosed under § 329(a)  
34 if the professional is an attorney; and

35 (7) whether the person shared or has agreed to share any  
36 compensation with any person, other than a partner, employee, or  
37 regular associate of the person to be employed, and if so, the  
38 details.

39 (c) SERVICE AND TRANSMITTAL OF APPLICATION.

40 (1) The applicant shall serve a copy of the application on:

41 (A) the trustee;

42 (B) the debtor and the debtor's attorney;

43 (C) any committee elected under §705 or appointed  
44 under § 1102, or, if the case is a chapter 9 case or a chapter 11 case  
45 and no committee of unsecured creditors has been appointed, on

46 the creditors included on the list filed under Rule 1007(d); and

47 (D) any other entity as the court may direct.

48 (2) Unless the case is a chapter 9 case, the applicant  
49 shall transmit a copy of the application to the United  
50 States trustee.

51 (d) SERVICES RENDERED BY MEMBER OR ASSOCIATE  
52 OF FIRM OF EMPLOYED PROFESSIONAL. If the court  
53 approves the employment of an individual, partnership, or  
54 corporation, any partner, member, or regular associate of the  
55 individual, partnership, or corporation may act as the person so  
56 employed, without further order of the court. If a partnership is  
57 employed, a further order approving employment is not required if  
58 the partnership has dissolved solely because of the addition or  
59 withdrawal of a partner.

60 (e) SUPPLEMENTAL STATEMENT OF  
61 PROFESSIONAL. Within 15 days after becoming aware of any  
62 undisclosed matter that is required to be disclosed under Rule  
63 2014(b), a person employed under this rule shall file a  
64 supplemental statement, serve a copy on each entity listed in Rule  
65 2014(c), and, unless the case is a chapter 9 case, transmit a copy to  
the United States trustee.

## COMMITTEE NOTE

The rule has been rewritten to make stylistic changes and to make it conform more closely to the applicable provisions of the Code. Professionals seeking court approval of their employment must disclose any interest in, relationship with, or connection to the debtor and any creditor. This carries forward the disclosure standard under the current version of the rule and is not intended to expand or contract the scope of that disclosure as regards connections with the debtor or creditors.

Subdivision (b4) requires the professional to disclose any other interests, relationships, or connections that would cause the court or any party in interest to reasonably question whether the person is disinterested. The rule thus requires the professional to evaluate the need to disclose the information from the perspective of the court and other parties in interest. If the information would cause those persons to question whether the professional is disinterested, it must be disclosed. For example, although the amended rule no longer requires the professional to disclose all connections with parties in interest and the attorneys and accountants of the debtor, creditors or parties in interest, subdivision (b)(4) requires disclosure of those matters if the court or interested parties could reasonably question whether the professional is disinterested because of those connections. This permits the United States trustee and other parties in interest an opportunity to evaluate more fully whether to oppose the application.

The rule also establishes a continuing obligation on the professional to timely file supplemental statements setting out the information required under the rule. Subdivision (c) of the rule sets out the service requirements for the application for the approval of employment. There is no provision requiring a hearing on the application. In most cases, an order approving the employment will be entered without a hearing. The court may set a hearing sua sponte or on request or may vacate an order issued under the rule upon motion of an interested party.

The rule does not address the standards that courts should apply in ruling on an application for employment of a professional.





## Memorandum

Date: February 15, 2002

From: Forms Subcommittee

To: Advisory Committee on Bankruptcy Rules

The instruction on Schedule G - Executory Contracts and Unexpired Leases states that a party to an executory contract or unexpired lease who is not also listed on one of the schedules of creditors will not receive notice of the filing of the bankruptcy case. The rationale for this instruction is that the debtor may be current on payments on an executory contract or lease, so that the other party is not a creditor in the case. In many cases, especially those involving a residential lease, the debtor may not want the landlord to know debtor/tenant has filed a bankruptcy case. A member of the subcommittee has questioned the policy underlying an official form that helps a debtor avoid notifying a landlord or other party to an executory contract that the debtor has filed a petition in bankruptcy.

An additional rationale for not including parties listed on Schedule G in the regular mailings is to avoid sending duplicate notices to those parties who are creditors listed on Schedule D, E, or F. Duplicate notices probably can be avoided by some other means, however.

The subcommittee suggests that the committee reconsider Schedule G on the following grounds. If a debtor who is current when the case is filed later defaults on the contract or lease, the debtor can argue that personal liability on the prepetition contract or lease was discharged, and, in the absence of a reaffirmation, the landlord's remedy for a postpetition or postdischarge breach may be limited to recovery of possession of the leased premises. There may be similar issues involving business debtors. Accordingly, it may be that landlords, lessees of personal property, and parties to executory contracts should receive notice of the case regardless of whether they are creditors.

Attached is a discussion draft of an amended Schedule G - Executory Contracts and Unexpired Leases.

Attachment

In re \_\_\_\_\_,

Case No. \_\_\_\_\_

Debtor

(If known)

## SCHEDULE G- EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any time share interest. If the claim is also listed on Schedule D, E, or F, do not include here the amount owed on the contract or lease. If all leases and contracts will not fit on this page, use the continuation sheets provided.

Provide the names and complete mailing addresses of all other parties to each lease or contract described, using the same format as in Schedules D, E, or F. State the nature of debtor's interest in each contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor lessee of a lease.

If any entity other than a spouse in a joint case may be jointly liable on a contract or lease, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each contract or lease by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If a claim relating to the contract or lease is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no executory contracts or unexpired leases to report on this Schedule G.

NAME AND MAILING ADDRESS INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM. (AMOUNT OWED AND NOT LISTED ON SCHEDULE D, E, OR F, IF ANY, AS OF DATE PETITION FILED.)

\_\_\_\_\_ continuation sheets attached

Subtotal ▶  
(Total of this page)

Total ▶

(Use only on last page of the completed Schedule G.)

\$

\$

(Report total also on Summary of Schedules)

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**  
(Continuation Sheet)

NAME AND MAILING ADDRESS INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM. (AMOUNT OWED AND NOT LISTED ON SCHEDULE D, E, OR F, IF ANY, AS OF DATE PETITION FILED.)
Sheet no ____ of ____ sheets attached to Schedule of Executory Contracts and Unexpired Leases							Subtotal ▶ \$ (Total of this page) Total ▶ \$ (Use only on last page of the completed Schedule G.) (Report total also on Summary of Schedules)

COMMITTEE NOTE

The form is amended to provide additional information about executory contracts and unexpired leases to which the debtor is a party and to delete the instruction that parties to these contracts and leases will not receive notice of the bankruptcy case unless they are listed on one of the schedules of liabilities. Even though a contract or lease may be an asset of the debtor or the debtor may be current on any lease or contract payment obligations, other parties to these transactions may have an interest in the bankruptcy case and should receive notice.



MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules  
FROM: Jeff Morris, Reporter  
RE: Burden of Proof Under Rule 4003  
DATE: August 22, 2001

Hon. Barry Russell (Bankr. C.D. Cal.) has asked the Committee to consider an amendment to Rule 4003(c). Under that provision, the burden of proof is on the party asserting that an exemption is not properly claimed. Judge Russell believes that this burden allocation is improper and likely due to the adaptation of former Bankruptcy Rule 403(c) which placed the burden of proof on any entity that objected to the trustee's report of exempt property. As Judge Russell notes in his letter, a copy of which is attached, placing the burden of proof on the party who objects to the exemption usually reverses the burden allocation made under former Rule 403(c). Typically, the debtor would object to a trustee's report that concluded a claimed exemption should not be allowed. In that instance, the debtor would have the burden of proof as to the propriety of the exemption. Under Rule 4003, however, the trustee does not file a report of exempt property to which the debtor would have to object. Rather, exemptions are allowed, in the absence of timely objections, upon the listing of the property as exempt under Bankruptcy Code § 522(*l*).

Rule 4003 is patterned after former Rule 403, but it is also derived from § 522(*l*). The Bankruptcy Code changed dramatically the treatment of exemptions from the practice under the Bankruptcy Act. The Code reverses the law under the Act by now providing in § 522(*b*) that

exempt property is property of the estate. Only upon allowance of the exemption is that property removed from the estate. Under the Act, exempt property was not property of the estate, consistent with the Act's emphasis on the creditors' ability to reach property as the foundation for including property within the estate. The Supreme Court in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) made it clear that the simple act of claiming property as exempt will result in that property being exempt in the absence of a timely objection by a party in interest. Thus, the treatment of exemptions under the Bankruptcy Code is radically different from the treatment of that property under the Bankruptcy Act. The lower courts have uniformly applied the burden of proof allocation established in Rule 4003(c). See, e.g., *In re Lester*, 141 B.R. 157, 161 (S.D. Oh. 1991) (burden of proof is set by Rule 4003(c) rather than state law even for exemption claimed under state exemption); *Gagne v. Bergquist (In re Gagne)*, (D. Mn. 1994)(same); *In re Ritter*, 190 B.R. 323 (Bankr. N.D. Ill. 1995)(same).

In support of his argument that Rule 4003(c) improperly shifts the burden of proof, Judge Russell cites the Supreme Court's decision in *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000). In that case, the Court held that the applicable nonbankruptcy law supplied the burden of proof for the allowance of a tax claim. The Court stated that creditors entitlements in bankruptcy arise out of substantive nonbankruptcy law as the Court had previously held in *Butner v. United States*, 440 U.S. 48 (1979). The recognition of the typically state law basis for creditors' claims should not, however, be carried over to the procedure for the allowance of exemptions. Section 522 governs all claims for exemption in bankruptcy cases, even when the exemptions are those set out in state law. Section 522(b) permits debtors to claim as exempt from the bankruptcy estate property that would be exempt under State or local law, but the exemption is "from the

estate” and it is both proper and necessary for the Bankruptcy Rules to govern the exemption process. In particular, § 522(*l*) provides the statutory support for the proposition that listing property as exempt makes it so. That section arguably demonstrates a Congressional intention that exemption allowance be streamlined as compared to the practice under the Bankruptcy Act. Importing the burdens of proof for the allowance of exemptions from nonbankruptcy law would be inconsistent with § 522(*l*). I would recommend retaining Rule 4003(c) in its present form rather than to amend it as Judge Russell has proposed.

Nevertheless, if the Committee believes either that the Rules should employ the burden of proof existing in the law under which the exemption is claimed, or if the Committee considers the Supreme Court’s decision in *Raliegh* dispositive in requiring the allocation of proof burdens according to applicable nonbankruptcy law, then Rule 4003 would have to be amended. The amendment would have to allocate the burden of proof for “federal” exemptions claimed under § 522(d) (available in approximately 15 states) as well as the “nonbankruptcy” exemptions. Given the directive of § 522(*l*), current Rule 4003(c) would properly allocate the burden, but the rule would have to be rewritten to govern exemption claims made other than under § 522(d). The following amendment to Rule 4003(c) is intended to implement Judge Russell’s proposal.

**RULE 4003. EXEMPTIONS**

\* \* \* \* \*

1  
2  
3  
4

(c) BURDEN OF PROOF. If the debtor or a dependent of the debtor claims exemptions under § 522(d) of the Bankruptcy Code, In any hearing under this rule the debtor party objecting has



5 the burden of proving that the exemptions are ~~not~~ properly  
6 claimed. If the debtor or a dependent of the debtor claims  
7 exemptions other than under § 522(d), the law under which the  
8 exemption arises establishes the burden of proof. After hearing on  
9 notice, the court shall determine the issue presented by the  
10 objections.

#### COMMITTEE NOTE

The rule is amended to shift the burden of proof for the allowance of exemptions under § 522(d) to the party claiming the exemption rather than placing the burden on the party filing an objection to the exemptions. This is consistent with the rules under the Bankruptcy Act which placed the burden of proof on the party objecting to the trustee's report of exempt property under former Rule 403(c). In that circumstance the debtor was the most likely party to object to the trustee's report, and under the prior rule the debtor had the burden of proof on that issue. Moreover, as to exemptions claimed under nonbankruptcy law, the Supreme Court has held that nonbankruptcy substantive law governs the burden of proof for the allowance of claims. *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000). Recognizing the preeminence of nonbankruptcy law also is appropriate for exemptions that exist under provisions outside of the Bankruptcy Code. The amendment carries the allocation of the burden of proof into the bankruptcy case from the substantive law outside of the Code and under which the debtor or a dependent of the debtor makes the claim of exemption.



# United States Bankruptcy Court

Central District of California  
Raybal Building  
255 East Temple Street, Suite 1660  
Los Angeles, California 90012

RECEIVED  
4/16/01

Chambers of  
Harry Russell  
Judge

(213) 894-6091

April 4, 2001

**01-BK-D**

Chief Judge A. Thomas Small  
U.S. Bankruptcy Court  
P.O. Box Bureau 2747  
Raleigh, NC 27602-2747

Dear Tom:

I am writing to you, as Chairman of the Bankruptcy Rules Committee, concerning Rule 4003. In my opinion, at its inception, the Rule improperly places the burden of proof on the party objecting to the debtor's claimed exemptions.

I believe this error was due to a confusion as to the burden of proof under prior Rule 403. Under both rules 4003 and 403, the burden of proof is, and was on the objector. However, under Rule 403, the trustee prepared and filed a report indicating the allowed exemptions. Thereafter, any creditor or the "bankrupt" had 15 days after the filing of the report to object.

Since the battle over exemptions is usually fought by the trustee and the debtor, it was the debtor, not the trustee who had the burden of proof. I believe the rules committee believed they were merely continuing the prior law when in effect it was reversing the appropriate burden of proof.

Although Rule 4003 superseded Rule 403 of the Bankrupt Act, the bankrupt had a similar duty under Rule 403(a) to file full and complete schedules, including a schedule of exempt property with the trustee. See 4 Colliers on Bankruptcy, (14<sup>th</sup> Ed). Once filed, however, it was the trustee who determined which exemptions were allowed under Rule 403(b) to make a report, and it was the trustee's report not the bankrupt-debtor's claims of exemption "which [was] given the force of an adjudication." Id.

As you can see from Rule 403(b), at a hearing, "The burden of proof shall be on the objector." Under Rule 403, this would almost always have been the debtor. The burden is reversed under Rule 4003 being on the creditor or the trustee rather than on the debtor.

For your convenience, the following is a copy of Rule 403:

Rule 403. Exemptions

(a) *Claim of Exemptions.* – A bankrupt shall claim his exemptions in the schedule of his property required to be filed by Rule 108.

(B) *Trustee's Report.* – The trustee shall examine the bankrupt's claim for exemptions, set apart such as are lawfully claimed, and allowable, and report to the court the items set apart, the amount or estimate value of each, and the exemptions claimed that are not allowable. The report shall be filed with the court no later than 15 days after the trustee qualifies. If the trustee reports that any exemption claimed is not allowable, he shall forthwith mail or deliver copies of the report to the bankrupt and his attorney.

(c) *Objections to Report.* -- Any creditor or the bankrupt may file objections to the report within 15 days after its filing, unless further time is granted by the court within such 15-day period. Copies of the objections so filed shall be delivered or mailed to the trustee and, if the objections are by a creditor, to the bankrupt and his attorney. After hearing upon notice the court shall determine the issues presented by the objections. The burden of proof shall be on the objector.

(d) *Procedure If No Trustee Qualified.* – If no trustee has qualified, the bankruptcy judge shall file the report prescribed by subdivision (b) of this rule within 15 days after the first date set for the first meeting of creditors. If the bankrupt files objections to the report, the court shall appoint a trustee or receiver, who shall represent the estate in the hearing on the objections.

(e) *Approval of Report If No Objections.* – If no objections are filed within the time provided by this rule, the report shall be deemed approved by the court. On request, the court may, at any time and without reopening the case, enter an order approving the report.

(f) *Claim of Exemption by Person Other Than Bankrupt.* – If the bankrupt fails to claim the exemptions to which he is entitled, or if he dies before his exemptions have been set apart to him, his spouse, dependent children, or any other persons who are entitled to claim the exemptions allowable to the bankrupt may, within such time as the court may order, file a claim for his exemptions or object to the report.

As you are aware, the Supreme Court in *Raleigh v. Illinois Department of Revenue*, 120 S.Ct 1951 (2000) has held that the burden of proof for tax claims is governed by non-bankruptcy substantive law. It seems to me that the burden of proof regarding entitlement to a state exemption is also a matter of substantive state law. I do not recall whether all states have opted out under Section 522(b)(1), but as stated above, I believe for federal exemptions the burden should be on the debtor.

Therefore, I suggest a bankruptcy rule which provides that the burden of proof should be governed by state law, as to state exemptions, (probably always on the debtor) and on the party claiming federal exemptions.

I would appreciate your comments on this matter.

Best regards,

A handwritten signature in black ink, appearing to read "Barry", written in a cursive style.

BARRY RUSSELL  
U.S. Bankruptcy Judge

cc: Honorable Christopher M. Klein  
U.S. Bankruptcy Judge  
501 "T" Street, 6<sup>th</sup> Floor  
Sacramento, CA 95814





MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM JEFF MORRIS, REPORTER  
RE: REAFFIRMATION AGREEMENTS  
DATE: FEBRUARY 25, 2002

Section 524(c) of Code governs reaffirmation agreements. It requires that the agreement be in writing (it must contain a clear and conspicuous statement regarding the debtor's rescission rights), that it be entered into prior to the entry of the debtor's discharge, that the debtor's attorney essentially has approved, and that the agreement be filed with the court. If the debtor is not represented by counsel, the court must make a finding that the agreement is in the debtor's best interest and does not impose an undue hardship on the debtor. Finally, the provision permits the debtor to rescind the agreement "at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever is later." Rule 4008 also governs the matter, although it includes only the slightest direction as to reaffirmation agreements. Instead, the rule simply requires that at least ten days notice be given to the debtor and trustee of a reaffirmation hearing. The hearing is required under § 524(d), however, only if the debtor was not represented by counsel during the negotiation of the reaffirmation agreement. The hearing provides the court with an opportunity to determine whether the agreement meets the requirements of § 524 and to inform the debtor of the consequences of the agreement. The rule also provides that the debtor must file a motion for approval of the reaffirmation agreement "before or at the hearing."

While the statute requires that the agreement be made prior to the discharge and also requires that it be filed, there is no deadline set for filing the reaffirmation agreement with the



court. Therefore, a reaffirmation agreement could be entered into prior to the entry of the discharge, but not filed with the court for quite some time. The reaffirmation agreement would meet the requirements of § 524(c), but the debtor still would have another sixty days to rescind the agreement. Bankruptcy Code § 524(c)(4). More importantly, late filing of reaffirmation agreements appears to be creating problems for the courts and clerks who must reopen closed cases to permit the filing of these agreements. The Bankruptcy Judges Advisory Group has requested that the Advisory Committee on Bankruptcy Rules consider amending Rule 4008 to establish a deadline for filing reaffirmation agreements. A copy of their request is attached.

Since a reaffirmation hearing is required only if the debtor is not represented by counsel in the negotiation of the agreement, some mechanism must be put in place to inform the court that a hearing is necessary. The current rule permits the debtor to file a motion to approve a reaffirmation agreement even at the reaffirmation hearing. Until such a motion is filed, however, the court would have no reason to schedule such a hearing. The Bankruptcy Judges Advisory Group notes that the triggering event for scheduling these hearings is the filing of a reaffirmation agreement without an accompanying affidavit from counsel for the debtor. Thus, setting a deadline in Rule 4008 for filing a reaffirmation agreement with the court will permit the orderly consideration of the agreements and will avoid the need to reopen cases at some later time to permit the filing of the agreement. Including the deadline in the rule may also serve to highlight the significance of reaffirmation agreements to both the debtor and counsel to the debtor.

Rule 4004(c)(1) directs the court to grant the discharge “forthwith” in the absence of a complaint objecting to the discharge or a motion to dismiss the case under Rule 1017(e). The rules set a deadline (subject to extension by the court) of sixty days from the first date set for the

§ 341 meeting of creditors for filing these dismissal motions or discharge complaints. Thus, in the bulk of cases, entry of the discharge can occur within ninety days of the commencement of the case. The deadline for filing reaffirmation agreements, therefore, should be set at a time not later than a specific date after the time for filing a complaint objecting to the discharge. It is more appropriate to use the deadline for filing these complaints than to set a time based on the date of the order for relief or the first date set for the meeting of creditors for two reasons. First, since reaffirmation agreements are enforceable if they are entered into prior to the entry of the discharge (assuming compliance with the other statutory requirements), the point at which discharge objections are no longer timely must run before the deadline for entering into the agreements has expired. Secondly, for cause shown, the court may extend the deadline for filing objections to discharge beyond the initial period set out in Rule 4004(a). Bankruptcy Rule 4004 (b). Thus, if the deadline is extended for an additional ninety days, there is little or no incentive to negotiate reaffirmation agreements. They are unnecessary if the debtor does not receive a discharge. Thus, the deadline for filing reaffirmation agreements cannot be set until after the time for filing complaints objecting to the discharge has passed.

Setting the ending date for the filing of reaffirmation agreements must address the concern of the Bankruptcy Judges Advisory Committee that the agreements be filed before case is likely to be closed. It must also allow the parties sufficient time to negotiate and reach agreement on the issues. Rule 4008 currently sets thirty days after the entry of the discharge as the deadline for holding a hearing under § 524(d). The parties must have reached agreement prior to the entry of the discharge, so the agreements must have been entered into at least thirty days prior to the hearing. The parties necessarily would know that the discharge had not been

granted at the time they reached agreement on the reaffirmation, so there should be no need for delay in filing the agreement. The rule, as revised, could require the parties to file the reaffirmation agreement within a stated period after they reach agreement, but this would create a variety of different deadlines with no corresponding benefit to the court or the clerk. Instead, it is appropriate to set the same deadline for filing all reaffirmation agreements when the debtor is not represented by counsel. The debtor and creditors will not know when the court enters the discharge until they receive notice of that fact under Rule 4004(g). That rule requires the clerk to give that notice "promptly." If we assume that creditors and the debtor would receive this notice within seven days after the entry of the discharge, then an additional seven days should be a more than sufficient time to file a copy of the reaffirmation agreement with the court. The court could then notify the debtor, the trustee and creditors of the § 524(d) hearing that would become necessary. Under current Rule 4008, the court must give ten days notice of the hearing, and this would still be possible if the agreements must be filed not later than fourteen days after the entry of the order of discharge. The time for filing the motions could be reduced to ten days, and the proposed rule could be changed by substituting "10" for "14" in the text of the rule and the Committee Note. The revised text of Rule 4008 to impose the filing deadline requirement for reaffirmation agreements follows.

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**Rule 4008. DISCHARGE AND REAFFIRMATION**

**HEARING.**

Not more than 30 days following the entry of an order granting  
or denying a discharge, or confirming a plan in a chapter 11  
reorganization case concerning an individual debtor and on not less

6 than 10 days notice to the debtor and the trustee, the court may  
7 hold a hearing ~~as provided in~~ under § 524(d) of the Code. ~~A~~  
8 ~~motion by the debtor for approval of a reaffirmation agreement~~  
9 ~~shall be filed before or at the hearing.~~ The debtor shall file a copy  
10 of any reaffirmation agreement not later than 14 [10] days after the  
11 entry of the order granting a discharge. If the debtor was not  
12 represented by counsel during the negotiation of a reaffirmation  
13 agreement, the debtor shall file with the agreement a motion for  
14 approval of the agreement.

#### COMMITTEE NOTE

The rule is rewritten to include a deadline for filing reaffirmation agreements and motions to reaffirm debts. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements are that the agreements must be entered into prior to the entry of the discharge, and they must be filed with the court. The rule sets the deadline for filing these agreements with the court. Since the parties must enter into the agreements prior to the entry of the discharge, providing an additional 14 [10] days to file a motion for approval of the agreement should be ample.

Setting a deadline for the filing of reaffirmation agreements is also necessary to inform the court of the need for a hearing under § 524(d). If the debtor is not represented by counsel in the negotiation of those agreements, then the court must approve the agreement. Imposing a deadline on the filing of these agreements and a motion to approve those agreements permits the courts to schedule those hearings when necessary. The deadline also operates to complete the reaffirmation process before the case is closed.

The proposed revision requires that all reaffirmation agreements be filed by the ten or

fourteen day limit. An argument can be raised that the rule should set different deadlines for the filing of these agreements depending on whether the debtor was represented by counsel. The need to schedule Rule 4008 hearings does not arise if the debtor has counsel, so there is no need to have the agreements filed early enough for the court to schedule the hearing. As long as the agreement is filed prior to the closing of the case, the problem identified by the Bankruptcy Judges Advisory Committee is avoided. On the other hand, setting different deadlines for filing the reaffirmation agreements could create unnecessary confusion. Consequently, I would not recommend a different deadline for filing the agreements based on the presence or absence of counsel for the debtor.





LEONIDAS RALPH MECHAM  
Director

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

CLARENCE A LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

FRANCIS F. SZCZEBAK  
Chief

Bankruptcy Judges Division

November 30, 2001

Mr. Peter G. McCabe  
Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

Dear Mr. McCabe:

The Bankruptcy Judges Advisory Group, at its November 6, 2001, meeting, voted to suggest an amendment to the Federal Rules of Bankruptcy Procedure to establish a deadline for the filing of a reaffirmation agreement. Although 11 U.S.C. § 524(c)(1) requires such an agreement to be "made" before the granting of a discharge and 11 U.S.C. § 524(c)(3) requires that it be filed with the court, no provision in either the Bankruptcy Code or the Bankruptcy Rules establishes a deadline for the filing.

The absence of a deadline and the speed with which most courts close a chapter 7 case after discharge produce a situation, now widespread, in which reaffirmation agreements are filed after the case has been closed. In order to include these agreements in the official case file and make them part of the official case record, the case must be reopened. Rule 4008 provides a deadline of 30 days after the grant or denial of discharge for the court to hold a reaffirmation hearing and requires ten days notice of the hearing, but permits a debtor to wait until the actual hearing to file a motion for approval of a reaffirmation agreement. In most courts, it is the filing of a reaffirmation agreement without any accompanying affidavit from the debtor's attorney that triggers the scheduling of a hearing under § 524(d) and Rule 4008. If neither the creditor nor the debtor files the agreement, the court has no way to know a hearing should be scheduled. The lack of a deadline for filing the agreement means that the deadlines which are provided in Rule 4008 for giving notice and holding the hearing may pass with no hearing having been held.

Mr. Peter G. McCabe

Page 2

Although, under § 524(c)(6), a reaffirmation agreement concerning a debtor not represented by an attorney is not enforceable unless approved by the court, the debtor may not know that. Providing a deadline for filing a reaffirmation agreement -- one that is early enough to prevent the court from closing the case and affords sufficient notice time for a hearing -- would help assure that every reaffirmation agreement is subjected to review either by the debtor's attorney or the judge and that all requirements for enforceability are met.

It appears to the Advisory Group that, if the Advisory Committee on Bankruptcy Rules agrees that the rules should provide a deadline for filing a reaffirmation agreement, Rule 4008 would be the appropriate rule to amend. The Advisory Group is concerned chiefly about the substance of its suggestion, however, and defers to the expertise of the Advisory Committee on Bankruptcy Rules regarding how the objective might be accomplished.

Accordingly, I request that you refer this suggestion to the Advisory Committee on Bankruptcy Rules.

Sincerely,



Francis F. Szczebak

cc: Hon. David S. Kennedy  
Hon. A. Thomas Small  
Prof. Jeffrey W. Morris

PSK:ff  
WPD OC:  
REF: Bankruptcy Rules Committee - Suggestions Received  
PF: n

November 27, 2001

THRU:

FFS 779  
RA R  
PSK PSK





MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: RULE 5002 – EMPLOYMENT OF JUDGE’S RELATIVES  
DATE: FEBRUARY 22, 2002

Judge Marilyn Shea-Stonum (Bankr. N.D. Oh.) has asked the Committee to consider an amendment to Rule 5002 to clarify that it does not extend the restrictions on the appointment or employment of a judge’s relatives beyond those set by the Code of Conduct for United States Judges. Rule 5002(a) sets out the restrictions on judges in the appointment of their relatives under §§ 327, 1103, 1104, or 1114 of the Bankruptcy Code. In relevant part, the current rule prohibits the judge from appointing or approving the appointment of any relative as the trustee or examiner in a case, or as the “attorney, accountant, appraiser, auctioneer, or other professional person.” The court may approve the appointment of a person who is a relative of the United States trustee in the region, “unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances.”

A “relative” is an “individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.” Bankruptcy Code § 101(45). While this definition establishes a specific limitation on the scope of Rule 5002(a), the Rule itself expands the limitation on the employment or approval of employment. It provides that if “an individual may not be approved for appointment or employment, the individual’s firm, partnership, corporation, or any other form of business

association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.” Judge Shea-Stonum suggests that the rule may prohibit the appointment or employment of any person in a firm that includes the child of the judge, even if the judge’s child is an associate in the firm and is not actively participating in the case. Such a reading of the rule would extend its reach beyond that which the Committee on Codes of Conduct has concluded is necessary under Canon 3C(1)(d)(ii) and (iii). Under that provision, the judge must recuse himself or herself if a relative is either acting as a lawyer in the proceeding or is known by the judge to have an interest that could be affected by the outcome of the proceeding. The Committee on Codes of Conduct has concluded that the provision does not require recusal if the judge’s relative is either an associate or non-equity partner in the firm. See Advisory Opinion No. 58, Committee on Codes of Conduct (August 9, 1978, Revised July 10, 1998) (copy attached).

It is possible to construe the language of the rule as consistent with the Advisory Opinion. The rule extends the prohibition to others who are in the “individual’s firm.” By characterizing it as the “individual’s” firm, the rule suggests that the judge’s relative has an ownership interest in the firm. Since neither associates nor non-equity partners have an ownership interest in a firm, their employment by the firm Rule 5002(a) should not prohibit the approval of appointments or employment. I have been unable to locate any decisions under Rule 5002(a) on this issue. At least two courts found a prior version of Rule 5002 in violation of the Rules Enabling Act because of the nature of the restrictions on appointments, In re Management Data Services, Inc., 43 B.R. 962 (Bankr. W.D. Wash. 1984); In re National Store Fixture Co., 37 B.R. 4811 (Bankr. W.D. Mo. 1983). Neither case, however, addressed the issue raised by Judge Shea-Stonum.

Nevertheless, those courts did find that the rule was vulnerable in part because it reached beyond the statutory restrictions governing recusal. The Committee Note to the 1985 Amendment to the rule notes that the rule is intended to implement Canon 3(b)(4) of the Code of Judicial Conduct and is guided by the same policy considerations that guide that Code. Thus, the Advisory Opinions of the Committee on Codes of Conduct should inform the interpretation of Rule 5002. If they do, then it would seem most likely that a judge could appoint a person seeking employment under §§ 327, 203, or 1114 of the Bankruptcy Code even if that person was a partner in a law firm that employed the judge's son or daughter as an associate or non-equity partner. Consequently, I would not recommend any amendment to the rule. Instead, it would seem more appropriate to direct the question to the Committee on Codes of Conduct for a determination that a bankruptcy judge may approve the employment of a person whose firm employs the judge's son or daughter.

If the Committee believes that an amendment to Rule 5002(a) is necessary, I would recommend the following language as a complete substitute for existing Rule 5002. The amended language rewrites the provision in the active voice, and it attempts to limit the mandatory restriction to those situations in which the judge's relative either is a partner or owner of a firm, or has taken or will take an active role in the case. Subdivision (b) of the rule would not be amended.

**RULE 5002. RESTRICTIONS ON APPROVAL OF APPOINTMENTS.**

1                                    (a) Approval of Appointment of Relatives Prohibited. The  
2                                    court shall not approve the appointment of an individual as a

3 trustee or examiner under § 1104 of the Code if the individual is a  
4 relative of the bankruptcy judge approving the appointment or the  
5 United States trustee in the region in which the case is pending.  
6 The court shall not approve the employment of an individual as  
7 attorney, accountant, appraiser, auctioneer, or other professional  
8 person under §§ 327, 1103, or 1114 if the individual is a relative of  
9 the bankruptcy judge making the appointment. The court may  
10 approve the employment of an individual as attorney, accountant,  
11 appraiser, auctioneer, or other professional person under §§ 327,  
12 1103, or 1114 if the individual is a relative of the United States  
13 trustee in the region, unless the court finds that the relationship  
14 with the United States trustee renders the employment improper  
15 under the circumstances of the case. Whenever under this  
16 subdivision the court may not approve the appointment or  
17 employment of an individual, the court also may not appoint any  
18 members, associates, or professional employees of a firm,  
19 partnership, corporation, or other form of business association or  
20 relationship in which the individual has an ownership interest.

#### COMMITTEE NOTE

The rule is rewritten to clarify that the prohibition on the appointment or approval or employment of a judge's relatives is coextensive with the limits imposed by Canon 3C of the Canons on Codes of Conduct for United States Judges. One could interpret the prior version of the rule to prohibit the appointment or approval

of employment of an individual if that person was a partner in a firm that employed the appointing judge's son as an associate who would have no involvement in the case. Advisory Opinion No. 58 of the Committee on Codes of Conduct states that such relationships are insufficient to require recusal. The relationship might become so close as to result in a permissive recusal, but that decision is left to the discretion of the judge.

Other changes are stylistic.







MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules  
FROM: Jeff Morris, Reporter  
RE: Bankruptcy Reform Legislation  
DATE: August 20, 2001

As you know, Congress has actively considered bankruptcy reform legislation for several years. It has passed a bill on the subject, but that bill did not become law by virtue of a pocket veto of the legislation by President Clinton. Thereafter, Congress again undertook consideration of bankruptcy reform legislation, and both the House and Senate have passed bills on the topic. The House passed H.R. 333 on March 1, 2001, and the Senate passed S. 420 on March 15, 2001. There are differences in the two bills, and they are now before a conference committee<sup>1</sup> seeking to reconcile the two bills. The two versions of the reform legislation are available in a side-by-side format through the website of the Davis Polk & Wardwell law firm. You can access this material at <<http://www.dpw.com/bankruptcyreform>>. It is also available through the website of the American Bankruptcy Institute at <[www.abiworld.org](http://www.abiworld.org)> through its Legislative News link. The side-by-side comparison places the language of the bills into the Bankruptcy Code and other U.S. Code titles. We will be referring to the Bankruptcy Code and related amendments frequently during the meeting, so you may wish to have a copy handy for those discussions.<sup>2</sup>

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<sup>1</sup> On July 17, 2001, the Senate passed H.R. 333 after deleting all of its provisions and substituting therefor the language of S. 420. The membership of the Conference Committee is now set, and meetings of the Committee are expected to begin when Congress reconvenes after Labor Day.

<sup>2</sup> After using the printed version of the document for several months, Judge Walker has opted to use the electronic version of the document.

The two Bills are nearly 300 pages long, and they contain amendments to five different titles of the United States Code. Many of the statutory changes and additions require no change or addition to the existing Bankruptcy Rules. Nevertheless, there are many provisions that will require action to implement by way of amendments and additions to the Bankruptcy Rules and Official Forms.

The amendments affecting consumer bankruptcy have garnered most of the attention given to the Bills. Certainly, these amendments are very extensive, but they are not the only changes that would follow upon final enactment. The Bills contain significant business bankruptcy amendments and other changes that operate across the full range of bankruptcy cases as well as to the appellate process. We will consider rules amendments and additions primarily, though not exclusively in those two categories. In preparation for our discussion of the proposed rules changes, the following is a brief description of the reform legislation in those areas that will require rules amendments and additions should the legislation become effective. The bills each provide a general effective date of 180 days after enactment. Consequently, we are attempting to set the foundation for amendments to the rules so that they can be promulgated as quickly as possible (consistent with the Rules Enabling Act) in the event that the bill becomes law. References to the Bankruptcy Code in this memorandum are references to the Code as it would be amended in the event that the pending legislation becomes law.

### **THE CONSUMER PROVISIONS**

The most fundamental change to the Bankruptcy Code contained in the Bills is the introduction of a means test for eligibility for individual debtors' to obtain chapter 7 relief. In simple terms, it provides that a debtor whose disposable income is either above a stated amount,

or whose disposable income is sufficient to pay a stated amount or percentage of nonpriority, unsecured claims cannot proceed under chapter 7 of the Bankruptcy Code. The disposable income calculations are based on expenses taken in large part from expense allowances established by the Internal Revenue Service. To some extent, a debtor's actual expenses form a part of the calculation. The chapter 7 petitions of those debtors whose disposable income levels meet or exceed the stated minimums are deemed to be an abuse of that chapter, and the debtors must seek relief under another chapter of the Code unless they are able to demonstrate special circumstances that justify expense allowances in excess of the IRS standards.

Understanding the means test requires analysis of several Bankruptcy Code sections. While it is primarily included in § 707(b), §§ 521 and 704 also play a significant role in the application of the means test in Chapter 7 cases.<sup>3</sup> Furthermore, the means test is made applicable to Chapter 13 cases by the amended definition of disposable income in §1325 (b). That section carries forward the means test calculations from § 707(b), and if the debtor's current monthly income exceeds the applicable median, then the debtor's plan must extend for five years in the Chapter 13 case. The applicable median is based on the size of the debtor's household and the state in which the debtor resides.

Section 521 provides that, unless the court orders otherwise, the debtor must file a statement of current income and expenditures. This statement of current income and expenditures must permit the calculation of the debtor's net income for purposes of the means test. The calculation requires a determination of the debtor's monthly income (a term defined in

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<sup>3</sup> It is also necessary to consider § 101(10A) which contains the definition of the debtor's "current monthly income".

Section 101) and the debtor's expenses. Current monthly income is defined as all of the income received by the debtor in the six months prior to the commencement of the case divided by six. The debtor's expenses are those established by the national and local standards of the Internal Revenue Service as well as the debtor's actual expenses in the categories of "other necessary expenses" set by the Internal Revenue Service. There is also the possibility of expanding the debtor's housing and food allowance by up to 5% over the IRS guidelines. Additionally, each bill provides that the debtor can demonstrate a higher expense for utilities if that fact is present.<sup>4</sup>

Under Section 707(b)(2), if the debtor's net income would exceed \$10,000 over five years, then the debtor is presumed to be in abuse of Chapter 7. Furthermore, if the debtor can pay the greater of either \$6,000 over five years or 25% of general unsecured claims over that period, then the filing is likewise considered an abuse.

If the debtor's gross income (on an annualized basis) is below the applicable median, the debtor is not vulnerable to a presumed abuse motion under § 707(b)(2). See § 707(b)(7). A debtor whose income is below that median, however, could be the subject of a motion to dismiss under § 707(b)(3). Such a motion, however, can be brought only by the judge, United States trustee, or bankruptcy administrator. The following table demonstrates the availability of these motions to specific parties.

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<sup>4</sup> The IRS expense calculations apply as well to the calculation of disposable income under § 1325(b) if the debtor's income exceeds the applicable median for that debtor's household.

	§ 707(b)(2)(presumed abuse)	§ 707(b)(3)(bad faith or totality of circumstances abuse)
Gross income above applicable median	Judge, United States trustee, Bankruptcy Administrator, and parties in interest may move to dismiss	Judge, United States trustee, Bankruptcy Administrator, and parties in interest may move to dismiss
Gross income below applicable median	No party can move to dismiss - safe harbor for debtor	<u>Only</u> Judge, United States Trustee, and Bankruptcy Administrator may move to dismiss under (b)(3)

Given that parties in interest are eligible to move to dismiss cases in which the debtor's income exceeds applicable medians, the first information that is necessary for noticing is the debtor's income and household size. If the debtor's income is below the median, presumably a notice could be sent to parties in interest stating that they are not eligible to move to dismiss under § 707(b). That notice could likewise be sent to the United States trustee or bankruptcy administrator and would indicate that the trustee or administrator is limited to moving under § 707(b)(3).

Sections 342 and 704 of the Code provide additional noticing requirements essential to the operation of the means test. Under § 342(d), the clerk must give notice to all creditors not later than ten days after the date of the filing of the petition that a presumption of abuse is triggered. Thus, the information necessary to make a determination of presumed abuse must be available to the clerk in time to initiate such a notice. Importantly, that section requires the notice whenever a presumption of abuse is present, not just when the debtor's income exceeds the appropriate median. This would suggest that all debtors must complete a means test calculation form, even if the debtor would not be vulnerable to a motion to dismiss for presumed

abuse under § 707(b)(2).

Once the § 342(d) notice is given, the next step in the case is the meeting of creditors under § 341. Section 704(b)(1)(A) requires the United States trustee or bankruptcy administrator to review the materials filed by the debtor and to file with the court a statement as to whether the debtor's case would be presumed to be an abuse under § 707(b). This statement must be filed not later than ten days after the date of the first meeting of creditors. Thereafter, the court must provide a copy of that statement to all creditors within five days after receipt of the statement. This would be the second notice that all creditors receive regarding potential abuse by the debtor. Section 704(b)(2) then requires the United States trustee or bankruptcy administrator to file a motion to dismiss or a statement setting forth why such motion is not appropriate. This filing must occur not later than 30 days after the date of the filing of the "ten day statement" required under § 704(b)(1)(A). The United States trustee or bankruptcy administrator has discretion to refrain from filing a motion to dismiss or convert if the debtor's current monthly income is between 100% and 150% of the appropriate median amount, and the debtor's net income is less than \$2,000 a year or would pay 25% of the debtor's unsecured claims or \$6,000, whichever is greater.

Any noticing system, and the rules to implement that system, must take account of the dual sources of motions to dismiss in § 707(b). In cases in which a debtor's case can be dismissed on motion of a party in interest, those parties need to be informed that they may have standing to assert such motions. The initial notice given by the clerk within ten days of the commencement of the case meets this need. Arguably, no other specific notice need be given to those parties. Rather, the timing for motion to dismiss under § 707(b) is analytically comparable

to objections to discharge under § 727. For example, the trustee can proceed under § 727 to object to a debtor's discharge. Parties in interest likewise can pursue such objections. No additional time is given to parties in interest to commence those actions even though the trustee might initiate a case. Instead, the parties have the same amount of time in which to initiate such actions. The protection of the interests of other creditors is contained in the rules governing dismissal of the discharge objection case. Dismissal can only be accomplished on notice to the trustee, the United States trustee, and such other persons as the court may direct under Rule 7041. Arguably, a similar rule should apply to 707(b) dismissal motions.

Section 704(b)(2) sets a deadline for the United States trustee or bankruptcy administrator to file a motion to dismiss within thirty days after the filing of the "ten day statement". This is a total of forty days after the first meeting of creditors. This time ? however, does not apply to motion to dismiss under § 707(b)(3). Presumably, the deadline for filing those motions would remain as it is under existing Rule 1017(e). The existing rule would operate sufficiently to govern the filing of motions to dismiss under § 707(b)(3). The statute governs the timing of the filing of the motion under § 707(b)(2) when the debtor's income exceeds the appropriate median. Since parties and interests may bring such motions in the event that the debtor's income exceeds the median, the rule needs to be expanded to establish timing limits on those motions filed by parties and interests. Two possibilities exist. Parties in interest can be given the same amount of time as the United States trustee or bankruptcy administrator within which to file such motions. It is also possible to extend that time to the deadline currently included in Rule 1017(e) which is currently only applicable to the United States trustee. The argument in favor of extending the time for parties and interest (but not for the United States trustee or bankruptcy administrator) is

that parties and interest theoretically will await action by the United States trustee before determining whether to pursue a motion to dismiss. The parties in interest would have twenty days after the United States trustee files its statement that it does not intend to move to dismiss the proceeding within which to file their motion.

The Bills contain a number of other provisions that likely will require amendments and additions to the Rules. Section 521 is amended to require debtors to submit additional financial information including pay stubs and tax returns. The rules and forms currently do not refer to these items that must be submitted. The Bills amend § 1328(a) to reduce the scope of the discharge in chapter 13 by excepting debts under § 523(a)(2) and (4) from that discharge. They also except from the full payment discharge debts for “restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.” This additional exception is very close in language to § 523(a)(6), but the difference in language and the fact that this exception to discharge is not carried into chapter 13 by direct cross reference to § 523(a)(6) raises questions about the applicability of the exclusive jurisdiction of the bankruptcy courts over those proceedings. The importation of these new categories of nondischargeable debts into chapter 13 can pose some problems as to the justiciability of those claims and to the effect of the conversion of the case from chapter 13 to chapter 7.

The Bills include new restrictions on the scope of the automatic stay when the debtor has filed for bankruptcy relief on more than one occasion. These limits may require that debtors provide additional or different information on the petition or other forms.

The reform legislation also expands the pilot program that existed in a limited number of



courts for the waiver of filing fees. See 28 U.S.C. § 1930(f). Rules and forms changes may be necessary to implement the nationwide availability of fee waivers. Likewise, the creation of new requirements of creditor counseling and financial management education as conditions to eligibility for relief and the entry of a discharge, respectively, may require additions to the rules and forms to implement the changes.

### **BUSINESS BANKRUPTCY ISSUES**

While less extensive, the amendments to the Bankruptcy Code affecting business cases create the need for a number of amendments and additions to the Bankruptcy Rules and Official Forms. Most of the changes follow from the provisions governing “small business debtors” in chapter 11 cases. These debtors face different time deadlines for the confirmation of plans, and they also must submit operating reports different in form from those that might be required of chapter 11 debtors generally. The reform legislation also calls for the promulgation of form plans and disclosure statements for use by small business debtors. Each of these legislative developments requires the creation of rules or forms to implement those provisions. Even the definition of a “small business debtor” creates problems for the rules because the definition turns on the presence or absence of an active and effective creditors’ committee, a matter that can change over the course of the case. The legislation also establishes restrictions on serial bankruptcy cases by small business debtors.

The reform legislation also contains significant amendments to chapter 11 for cases of individual debtors. Property of the estate is redefined, see § 1115, and the discharge in those cases is postponed to the completion of payments under a confirmed plan. See § 1141(d)(5).

These changes create problems similar to those created by the expansion of the categories of nondischargeable debts in chapter 13 cases discussed above, and also raise issues about the need for postconfirmation monitoring of the debtor.

The reform legislation also creates “health care businesses” as another form of debtor. In these debtors’ cases, the revised Code anticipates the appointment of an ombudsman to oversee the protection of patient health care records. The amendments include new provisions for the election of trustees in chapter 11 cases as well as requirements to expand the information being given to creditors with foreign addresses. Each of these amendments may require changes to or additions to the Bankruptcy Rules and Official Forms.

The Agenda Materials on these matters are divided into four categories: Consumer Rules, Consumer Forms, Business Rules, and Business Forms. Other Rules amendments or additions necessitated by the pending legislation are addressed separately.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: "CONSUMER" AMENDMENTS TO IMPLEMENT THE BANKRUPTCY REFORM LEGISLATION

DATE: AUGUST 23, 2001

The Consumer Subcommittee met twice during the past several months to consider the extent to which the pending reform legislation might require amendments to the rules. The Subcommittee initially studied and discussed the matter, and later considered specific language for the amendment of a number of rules. The following proposed rules amendments are a product of those discussions. The versions set out below have been modified and expanded to some extent after the Subcommittee met; however the changes were largely in response to the the Subcommittee's discussions. It is possible that further rules amendments and additions may be necessary if the reform legislation is enacted. The amendments and additions set out below are those that the Subcommittee identified or discussed. While the Subcommittee has considered most of these amendments, some of the changes and additions were made after the Subcommittee's last meeting.

As noted in the general memorandum, the most extensive amendments to the Bankruptcy Code contained in the pending reform legislation apply in individual debtor cases. Some of the amendments are relatively straightforward, such as the expansion of the availability of filing fee waivers. Under the existing law, Congress authorized eight pilot districts to waive filing fees in bankruptcy cases. By amendment to 28 U.S.C. § 1930, waiver of filing fees would be available

nationwide. Thus, there is a proposed amendment to **Rule 1006** to reflect this legislative change.

The reform legislation greatly increases the information and materials that individual debtors must provide to the court and parties in interest. Consequently, amendments are necessary to **Rules 1007 and 1009** which describe the debtor's informational filing obligations. Under the legislation, debtors must submit pay stubs and tax returns and must complete and file new forms to demonstrate that they meet new eligibility requirements. These forms and the new data were not required under the existing rules, so amendments would be necessary to implement those changes.

Among the most significant amendment to the Bankruptcy Code that the reform legislation would effect is the introduction of a means test as a requirement for eligibility for relief under chapter 7. The means test is a combination of provisions in §§ 101, 521, and 707 of the Code, and it is implemented primarily by a motion to dismiss a chapter 7 case under § 707(b). These amendments require changes in **Rule 1017** to reflect the new terminology ("abuse" rather than "substantial abuse") and the limited standing to file motions under § 707(b). Proposed amendments to **Rules 2003 and 9006** are set out below to address possible problems with the timing of the conclusion of the § 341 meeting of creditors. This event has important consequences under the reform legislation, and the rules need to provide a mechanism to establish necessary deadlines.

Categories of nondischargeable debts are expanded in chapter 13 cases under the reform bills. This creates a need to establish new deadlines for filing these complaints in chapter 13 cases and to set the deadlines if a case is converted to chapter 7. Revisions to **Rules 1019 and**

**4007** are intended to implement these legislative amendments.

Under the reform legislation, chapter 13 debtors have new obligations to file with the court copies of tax returns that come due during the pendency of the case. The legislation provides that the taxing authorities with claims that arise from these returns have more time to file proof of those claims than is provided under the current version of **Rule 3002**. Consequently, an amendment to that rule is offered. The amendments and additions proposed to implement the changes made to the law governing consumer bankruptcy cases are set out below.

**RULE 1006. FILING FEE**

1 (a) GENERAL REQUIREMENT. Unless the court waives the  
2 filing fee, every ~~Every~~ petition shall be accompanied by the filing  
3 fee except as provided in subdivision (b) of this rule. For the  
4 purpose of this rule, “filing fee” means the filing fee prescribed by  
5 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the  
6 Judicial Conference of the United States under 28 U.S.C. § 1930(b)  
7 that is payable to the clerk upon the commencement of a case  
8 under the Code.

9 (b) PAYMENT OF FILING FEE IN INSTALLMENTS.

10 (1) *Application for Permission to Pay Filing Fee in*  
11 *Installments.* A voluntary petition by an individual shall be  
12 accepted for filing if accompanied by the debtor’s signed

13 application stating that the debtor is unable to pay the filing fee  
14 except in installments. The application shall state the proposed  
15 terms of the installment payments and that the applicant has neither  
16 paid any money nor transferred any property to a debt relief agency  
17 ~~an attorney~~ for services in connection with the case.

18 \* \* \* \* \*

COMMITTEE NOTE

The rule is revised to reflect the amendment that added 28 U.S.C. § 1930(f) authorizing the courts to waive the filing fee for an individual whose income falls below the statutory standard. The availability of the waiver is in addition to the payment of the filing fee in installments which subdivision (b) of the rule continues to govern. Subdivision (b)(1) is amended to introduce the term “debt relief agency” included in § 101 of the Bankruptcy Code. That term includes attorneys and others who provide “bankruptcy assistance” (as that term is likewise defined in § 101 of the Code) to the debtor. The amendment to the rule expands the restriction on the timing of the payment of attorney fees to reach payments to all debt relief agencies.

**RULE 1007. LISTS, SCHEDULES, ~~AND~~ STATEMENTS, AND  
OTHER SUBMISSIONS; TIME LIMITS**

1 \* \* \* \* \*

2 (b) Schedules, ~~and~~ statements, and other submissions required.  
3 (1) Except in a chapter 9 municipality case, the debtor, unless the  
4 court orders otherwise, shall file schedules of assets and liabilities,

5 a schedule of current income and expenditures, a schedule of  
6 executory contracts and unexpired leases, and a statement of  
7 financial affairs, prepared as prescribed by the appropriate Official  
8 Forms. The debtor also shall file with the court a record of any  
9 interest that the debtor has in an education individual retirement  
10 account or a qualified State tuition program, and, unless the court  
11 orders otherwise, copies of all payment advices or other evidence  
12 of payment, if any, received by the debtor from an employer within  
13 60 days of the filing of the petition.

14 (2) An individual debtor in a chapter 7 case shall file a statement of  
15 intention as required by § ~~521(a)~~ 521(2) of the Code, prepared as  
16 prescribed by the appropriate Official Form. A copy of the  
17 statement of intention shall be served on the trustee and the  
18 creditors named in the statement on or before the filing of the  
19 statement.

20 (3) An individual debtor in a chapter 7 case shall file a statement of  
21 current monthly income and the calculations that determine  
22 whether a presumption of abuse arises under § 707. If an  
23 individual filing a chapter 13 case has current monthly income  
24 greater than the applicable median family income for the applicable  
25 state, as adjusted under § 1325, the debtor shall file a statement of  
26 current monthly income and the calculations that determine



27 whether a presumption of abuse arises under § 707.

28 (4) An individual debtor who requests an exemption from the  
29 credit counseling requirement of § 109 must file an application  
30 with the petition. All individual debtors must file a certificate  
31 indicating satisfaction of the credit counseling requirement of §  
32 109 and a copy of the debt repayment plan, if any, within 45 days  
33 after the filing of the petition.

34 (c) Time limits. The schedules and statements required by  
35 subdivision (b)(1); other than the statement of intention; shall be  
36 filed with the petition in a voluntary case, or if the petition is  
37 accompanied by a list of all the debtor's creditors and their  
38 addresses, within 15 days thereafter, except as otherwise provided  
39 in subdivisions (d), (e), and (h) of this rule. In an involuntary case  
40 the schedules and statements required by subdivision (b)(1); other  
41 than the statement of intention; shall be filed by the debtor within  
42 15 days after entry of the order for relief. The statement and  
43 calculations required by subdivision (b)(3) shall be filed with the  
44 petition within 5 days after the filing of the petition in a voluntary  
45 case and within 5 days after entry of the order for relief in an  
46 involuntary case. Schedules, ~~and statements,~~ and other  
47 submissions filed prior to the conversion of a case to another  
48 chapter shall be deemed filed in the converted case unless the court

49 directs otherwise. Any extension of time for the filing of the  
50 schedules, ~~and~~ statements, and submissions may be granted only on  
51 motion for cause shown and on notice to the United States trustee  
52 and to any committee elected under § 705 or appointed under §  
53 1102 of the Code, trustee, examiner, or other party as the court may  
54 direct. Notice of an extension shall be given to the United States  
55 trustee and to any committee, trustee, or other party as the court  
56 may direct.

57 \* \* \* \* \*

#### COMMITTEE NOTE

The title of the rule has been changed to reflect the broader range of submissions it governs. Subdivision (b) has been amended to require the filing of other submissions now required to be filed by § 521, including the statement of current monthly income and the calculations that determine whether a presumption of abuse arises under § 707(b), as required by § 707(b)(2)(C) and § 521(a). Another amendment to subdivision (b) relates to the new requirement under § 109 that individual debtors receive credit counseling prior to filing the petition or request an exemption of the requirement, in which case they must receive credit counseling after the filing of the petition. Amendments to subdivision (c) make conforming amendments and establish time limits for the statement and calculations to be filed under subdivision (b)(3).

#### **RULE 1009. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES AND STATEMENTS**

1 \* \* \* \* \*

2 (b) Statement of intention. The statement of intention may be  
3 amended by the debtor at any time before the expiration of the

4 period provided in § 521(a) 521(2)(B) of the Code. The debtor  
5 shall give notice of the amendment to the trustee and to any entity  
6 affected thereby.

7 \* \* \* \* \*

Committee Note

The amendment to subdivision (b) reflects the renumbering of subsections of § 521 and substantive amendments thereto.

**RULE 1017. DISMISSAL OR CONVERSION OF CASE;  
SUSPENSION**

1 \* \* \* \* \*

2 (e) Dismissal of an individual debtor's chapter 7 case or conversion  
3 to a case under chapter 11 or 13 for ~~substantial~~ abuse. The court  
4 may dismiss or convert an individual debtor's case for ~~substantial~~  
5 abuse under § 707(b) only on motion ~~by the United States trustee~~  
6 ~~or on the court's own motion~~ and after a hearing on notice to the  
7 debtor, the trustee, the United States trustee, and any other entities  
8 as the court directs.

9 (1) A motion to dismiss or convert a case for ~~substantial~~ abuse  
10 under § 707(b)(2) may be filed ~~by the United States trustee~~ only  
11 within ~~60~~ the earlier of 30 days after ~~the first date set for the~~  
12 ~~meeting of creditors under § 341(a), unless, on request filed by the~~

13 United States trustee files a statement as to whether the debtor's  
14 case would be presumed to be an abuse or 40 days after the  
15 conclusion of the meeting of creditors under § 341(a). ~~before the~~  
16 time has expired, the court for cause extends the time for filing the  
17 motion to dismiss. The conclusion of the meeting shall not be  
18 withheld without cause. <sup>1</sup> ~~The United States trustee party filing the~~  
19 motion shall set forth in the motion all matters to be considered  
20 submitted to the court for its consideration at the hearing.  
21 (2) If the hearing is set on the court's own A motion ; to dismiss or  
22 convert for abuse other than one under subdivision (e)(1) notice of  
23 the hearing shall ~~may~~ be served on the debtor no later than filed  
24 only within 60 days after the first date set for the meeting of  
25 creditors under § 341(a), unless, on request of a party made prior to  
26 the expiration of the 60 days, the court for cause extends the time  
27 for filing the motion to dismiss. All motions to dismiss under §  
28 707(b)(3) shall state with particularity the circumstances  
29 constituting abuse. The notice shall set forth all matters to be  
30 considered by the court at the hearing.  
31 (3) A motion to dismiss by the victim of a crime of violence or a  
32 drug trafficking crime may be filed only within 60 days after the  
33 United States trustee files a statement as to whether the debtor's

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<sup>1</sup>This sentence is offered as an alternative to the proposed amendment to Rule 2003(e).

34 case would be presumed to be an abuse, unless, on request by the  
35 victim before the time has expired, the court for cause extends the  
36 time for filing the motion to dismiss.

37 \* \* \* \* \*

#### COMMITTEE NOTE

Subdivision (e) has been amended to implement new subsections of § 707. First, § 707 now refers to conversion of a chapter 7 case to a case under chapter 11 or 13 as well as to dismissal of the case. Second, dismissal or conversion is now triggered by abuse, rather than substantial abuse. Third, subdivision (e) reflects that other parties in interest are now authorized to bring motions under § 707(b) under certain circumstances. Fourth, § 707 now draws a distinction between cases that are presumed abusive due to ability to pay calculations and cases that are found abusive on other grounds, and the distinction has procedural and timing consequences. For cases that are presumptively abusive based on the formula set forth in § 707(b)(2), § 704 now requires that the United States trustee file a motion within 30 days after filing an initial statement. Amended subdivision (e)(2) requires that the United States trustee, as well as other parties authorized to bring such motions, file a presumed abuse motion to dismiss within the earlier of 30 days after the United States trustee files its initial statement, or 40 days after the conclusion of the meeting of creditors. It is expected that meetings of creditors will not improvidently be held open. For a motion to dismiss or convert for abuse other than presumed abuse, the current timing rule is preserved. Fifth, new § 707(c) authorizes the court to dismiss a chapter 7 case, on motion of the victim of a crime of violence or a drug trafficking crime, when dismissal is in the best interest of the victims under some circumstances. The timing rules are provided separately for those motions in new subdivision (e)(3).

**RULE 1019.** CONVERSION OF CHAPTER 11  
REORGANIZATION CASE, CHAPTER 12 FAMILY  
FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13

INDIVIDUAL'S DEBT ADJUSTMENT CASE TO CHAPTER 7  
LIQUIDATION CASE

\* \* \* \* \*

1  
2 (2) NEW FILING PERIODS. A new time period for filing  
3 ~~claims or claims~~; a complaint objecting to discharge, ~~or a~~  
4 ~~complaint to obtain a determination of dischargeability of any debt~~  
5 shall commence under pursuant to Rules 3002 or 4004 ~~3002, 4004,~~  
6 ~~or 4007~~; provided that a new time period shall not commence if a  
7 chapter 7 case had been converted to a chapter 11, 12, or 13 case  
8 and thereafter reconverted to a chapter 7 case and the time for  
9 filing ~~claims or claims~~; a complaint objecting to ~~discharge, or a~~  
10 ~~complaint to obtain a determination of the dischargeability of any~~  
11 ~~debt~~; or any extension thereof, expired in the original chapter 7  
12 case. In a case converted to chapter 7 from chapter 13, a new  
13 period for filing a complaint to obtain a determination that a debt is  
14 dischargeable under § 523 (a)(6) shall commence under Rule 4007  
15 unless the case had been converted to a chapter 13 case and the  
16 time for filing such a complaint expired in the original chapter 7  
17 case.

COMMITTEE NOTE

The rule is amended to recognize that the Bankruptcy Reform Act of 2001 makes all of the categories of nondischargeable debts in § 523(a) of the Bankruptcy Code applicable in chapter 11 and 12 cases. The amendments also make two of the categories of

nondischargeable debts for which § 523(c) provides exclusive jurisdiction in the bankruptcy courts and for which Rule 4007 establishes filing deadlines applicable in chapter 13 cases. Since all of these debts would be nondischargeable in any of the operative chapters, there is no need to provide an additional deadline for filing these complaints in the event of a conversion of the case. Only in the conversion of a chapter 13 case to chapter 7 is there a need to establish a new deadline, and then only for debts that are nondischargeable under § 523(a)(6). Those debts are dischargeable in a chapter 13 case in which the debtor completes making the payments called for in the confirmed plan.

**RULE 2003. MEETING OF CREDITORS OR EQUITY SECURITY HOLDERS**

\* \* \* \* \*

(e) Adjournment. Unless the court orders otherwise, The the meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.<sup>2</sup>

\* \* \* \* \*

COMMITTEE NOTE

The conclusion of the meeting of creditors is one of the events setting the time to file motions to dismiss or convert chapter 7 cases for presumed abuse under § 707 and Rule 1017(e). Therefore, notwithstanding the general lack of involvement of courts in meetings of creditors under § 341(a), to prevent an open-ended statute of limitations period for presumed abuse motions it is important to recognize that judicial review is available in the event that meetings of creditors are continued without cause. This is the justification for the new reference to the court in subdivision (e).

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<sup>2</sup>This amendment is offered as an alternative to the language flagged in Rule 1017(e).

**RULE 3002. FILING PROOF OF CLAIM OR INTEREST**

\* \* \* \* \*

(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308 of the Code, is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit. A proof of claim filed by a governmental unit for a claim under § 1308 of the Code is timely if filed before the later of 180 days after the date of the order for relief, or 60 days after the date of the filing of the tax return.

COMMITTEE NOTE

The rule is amended to provide additional time for governmental units to file a proof of claim for tax obligations set out in tax returns filed during the pendency of a chapter 13 case.



The governmental unit has at least 60 days after the filing of the tax return to file proof of the claim, and that period can be greater if the return is filed less than 120 days after the date of the order for relief.

**RULE 4007. DETERMINATION OF DISCHARGEABILITY OF A DEBT**

\* \* \* \* \*

(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, OR CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. Except as provided in subdivision (d), a ~~A~~ complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

\* \* \* \* \*

COMMITTEE NOTE

Subdivision (c) of the rule is amended to account for the addition of categories of nondischargeable debts in chapter 13 cases. Previously, several categories of debts that were nondischargeable in chapter 7, 11, and 12 cases under § 523(a) of the Code were dischargeable in chapter 13 cases. The 2001 amendments to § 1328 of the Code, however, now exclude debts under § 523(a)(2) and (4) from the full payment discharge in chapter 13. Therefore, the time limits set by the rules governing these actions under the other chapters of the Code are now made applicable in chapter 13 cases. It is appropriate to employ the same time limits in chapter 13 cases as in chapter 12 cases.

Since there still exists the possibility that a chapter 13 debtor may seek a hardship discharge under § 1328(b), the rule continues to provide time limits governing those cases.

**RULE 9006. TIME**

\* \* \* \* \*

(b) ENLARGEMENT.

\* \* \* \* \*

(2) Enlargement not permitted. The court may not enlarge the time for taking action under Rules 1007(d), 1017(e)(1), 2003(a) and (d), 7052, 9023, and 9024.

(3) Enlargement limited. The court may enlarge the time for taking action under Rules 1006(b)(2), 1007(c), 1017(e)(2), 1017(e)(3), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

\* \* \* \* \*

COMMITTEE NOTE

A reference to Rule 1017(e)(1) has been placed in subdivision (b)(2) to preclude extensions of the time to file motions to dismiss or convert for presumed abuse under § 707(b). Subdivision (b)(3) includes a reference to Rule 1017(e)(2), for abuse motions under § 707(b) other than presumed abuse motions, and new Rule 1017(e)(3), which deals with motions to dismiss by the victim of a crime of violence or a drug trafficking crime and contains its own guidance on time extensions. Subdivision (b)(3) now includes a reference to Rule 1007(c) to reflect the guidance on extensions provided therein.

### **Rules Amendments Regarding Debtor Financial Education Requirements**

The Consumer Subcommittee briefly considered whether rules changes were necessary to implement the provisions in the reform legislation that require the debtor to complete a financial management course as a prerequisite to the entry of a discharge. The legislation would create §§ 727(a)(11) and 1328(g) to require completion of a course in personal financial management as a condition to the entry of a discharge. The Subcommittee concluded that the incentive for the debtor to obtain a discharge would likely lead to the submission of appropriate evidence of the completion of such a course. Moreover, under § 111 of the Code as it would be amended by the reform legislation, the United States trustee and the Bankruptcy Administrator are directed to evaluate and approve the entities that provide the personal financial management classes and credit counseling services. The Subcommittee assumed that the relevant oversight agency will require the service provider to submit a certificate of completion of the course or counseling program to the court. Only debtors in bankruptcy cases will be taking the personal financial management course, so the service provider could submit to the appropriate court a record of the debtor's completion of the course so that the discharge could be entered.

The United States trustee office has subsequently proposed that several rules be amended to prevent the automatic entry of a discharge. The proposal is to amend Rule 4004(c) to include the absence of a certificate of completion of a personal financial management course as a ground for the court to withhold entry of the discharge. The argument is that adding the absence of this document to the list in Rule 4004(c) will enable the clerk to “red flag” the case and prevent the inadvertent entry of the discharge. The argument against the rule amendment is that the statute specifically provides that the debtor is not entitled to a discharge unless the debtor has completed the course. Therefore, there is no need for the rules to duplicate the statute. The statute provides sufficient notice to the clerk to initiate a system to prevent the inadvertent entry of a discharge in the absence of the debtor’s submission of a certificate of completion of the course.

If the Committee believes that rules amendments are proper, the following are suggested.

**Rule 4004. GRANT OR DENIAL OF DISCHARGE**

\* \* \* \* \*

(c) GRANT OF DISCHARGE.

\* \* \* \* \*

(1)(H) the debtor has not filed with the court a certificate from a provider approved by the United States trustee stating that the debtor has completed a course in personal financial management.

COMMITTEE NOTE

The bankruptcy reform legislation introduced §§ 727(a)(11)

and 1328(g) which require individual debtors to complete a course in personal financial management as a condition to the entry of a discharge. The rule is amended to direct the court to withhold the entry of a discharge until the debtor files the appropriate certificate. Including this requirement in the rule also provides notice to the clerk to avoid the inadvertent entry of a discharge in the absence of a proper certificate.

**Rule 4006. NOTICE OF NO DISCHARGE**

1           If an order is entered denying or revoking a discharge or is a  
2           waiver of discharge is filed, the clerk, after the order becomes final  
3           or the waiver is filed, or if the case is closed without the entry of an  
4           order of discharge, shall promptly give notice thereof to all  
5           creditors in the manner provided in Rule 2002.

COMMITTEE NOTE

Under the bankruptcy reform legislation, debtors must complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, no discharge will be entered, but the case may still be closed. The rule is amended to include the closing of the case without the entry of the discharge as a trigger to the notification of creditors that no discharge was entered.

**Rule 5009. CLOSING CHAPTER 7 LIQUIDATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT AND CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES**

1           If in a chapter 7, chapter12, or chapter 13 case the trustee has  
2           filed a final report and final account and has certified that the estate  
3           has been fully administered, and if within 30 days no objection has  
4           been filed by the United States trustee or a party in interest, there

5 shall be a presumption that the estate has been fully administered.  
6 The clerk shall give at least 20 days notice to the debtor prior to the  
7 closing of the case that the debtor has failed to file a certificate of  
8 completion of a personal financial management course.

#### COMMITTEE NOTE

Under the bankruptcy reform legislation, the debtor must complete a personal financial management course as a condition to the entry of a discharge in a case under chapter 7 or 13. The rule is amended to require the clerk to notify the debtor that no certificate of completion has been filed and that the case will be closed without the entry of a discharge. The notice will enable the debtor to seek a postponement of the closing of the case in order to complete the personal financial management course and to file an appropriate certificate thereby permitting the entry of the discharge and avoiding any need to reopen the case for that purpose at a later time.



**11C**



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: RULE 1005 – CAPTION OF PETITION  
DATE: AUGUST 24, 2001

Rule 1005 sets out the requirements for the caption of a petition. There are two information items called for in the caption that should be revised. The first is the requirement that the caption include the debtor's social security number. The Judicial Conference has taken the position that these identifiers should be limited to protect legitimate privacy concerns, and the Advisory Committee has previously concluded that, unless the Bankruptcy Code specifically provides otherwise, publication of social security numbers and account numbers should be limited to the last four digits. Rule 1005 should be amended to make it consistent with this determination.

The rule also requires the debtor to state all names used by the debtor during the past six years. The bankruptcy reform legislation would amend § 727(a)(8) to extend the period between discharges from six to eight years. Consequently, Rule 1005 should be amended to reflect that proposed change in the statute.

**Rule 1005. CAPTION OF PETITION**

1           The caption of a petition commencing a case under the Code  
2           shall contain the name of the court, the title of the case and the  
3           docket number. The title of the case shall include the name, last  
4           four digits of the social security number and employer's tax

5 identification number of the debtor and all other names used by the  
6 debtor within ~~six~~ eight years before filing the petition. If the  
7 petition is not filed by the debtor, it shall include all names used by  
8 the debtor which are known to the petitioners.

#### COMMITTEE NOTE

The rule is amended to require the debtor to disclose all names used by the debtor during the preceding eight years. The bankruptcy reform legislation amended § 727(a)(8) to expand from six to eight years of the time between bankruptcy cases before which the debtor can receive a discharge.

The rule also is amended to implement the Judicial Conference policy to limit the disclosure of a party's social security number and similar identifiers. Under the rule as amended, only the last four digits of these identifiers need be included in the caption of the petition.



## Memorandum

To: Advisory Committee on Bankruptcy Rules

From: Subcommittees on Forms and Consumer Issues

Date: August 28, 2001

Re: Amendments to Official Forms Needed to Implement Pending Bankruptcy Legislation

This agenda item has two parts. The first part addresses amendments that will be needed to the official forms to implement consumer-related provisions of the pending legislation. The forms included are Official Forms 1, 3, 4, 5, 6, 7, 8, 10, 16A, 16C, 17, 18, and 19. Committee Notes following each form describe the changes. Amendments also will be needed to Form 9 (the “§ 341 Notice”); these will be distributed at the meeting. One new official form also will be needed, a notice by a non-attorney bankruptcy petition preparer which must be signed and filed with every document prepared by the petition preparer. This form also will be distributed at the meeting.

The second part is a memorandum and attachments from Professor Jacoby concerning the “means test” that will be required of all individual debtors who file under chapter 7 or chapter 13.

Attachments

<b>FORM B1</b>	<b>United States Bankruptcy Court</b> <b>District of _____</b>	<b>Voluntary Petition</b>
----------------	---	---------------------------

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec./Tax I.D. No. (if more than one, state all):	Last four digits of Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

<b>Type of Debtor (Check all boxes that apply)</b> <input type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Health Care Business <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other _____	<b>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)</b> <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 15
<b>Filing Fee (Check one box)</b> <input type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3. <input type="checkbox"/> Filing Fee waiver requested (Applicable to individuals only). Must attach signed application detailing the debtor's income and expenses for the court's consideration. See Official Form No. _____.	<b>Nature of Debts (Check one box)</b> <input type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business
<b>Individual and Joint Debtors with primarily consumer debts filing under chapter 7:</b>  Current Monthly Income \$ _____  Size of Household = _____ persons	

**Statistical/Administrative Information**

Debtor estimates that funds will be available for distribution to unsecured creditors.

Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

<b>Estimated Number of Creditors</b>	1-15	16-49	50-99	100-199	200-999	1000-over	THIS SPACE IS FOR COURT USE ONLY		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
<b>Estimated Assets</b>	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million		\$50,000,001 to \$100 million	More than \$100 million
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<b>Estimated Debts</b>	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Individual and Joint Debtors with Primarily Consumer Debts Only:**  
 If debtor checks "consumer/non-business" above, debtor also must complete this box.  
 Total Assets \$ \_\_\_\_\_ Total Liabilities \$ \_\_\_\_\_  
 (Give exact amounts rounded to the nearest dollar.)

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s):	
<b>Prior Bankruptcy Case Filed Within Last 8 Years</b> (If more than one, attach additional sheet)			
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor</b> (If more than one, attach additional sheet)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<b>Exhibit A</b>			
(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)			
<input type="checkbox"/> Exhibit A is attached and made a part of this petition.			
<b>Exhibit B</b>			
(To be completed if debtor is an individual whose debts are primarily consumer debts)			
I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by § 342(b) of the Bankruptcy Code.			
X _____			
Signature of Attorney for Debtor(s)		Date	
<b>Exhibit C</b>			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.			
<input type="checkbox"/> No			
<b>Information Regarding the Debtor (Check the Applicable Boxes)</b>			
Venue (Check any applicable box)			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of justice and convenience of the parties will be served in regard to the relief sought in this District.			
<b>Certification Concerning Debt Counseling by Individual/Joint Debtor(s)</b>			
<input type="checkbox"/> I/we have received approved budget and credit counseling during the 180-day period preceding the filing of this petition.			
<input type="checkbox"/> I/we request a waiver of the requirement to obtain budget and credit counseling prior to filing based on exigent circumstances. Must attach certification describing.			

**Voluntary Petition**

*(This page must be completed and filed in every case)*

Name of Debtor(s):

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by § 342(b) of the Bankruptcy Code.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
Signature of Debtor

X \_\_\_\_\_  
Signature of Joint Debtor

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

\_\_\_\_\_  
Date

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Printed Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual

\_\_\_\_\_  
Date

**Signature of Non-Attorney Petition Preparer**

I declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). Official Form No. \_\_\_\_ is attached. I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

\_\_\_\_\_  
Printed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.)

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature and title, if any, of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.*

**Signature of Attorney**

X \_\_\_\_\_  
Signature of Attorney for Debtor(s)

\_\_\_\_\_  
Printed Name of Attorney for Debtor(s)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

COMMITTEE NOTE

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The form is amended to implement [reflect] amendments to the Bankruptcy Code contained in the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001). The period for which the debtor must provide all names used is extended to eight years to match the new minimum time between the granting of discharges to the same debtor. The amendments also require an individual debtor with primarily consumer debts to file information that will help the clerk to determine whether the presumption of abuse has been triggered in a case filed under chapter 7. The box indicating the debtor's selection of chapter under which to file the case been amended to delete "Sec. 304 - Case ancillary to foreign proceeding and replace it with the new "Chapter 15." A statement of venue to be used in a chapter 15 case also has been added. A new check box is provided for the debtor that is a "health care business" as defined in § 101 of the Code to so state, thereby alerting the court and the United States trustee of the necessity under § 332 of the Code to appoint an ombudsman to represent the interests of the patients of the health care business. A check box also has been added for a debtor to indicate that the debtor is applying for a waiver of the filing fee. The section of the form relating to a chapter 11 small business debtor is, because under the definition contained in the Bankruptcy Reform Act the debtor will not know at the time of filing whether the case will be a "small business case." The statistical section of the form is amended to require individuals with primarily consumer debts to state the actual dollar amounts of their assets and liabilities. A space is provided for individuals to certify that they have received budget and credit counseling prior to filing or to request a waiver of the requirement. The signature sections and the declaration under penalty of perjury by an individual debtor concerning the notice received about bankruptcy relief, the declaration under penalty of perjury by a non-attorney bankruptcy petitioner, and the declaration and certification by an attorney all are amended to include new material mandated by the Bankruptcy Reform Act. In addition, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, the form is amended to require the debtor to provide only the last four digits of the debtor's Social Security or tax identification number.



### Form 3. APPLICATION AND ORDER TO PAY FILING FEE IN INSTALLMENTS

[Caption as in Form 16B]

#### APPLICATION TO PAY FILING FEE IN INSTALLMENTS

1. In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the Filing Fee amounting to \$\_\_\_\_\_ in installments.
2. I certify that I am unable to pay the Filing Fee except in installments.
3. I further certify that I have not paid any money or transferred any property to an attorney for services in connection with this case and that I will neither make any payment nor transfer any property for services in connection with this case until the filing fee is paid in full.
4. I propose the following terms for the payment of the Filing Fee.\*
  - \$ \_\_\_\_\_ Check one  With the filing of the petition, or
  - On or before \_\_\_\_\_
  - \$ \_\_\_\_\_ on or before \_\_\_\_\_
  - \$ \_\_\_\_\_ on or before \_\_\_\_\_
  - \$ \_\_\_\_\_ on or before \_\_\_\_\_
- \* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2).
5. I understand that if I fail to pay any installment when due my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

\_\_\_\_\_  
Signature of Attorney Date

\_\_\_\_\_  
Signature of Debtor Date  
(In a joint case, both spouses must sign.)

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Signature of Joint Debtor (if any) Date

-----  
**CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION (See 11 U.S.C. § 110)**

I certify declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. I also certify that I will not accept money or any other property from the debtor before the filing fee is paid in full.

\_\_\_\_\_  
Printed or Typed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No.

~~If the bankruptcy petition preparer is not an individual, state the name, title (if any), address and social security number of the officer, principal, responsible person or partner who signs the document.~~

\_\_\_\_\_  
Address

x \_\_\_\_\_  
Signature and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

~~If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.~~

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

United States Bankruptcy Court  
\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS**

IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor shall not pay any money for services in connection with this case, and the debtor shall not relinquish any property as payment for services in connection with this case.

BY THE COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*United States Bankruptcy Judge*

COMMITTEE NOTE

The declaration and certification by a non-attorney bankruptcy petitioner preparer in the  
~~form are amended to include material mandated by 11 U.S.C. § 110 as amended by the~~  
Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001).

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, indicate that by stating "a minor child". Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]</i>

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

[Declaration as in Form 2]

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COMMITTEE NOTE

The form is amended to direct that the name and address of any minor child not be disclosed. The amendment is required under the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001).



**TRANSFER OF CLAIM**

Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a).

**REQUEST FOR RELIEF**

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

X \_\_\_\_\_  
Signature of Petitioner or Representative (State title)

\_\_\_\_\_  
Name of Petitioner                      Date Signed

Name & Mailing  
Address of Individual \_\_\_\_\_  
Signing in Representative \_\_\_\_\_  
Capacity \_\_\_\_\_

X \_\_\_\_\_  
Signature of Attorney                      Date

\_\_\_\_\_  
Name of Attorney Firm (If any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

X \_\_\_\_\_  
Signature of Petitioner or Representative (State title)

\_\_\_\_\_  
Name of Petitioner                      Date Signed

Name & Mailing  
Address of Individual \_\_\_\_\_  
Signing in Representative \_\_\_\_\_  
Capacity \_\_\_\_\_

X \_\_\_\_\_  
Signature of Attorney                      Date

\_\_\_\_\_  
Name of Attorney Firm (If any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

X \_\_\_\_\_  
Signature of Petitioner or Representative (State title)

\_\_\_\_\_  
Name of Petitioner                      Date Signed

Name & Mailing  
Address of Individual \_\_\_\_\_  
Signing in Representative \_\_\_\_\_  
Capacity \_\_\_\_\_

X \_\_\_\_\_  
Signature of Attorney                      Date

\_\_\_\_\_  
Name of Attorney Firm (If any)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

**PETITIONING CREDITORS**

Name and Address of Petitioner	Nature of Claim	Amount of Claim

Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above. Total Amount of Petitioners' Claims

COMMITTEE NOTE

The form has been amended to delete statistical information no longer required and to add ~~“as to liability or amount” to the language concerning debts that are the subject of a bona fide~~ dispute, in conformity with amendments to § 303 of the Bankruptcy Code made by the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001). A new check box is provided for the petitioning creditors to identify the debtor that is a “health care business” as defined in § 101 of the Code, thereby alerting the court and the United States trustee of the necessity under § 332 of the Code to appoint an ombudsman to represent the interests of the patients of the health care business. In furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, petitioning creditors are directed to provide only the last four digits of the debtor’s Social Security or tax identification number.



## **SUMMARY OF SCHEDULES**

[To be developed if the pending legislation is enacted.]

The pending Bankruptcy Reform Act would require extensive additional statistical reporting by the Administrative Office. The summary of schedules would be the logical place to obtain much of the information that would be required and which is not provided on the first page of Official Form 1, Voluntary Petition. If a bill is enacted, staff from the Bankruptcy Judges Division and the Statistics Division will cooperate to develop an amended Summary of Schedules for the committee's review.

In addition, the "means test" and the further statistical reporting obligations in the pending legislation may require some supplementary amendments to the various schedules constituting Official Form 6 in order to facilitate collection of the required information. If a bill is enacted, further proposed amendments to implement those provisions will be submitted to the committee for consideration. Accordingly, all of the currently proposed amendments to Official Form 6 relating to the pending Bankruptcy Reform Act are preliminary in nature and represent only those provisions in the legislation on which the House and Senate versions of the bill appear to agree.

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." ~~In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."~~

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<ol style="list-style-type: none"> <li>1. Cash on hand.</li> <li>2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and home-stead associations, or credit unions, brokerage houses, or cooperatives</li> <li>3. Security deposits with public utilities, telephone companies, landlords, and others.</li> <li>4. Household goods and furnishings, including audio, video, and computer equipment.</li> <li>5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.</li> <li>6. Wearing apparel.</li> <li>7. Furs and jewelry.</li> <li>8. Firearms and sports, photographic, and other hobby equipment.</li> <li>9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.</li> <li>10. Annuities. Itemize and name each issuer.</li> </ol> <p><del>11. Interests in an education IRA as defined in 26 U.S.C. § 529(b)(1) or under a qualified state tuition plan as defined in 26 U.S.C. § 529(b)(1) or other parties; file separate schedule of any such interests. 11 U.S.C. § 541(c)(2); Rule 1001(c).</del></p>				

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p><del>11-12</del> Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize. <u>Give particulars.</u></p> <p>13. Stock and interests in incorporated and unincorporated businesses. Itemize. <u>Indicate for stock whether it is closely held or publicly traded and for every type of interest whether the debtor holds a substantial or controlling interest.</u></p> <p>14. Interests in partnerships or joint ventures. Itemize. <u>Indicate whether the debtor holds a substantial or controlling interest.</u></p> <p>15. Government and corporate bonds and other negotiable and non-negotiable instruments.</p> <p>16. Accounts receivable.</p> <p>17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.</p> <p>18. Other liquidated debts owing debtor including tax refunds. Give particulars.</p> <p>19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.</p> <p>20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</p> <p>21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each. <u>Indicate whether the debtor holds a substantial or controlling interest.</u></p>	N O N E		HUSBAND, WIFE, JOINT, OR COMMUNITY	

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>22. Patents, copyrights, and other intellectual property. Give particulars.</p> <p>23. Licenses, franchises, and other general intangibles. Give particulars.</p> <p><del>24. Personally identifiable information as defined in 11 U.S.C. § 541(c)(4)(A) provided by individuals to the debtor in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes. Give details, including whether the debtor has disclosed a policy to an individual prohibiting the transfer of personally identified information to unaffiliated third persons and whether the policy remains in effect.</del></p> <p>25. Automobiles, trucks, trailers, and other vehicles and accessories.</p> <p>26. Boats, motors, and accessories.</p> <p>27. Aircraft and accessories.</p> <p>28. Office equipment, furnishings, and supplies.</p> <p>29. Machinery, fixtures, equipment, and supplies used in business.</p> <p>30. Inventory.</p> <p>31. Animals.</p> <p>32. Crops - growing or harvested. Give particulars.</p> <p>33. Farming equipment and implements.</p> <p>34. Farm supplies, chemicals, and feed.</p> <p>35. Other personal property of any kind not already listed. Itemize.</p>				

\_\_\_\_\_ continuation sheets attached Total ▶

\$ \_\_\_\_\_

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

- 11 U.S.C. § 522(b)(12): Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- 11 U.S.C. § 522(b)(23): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180/730 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and if the debtor's domicile has not been located at a single state for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place; the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law, and certain retirement funds to the extent provided in 11 U.S.C. §§ 522(b)(3)(C) and (b)(4).

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and ~~last four digits of the~~ account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

~~If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).~~

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
Subtotal (Total of this page) ▶							\$	
Total (Use only on last page) ▶							\$	

\_\_\_\_\_ continuation sheets attached

(Report total also on Summary of Schedules)

~~Use only last four digits of account number.~~

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBITOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					

Sheet no. \_\_\_ of \_\_\_ continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal (Total of this page)		\$
Total (Use only on last page)		\$

(Report total also on Summary of Schedules)

Use only last four digits of account number.

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition.

~~If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).~~

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

### TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

~~Alimony, Maintenance, or Support Domestic Support Obligations~~

~~Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(1). Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).~~

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,650\* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).



In re \_\_\_\_\_,  
Debtor (if known)

Case No. \_\_\_\_\_

**Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$4,650\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

**Deposits by individuals**

Claims of individuals up to \$2,100\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

**Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

**Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

~~Claims for Death or Personal Injury while Debtor was Intoxicated~~

~~Claims for death or personal injuries resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated. 11 U.S.C. § 507(a)(10).~~

\* Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

\_\_\_\_\_ continuation sheets attached

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								

Sheet no. \_\_\_\_\_ of \_\_\_\_\_ sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal > \$ \_\_\_\_\_  
(Total of this page)  
Total > \$ \_\_\_\_\_

(Use only on last page of the completed Schedule E.)  
(Report total also on Summary of Schedules)

Use only last four digits of account number

In re \_\_\_\_\_ Debtor

Case No. \_\_\_\_\_ (If known)

## SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and ~~last four digits of the~~ account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

~~If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 542, Fed. R. Bankr. P. 1007(m).~~

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
Subtotal >							\$
Total >							\$

\_\_\_\_\_ continuation sheets attached

(Report also on Summary of Schedules)

~~Use only last four digits of account number.~~

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							

Sheet no. \_\_\_ of \_\_\_ sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal > \$ \_\_\_\_\_  
(Total of this page)  
Total > \$ \_\_\_\_\_

(Use only on last page of the completed Schedule E.)  
(Report total also on Summary of Schedules)

\* Use only last four digits of account number.

In re \_\_\_\_\_,  
Debtor

## SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, indicate that by stating "a minor child." Do not include the name or address of the minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

**NOTE:** A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

### SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the six-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the six-year period immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, indicate that by stating "a minor child." Do not include the name and address of a minor child in this schedule. See 11 U.S.C. § 112; Fed. Bankr. P. 107(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

# DECLARATION CONCERNING DEBTOR'S SCHEDULES

## DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_  
(Total shown on summary page plus 1.)  
sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

### CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify, declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h) and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_ Social Security No \_\_\_\_\_

~~If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.~~

\_\_\_\_\_  
Address

X \_\_\_\_\_ Date \_\_\_\_\_  
Signature and title of any of Bankruptcy Petition Preparer

~~If the bankruptcy petition preparer is not individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.~~

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

### DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

Date \_\_\_\_\_

Signature: \_\_\_\_\_

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

In re \_\_\_\_\_,  
Debtor

## SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	List dependents of debtor and spouse. Indicate age and relationship of each, but do not disclose the name of any minor child.	
<b>Employment:</b>	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

**Income:** (Estimate of average monthly income)  
 Current monthly gross wages, salary, and commissions  
 (pro rate if not paid monthly.)  
 Estimated monthly overtime

	DEBTOR	SPOUSE
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

**SUBTOTAL**

**LESS PAYROLL DEDUCTIONS**  
 a. Payroll taxes and social security  
 b. Insurance  
 c. Union dues  
 d. Other (Specify: \_\_\_\_\_)

	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

**SUBTOTAL OF PAYROLL DEDUCTIONS**

	\$ _____	\$ _____
	\$ _____	\$ _____

**TOTAL NET MONTHLY TAKE HOME PAY**

Regular income from operation of business or profession or farm  
 (attach detailed statement)  
 Income from real property  
 Interest and dividends  
 Alimony, maintenance or support payments payable to the debtor for the  
 debtor's use or that of dependents listed above.  
 Social security or other government assistance  
 (Specify) \_\_\_\_\_  
 Pension or retirement income  
 Other monthly income  
 (Specify) \_\_\_\_\_

	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

**TOTAL MONTHLY INCOME**

**TOTAL COMBINED MONTHLY INCOME** \$ \_\_\_\_\_

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

### SCHEDULE J—CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	\$ _____
Are real estate taxes included? Yes _____ No _____	
Is property insurance included? Yes _____ No _____	
Utilities Electricity and heating fuel	\$ _____
Water and sewer	\$ _____
Telephone	\$ _____
Other _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____
Food	\$ _____
Clothing	\$ _____
Laundry and dry cleaning	\$ _____
Medical and dental expenses	\$ _____
Transportation (not including car payments)	\$ _____
Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ _____
Charitable contributions	\$ _____
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	\$ _____
Life	\$ _____
Health	\$ _____
Auto	\$ _____
Other _____	\$ _____
Taxes (not deducted from wages or included in home mortgage payments) (Specify) _____	\$ _____
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)	
Auto	\$ _____
Other _____	\$ _____
Other _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____
Payments for support of additional dependents not living at your home	\$ _____
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ _____
Other _____	\$ _____
<b>TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)</b>	<b>\$ _____</b>

**[FOR CHAPTER 12 AND 13 DEBTORS ONLY]**

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	\$ _____
B. Total projected monthly expenses	\$ _____
C. Excess income (A minus B)	\$ _____
D. Total amount to be paid into plan each _____ (interval)	\$ _____

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

# DECLARATION CONCERNING DEBTOR'S SCHEDULES

## DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_  
(Total shown on summary page plus 1.)  
sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_ Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_ Signature: \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

## CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I ~~certify~~ declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(b) and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_ Social Security No. \_\_\_\_\_  
~~If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal responsible person, or partner who signs this document.~~

Address \_\_\_\_\_

X \_\_\_\_\_ Date \_\_\_\_\_  
Signature and title, if any, of Bankruptcy Petition Preparer  
~~If the bankruptcy petition preparer is not individual, this certification must be signed by an officer, principal responsible person or partner of the bankruptcy petition preparer.~~

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document.

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156

## DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

Date \_\_\_\_\_ Signature: \_\_\_\_\_

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

COMMITTEE NOTE

The forms of the Schedules of Assets and Liabilities are amended to implement the ~~provisions of the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001).~~  
Some amendments occur in several of the schedules. These include directions to avoid disclosing the name and address of any minor child and, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, to disclose only the last four digits of any account number reported on the schedules.

The “means test” mandated for individual debtors with primarily consumer debts who file under chapter 7 or chapter 13 of the Bankruptcy Code is provided for with amended [supplemented] Schedules I and J. Those and other amendments specific only to one schedule are discussed separately with respect to each schedule.

[The Summary of Schedules is amended to include additional information needed to prepare statistical reports required under 28 U.S.C. § 159, which was enacted as part of the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001).]

Schedule B - Personal Property is amended to require the debtor to list any interests in an education IRA. The schedule also requires the debtor to indicate whether the debtor’s stock in a corporation is publicly traded or closely held, and whether the stock or other interest the debtor has in a corporation and any unincorporated business, partnership, or joint venture constitutes a substantial or controlling interest in any of those entities. The schedule also is amended to require the debtor to list any personally identifiable information provided by an individual to the debtor in connection with obtaining a product or service from the debtor for personal, family, or household purposes.

Schedule C - Property Claimed as Exempt is amended to conform to provisions in the Bankruptcy Reform Act of 2001 requiring a longer period of domicile before a debtor can claim certain exemptions and requiring a debtor to indicate the basis on which certain retirement funds are eligible for exemption.

Schedule D - Creditors Holding Secured Claims is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account numbers to only the last four digits.

Schedule E - Creditors Holding Unsecured Priority Claims is amended to implement the changes in priority to which a claim may be entitled under 11 U.S. C. § 507 as amended by the

Bankruptcy Reform Act of 2001 and to add the new priority included in the Reform Act for claims for death or personal injury while the debtor was intoxicated. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the list of any account numbers to only the last four digits.

Schedule F - Creditors Holding Unsecured Nonpriority Claims is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account number to only the last four digits.

~~Schedule G - Executory Contracts and Unexpired Leases is amended to advise the debtor not to disclose on the form the name and address of any minor child.~~

Schedule H - Codebtors is amended to direct a debtor who resides or formerly resided in a community property state, commonwealth, or territory to disclose the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property jurisdiction. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child.

Schedule I - Current Income of Individual Debtor(s) is amended to delete the listing of dependents' names, which will avoid disclosure of the names of minor children. Limiting the information disclosed to the age and relationship of the debtor's dependents should be sufficient for purposes of the bankruptcy case. The Bankruptcy Reform Act of 2001 provides for the debtor to provide the name of any minor child confidentially to the court. [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Schedule J - Current Expenditures of Individual Debtor(s). [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Declaration Concerning Debtor's Schedules - The declaration and certification by a non-attorney bankruptcy petition preparer are amended to include material mandated by 11 U.S.C. § 110 as amended by the Bankruptcy Reform Act of 2001.

## FORM 7. STATEMENT OF FINANCIAL AFFAIRS

### STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. ~~Do not include the name or address of a minor child in this schedule. Indicate payments, transfers and the like to minor children by stating "a minor child." See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(a).~~

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

#### DEFINITIONS

*"In business"* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

#### 1. Income from employment or operation of business

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.) ~~File separately copies of pay stubs, payment advices, or similar evidence of payment, if any, received by the debtor from any employer of the debtor in the period of 60 days before the filing of the petition.~~

AMOUNT

SOURCE (if more than one)

**2. Income other than from employment or operation of business**

None

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**3. Payments to creditors**

None

a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None

b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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**4. Suits and administrative proceedings, executions, garnishments and attachments**

None

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
---------------------------------	----------------------	------------------------------	-----------------------

None

- b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS  
OF PERSON FOR WHOSE  
BENEFIT PROPERTY WAS SEIZED

DATE OF  
SEIZURE

DESCRIPTION  
AND VALUE OF  
PROPERTY

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**5. Repossessions, foreclosures and returns**

None

- List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS  
OF CREDITOR OR SELLER

DATE OF REPOSSESSION,  
FORECLOSURE SALE,  
TRANSFER OR RETURN

DESCRIPTION  
AND VALUE OF  
PROPERTY

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**6. Assignments and receiverships**

None

- a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS  
OF ASSIGNEE

DATE OF  
ASSIGNMENT

TERMS OF  
ASSIGNMENT  
OR SETTLEMENT

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None

- b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS  
OF CUSTODIAN

NAME AND LOCATION  
OF COURT  
CASE TITLE & NUMBER

DATE OF  
ORDER

DESCRIPTION  
AND VALUE OF  
PROPERTY

### 7. Gifts

None

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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### 8. Losses

None

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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### 9. Payments related to debt counseling or bankruptcy

None

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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### 10. Other transfers

None

List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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### 11. Closed financial accounts

None

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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### 12. Safe deposit boxes

None

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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### 13. Setoffs

None

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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### 14. Property held for another person

None

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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**15. Prior address of debtor**

None

If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS

NAME USED

DATES OF OCCUPANCY

**16. Spouses and Former Spouses**

None

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **sixty-eight-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None

- a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME  
AND ADDRESS

NAME AND ADDRESS  
OF GOVERNMENTAL UNIT

DATE OF  
NOTICE

ENVIRONMENTAL  
LAW

None

- b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME  
AND ADDRESS

NAME AND ADDRESS  
OF GOVERNMENTAL UNIT

DATE OF  
NOTICE

ENVIRONMENTAL  
LAW

None

- c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS  
OF GOVERNMENTAL UNIT

DOCKET NUMBER

STATUS OR  
DISPOSITION

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**18 . Nature, location and name of business**

None

- a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NUMBER	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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None

- b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

**19. Books, records and financial statements**

- None  a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS DATES SERVICES RENDERED

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- None  b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME ADDRESS DATES SERVICES RENDERED

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- None  c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME ADDRESS

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- None  d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS DATE ISSUED

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**20. Inventories**

- None  a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY INVENTORY SUPERVISOR DOLLAR AMOUNT OF INVENTORY  
(Specify cost, market or other basis)

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- None  b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY NAME AND ADDRESSES OF CUSTODIAN  
OF INVENTORY RECORDS

**21 . Current Partners, Officers, Directors and Shareholders**

- None  a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
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- None  b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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**22 . Former partners, officers, directors and shareholders**

- None  a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None  b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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**23 . Withdrawals from a partnership or distributions by a corporation**

- None  If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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**24. Tax Consolidation Group.**

None

If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION      TAXPAYER IDENTIFICATION NUMBER

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**25. Pension Funds.**

None

If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND      TAXPAYER IDENTIFICATION NUMBER

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\* \* \* \* \*

*[If completed by an individual or individual and spouse]*

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date \_\_\_\_\_

Signature \_\_\_\_\_  
of Debtor

Date \_\_\_\_\_

Signature \_\_\_\_\_  
of Joint Debtor  
(if any)

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*[If completed on behalf of a partnership or corporation]*

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief

Date \_\_\_\_\_

Signature \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

\_\_\_\_\_ continuation sheets attached

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. § 152 and 3571*

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**CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I certify/declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

\_\_\_\_\_  
Printed or Typed Name of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person or partner who signs this document.*

\_\_\_\_\_  
Address

X \_\_\_\_\_

Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

*If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.*

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.*

COMMITTEE NOTE

The form is amended to advise the debtor not to disclose on the form the name and address of any minor child and to direct the debtor to file separately the copies of pay stubs, ~~payment advices, or similar evidences of payment received from the debtor's employer during~~ the 60-day period before the filing of the petition. In addition, the declaration and certification by a non-attorney bankruptcy petition preparer have been amended to include material mandated by 11 U.S.C. § 110 as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001). The form also is amended to extend from six years to eight years the period before the filing of the petition concerning which the debtor is required to disclose the name of the debtor's spouse or of any former spouse who resides or resided with the debtor in a community property state. The amendments to this form all are required to implement provisions of the Reform Act.



# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
Chapter 7

## CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

- I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.
- I intend to do the following with respect to the property of the estate which secures those consumer debts:
  - Property to Be Surrendered.*

Description of Property

Creditor's name

*b. Property to Be Retained*

*[Check any/the applicable statement.]*

Description of Property	Creditor's Name	Property is claimed as exempt	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Debtor

### CERTIFICATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify/declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h) and 42(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

\_\_\_\_\_  
Printed or Typed Name of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No.

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person or partner who signs this document.*

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

*If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.*

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document. —

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*



Filing of Chapter 7  
Bankruptcy Case

A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.

Creditors Generally May  
Not Take Certain Actions

Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

Do Not File a Proof of  
Claim at This Time

There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.

Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.

Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—



# EXPLANATIONS

FORM B9C (DRAFT)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	



# EXPLANATIONS

FORM B9D (DRAFT)

Filing of Chapter 7  
Bankruptcy Case

A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered.

Creditors Generally  
May Not Take Certain  
Actions

Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

Claims

A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]

Liquidation of the  
Debtor's Property and  
Payment of Creditors'  
Claims

The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.

Bankruptcy Clerk's  
Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—





# EXPLANATIONS

FORM B9E (DRAFT)

## Filing of Chapter 11 Bankruptcy Case

A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.

## Creditors Generally May Not Take Certain Actions

Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

## Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.

## Claims

A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]

## Discharge of Debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.

## Exempt Property

The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

## Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

## Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.



# EXPLANATIONS

FORM B9E (ALT.) (DRAFT)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under <u>certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</u> Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.



# EXPLANATIONS

FORM B9F (DRAFT)

## Filing of Chapter 11 Bankruptcy Case

A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.

## Creditors Generally May Not Take Certain Actions

Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

## Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.

## Claims

A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]

## Discharge of Debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. [If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that deadline.]

## Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.

## Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—



# EXPLANATIONS

FORM B9F (Alt.) (DRAFT)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or may not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. [If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.]
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—





# EXPLANATIONS

FORM B9G (DRAFT)

<p>Filing of Chapter 12 Bankruptcy Case</p>	<p>A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and <del>garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited</del> in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nomentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distbution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Legal Advice</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.</p>



# EXPLANATIONS

FORM B9H (DRAFT)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court with consequences a lawyer can explain.]
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	



# EXPLANATIONS

FORM B9I (DRAFT)

<p>Filing of Chapter 13 Bankruptcy Case</p>	<p>A bankruptcy case under chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the <del>debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures;</del> and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay. Consult a lawyer to determine your rights in this case.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Legal Advice</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.</p>
<p>—Refer To Other Side For Important Deadlines and Notices—</p>	

COMMITTEE NOTE

The form is amended to implement the provisions of the Bankruptcy Reform Act of 2001, ~~Pub. L. No. 107 - , Stat. , ( , 2001). Forms 9A and 9C are amended to include a box in~~ which the clerk can notify creditors whether, in a chapter 7 case filed by an individual with primarily consumer debts, the presumption of abuse has been triggered, as required by § 342(d) of the Bankruptcy Code. In cases involving serial filers (debtors who have filed more than one case within a specified period), the automatic stay provided by § 362(a) of the Code may not apply or may be limited in duration, unless the stay is extended or imposed by court order. All versions of the form are amended to alert creditors to check the court's records concerning the status of the stay in the case. The form is further amended to accommodate the extended period for filing a proof of claim afforded to a creditor with a foreign address under § 1514, which was added to the Code by the Reform Act. Section 1514 also requires that a secured creditor with a foreign address in any case under the Code be advised whether the creditor is required to file a proof of claim, and the form is amended to include a general statement addressing that issue. Forms 9E, 9E Alt., 9F, and 9F Alt. are amended to inform creditors that in a case in which the debtor has filed a plan for which it has solicited acceptances before filing the case, the court may, after notice and a hearing, order that the United States trustee not convene a meeting of creditors. Forms 9E and 9E Alt. also are amended to state that an individual chapter 11 debtor's discharge is not effective until completion of all payments under the plan, as provided in § 1141(d)(5) which was added to the Code by the Reform Act. [Forms 9F and 9F Alt. have been amended to prescribe a deadline for filing a complaint to determine the dischargeability of certain debts in conformity with § 1141(d)(2) as amended by the Reform Act.]

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		<b>PROOF OF CLAIM</b>
Name of Debtor	Case Number	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property):	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent:		
Telephone number:		
Last four digits of account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)	
<b>2. Date debt was incurred:</b>	<b>3. If court judgment, date obtained:</b>	
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
<b>Unsecured Nonpriority Claim</b> \$ _____  <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.  <b>Unsecured Priority Claim</b>  <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority.  Amount entitled to priority \$ _____  Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650),* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).	<b>Secured Claim</b>  <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).  Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____  Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	
<input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) _____ (secured) _____ (priority) _____ (Total) <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.  <b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.  <b>8. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.	THIS SPACE IS FOR COURT USE ONLY	
Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):	

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

### DEFINITIONS

#### **Debtor**

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

#### **Creditor**

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### **Proof of Claim**

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

#### **Secured Claim**

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

#### **Unsecured Claim**

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### **Unsecured Priority Claim**

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

### Items to be completed in Proof of Claim form (if not already filled in)

#### **Court, Name of Debtor, and Case Number:**

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

#### **Information about Creditor:**

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

#### **1. Basis for Claim:**

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

#### **2. Date Debt Incurred:**

Fill in the date when the debt first was owed by the debtor.

#### **3. Court Judgments:**

If you have a court judgment for this debt, state the date the court entered the judgment.

#### **4. Classification of Claim**

##### **Secured Claim:**

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the

amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

##### **Unsecured Priority Claim:**

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

##### **Unsecured Nonpriority Claim:**

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

#### **5. Total Amount of Claim at Time Case Filed:**

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

#### **6. Credits:**

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

#### **7. Supporting Documents:**

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.



COMMITTEE NOTE

The form is amended to conform to the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001), and to ~~provide spaces for stating the amount of any unsecured nonpriority~~ claim. The contents of the form also are rearranged and the instructions amended to include the separate listing of a general unsecured claim. In furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, a creditor asserting a claim for wages, salary, and compensation is directed to provide only the last four digits of the creditor's Social Security number. A trustee can request the full information necessary for tax withholding and reporting at the time the trustee makes a distribution to creditors.

Form 16A. CAPTION (FULL)

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_, )  
Set forth here all names including married, )  
maiden, and trade names used by debtor within )  
last ~~68~~ years.] )  
Debtor ) Case No. \_\_\_\_\_ )  
Address \_\_\_\_\_ )  
\_\_\_\_\_ ) Chapter \_\_\_\_\_ )  
Social Security No(s).:\* \_\_\_\_\_ )  
Employer's Tax Identification No(s). [if any].:\* \_\_\_\_\_ )  
\_\_\_\_\_ )

[Designation of Character of Paper]

\*Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice given by the debtor and the use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c).

COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years, to implement the provision of the Bankruptcy Reform Act of 2001, Pub. L. No. 107-~~111~~, Stat. ~~1185~~, (~~10/17/01~~, 2001), ~~extending from six years to eight years the~~ period during which a debtor is barred from receiving successive discharges. The form also is amended to direct that only the last four digits of the debtor's Social Security or tax identification number be provided unless the caption is for a notice given by the debtor and use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c). This amendment implements the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files.

**FORM 16C. CAPTION OF COMPLAINT IN ADVERSARY PROCEEDING  
FILED BY A DEBTOR**

**United States Bankruptcy Court**  
\_\_\_\_\_ District Of \_\_\_\_\_

In re _____,	)	
<i>Debtor</i>	)	Case No. _____
	)	
Address _____	)	Chapter _____
	)	
	)	
Social Security No(s):* _____ or	)	
Employer's Tax Identification No(s). [if any]:* _____	)	
	)	
	)	
_____	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
_____	)	Adv. Proc. No. _____
<i>Defendant</i>	)	

**COMPLAINT**

\*Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice as given by the debtor and the use of the full Social Security number is required by 11 U.S.C. § 342(c).

COMMITTEE NOTE

The form is amended to include a note directing that, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal ~~information contained in court case files, only the last four digits of a debtor's Social Security or~~ tax identification number should be used, unless the caption is for a notice given by the debtor and use of the full Social Security number is required by 11 U.S.C. § 342(c). [Section 342(c) of the Code requires a debtor to provide the debtor's Social Security number on any notice furnished to a creditor by the debtor. A complaint, when combined with a summons and served on a defendant, functions as a notice of the commencement of an adversary proceeding. The form is amended to advise the debtor of the statutory basis for requiring disclosure of the Social Security number.]

# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re _____,	)	
<i>Set forth here all names including married,</i>	)	
<i>maiden, and trade names used by debtor within</i>	)	
<i>last <del>68</del> years.]</i>	)	
Debtor	)	Case No. _____
	)	
Address _____	)	
_____	)	Chapter 7
	)	
Social Security No(s):# _____	)	
Employer's Tax Identification No(s). [if any]:# _____	)	
_____	)	

## DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
United States Bankruptcy Judge

**\*Last four digits only.**

**SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.**

EXPLANATION OF BANKRUPTCY DISCHARGE  
IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:]* [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay these taxes;
- c. Debts that are ~~in the nature of alimony, maintenance, or support~~ domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans;
- k. Debts incurred through the debtor's violation of laws relating to the provision of lawful goods and services;

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

COMMITTEE NOTE

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The form is amended to require that the title of the case include all names used by the debtor within the eight years prior to the filing of the petition in the case to implement the provision of the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001), extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. The form also is amended to include a note directing that, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, only the last four digits of a debtor's Social Security or tax identification number should be used. The explanation part of the form is amended to include additional types of debts that are not discharged and to revise certain terminology in conformity with provisions of the Reform Act.



# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I ~~certify, declare under penalty of perjury~~ that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document ~~and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342 (b). I certify that if rules and guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.~~

\_\_\_\_\_  
Printed or Typed Name of Bankruptcy Petition Preparer

~~If the bankruptcy petition preparer is not an individual, state the name, address, and social security number of the officer, principal, responsible person or partner who signs this document.~~

\_\_\_\_\_  
Social Security No.

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature and title, if any, of Bankruptcy Petition Preparer Date

~~If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.~~

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

**A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.**

COMMITTEE NOTE

The declaration and certification by a non-attorney bankruptcy petition preparer in this form is amended to include material mandated by the Bankruptcy Reform Act of 2001, Pub. L.

~~No. 107 - , Stat. , ( , 2001).~~

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Form B \_\_\_\_ (Official Form \_\_\_\_)  
(Draft)

**Form \_\_\_\_ . NOTICE TO DEBTOR BY NON-ATTORNEY  
BANKRUPTCY PETITION PREPARER**

*[Caption as in Form 16B]*

NOTICE TO DEBTOR BY NON-ATTORNEY BANKRUPTCY PETITION PREPARER  
*[Must be filed with any document prepared by a non-attorney bankruptcy petition preparer.]*

I am a bankruptcy petition preparer. I am not an attorney and may not practice law or give legal advice. Before preparing any document for filing [in a bankruptcy case or court] or accepting any fees, I am required by law to provide you with this notice concerning bankruptcy petition preparers. Under the law, 11 U.S.C. § 110, I am forbidden to offer a potential bankruptcy debtor any legal advice, including advice about any of the following:

- whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- whether commencing a case under chapter 7, 11, 12, or 13 is appropriate;
- whether [your] [the debtor's] debts will be eliminated or discharged in a case under the Bankruptcy Code;
- whether [you][the debtor] will be able to retain [your][the debtor's] home, car, or other property after commencing a case under the Bankruptcy Code;
- concerning the tax consequences of a case brought under the Bankruptcy Code;
- concerning the dischargeability of tax claims;
- whether [you][the debtor] may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
- concerning how to characterize the nature of [your][ the debtor's] interests in property or [your] [the debtor's] debts; or
- concerning bankruptcy procedures and rights.

*[The notice may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give.]*

In addition, under 11 U.S.C. § 110(h), the Supreme Court or the Judicial Conference of the United States may prescribe guidelines for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. I am required by law to notify [you][the debtor] of any such maximum amount before preparing any document for filing for [you][a debtor] or accepting any fee from [you][the debtor].

\_\_\_\_\_  
Signature of Debtor Date  
(In a joint case, both spouses must sign.)

\_\_\_\_\_  
Signature of Joint Debtor (if any) Date

**CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY  
PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110 and that I provided the debtor with this notice as required under 11 U.S.C. § 110(b). ~~I declare further under penalty of perjury that, if guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) for setting a maximum fee for services chargeable by a bankruptcy petition preparer, I have given the debtor notice of the maximum amount before preparing any document for filing for the debtor or accepting any fee from the debtor.~~

\_\_\_\_\_  
Printed or Typed Name and title, if any, of  
Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No.

*If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.*

\_\_\_\_\_  
Address

x \_\_\_\_\_  
Signature and title, if any, of Bankruptcy  
Petition Preparer

\_\_\_\_\_  
Date

*If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.*

Names and Social Security numbers of all other individuals who prepared or assisted in preparing the document for filing to which this notice is attached:

*If more than one person prepared this document, attach additional signed notices conforming to this official form for each person.*

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

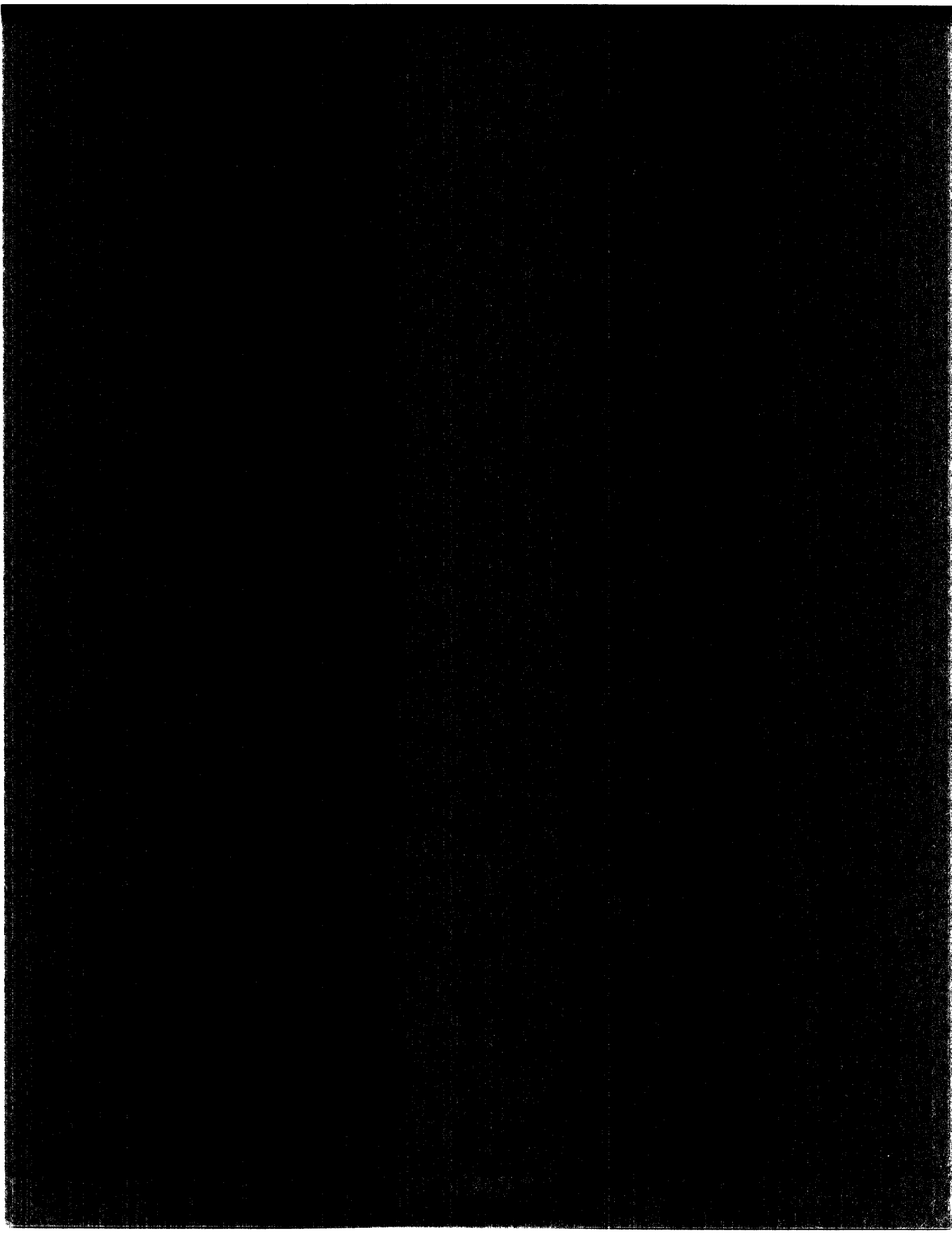
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**COMMITTEE NOTE**

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This form is new. It contains the notice a non-attorney bankruptcy petition preparer is required to give to a debtor under 11 U.S.C. § 110 as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001). The notice states, in language mandated in the Reform Act, that the bankruptcy petition preparer is not an attorney and must not give legal advice. The notice must be signed by the debtor and by the bankruptcy petition preparer and filed with any document for filing prepared by the bankruptcy petition preparer. 11 U.S.C. § 110.





## MEMORANDUM

To: Advisory Committee on Bankruptcy Rules  
From: Melissa B. Jacoby  
Date: August 28, 2001  
Re: Potential Form Revisions To Reflect Section 102 of the Bankruptcy Reform Act of 2001

Section 102 of the Bankruptcy Reform Act of 2001 makes substantial revisions to 11 U.S.C. § 707 and related statutory provisions. If section 102 is enacted into law, the case of a chapter 7 filer with primarily consumer debts will be presumed abusive if the debtor is deemed able to pay a certain amount of debt (in dollars or percentage) under a legislatively-provided formula. To facilitate disclosure of the relevant information, the legislation amends section 707(b) to include the following language: “[a]s part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor’s current monthly income, and the calculations that determine whether a presumption arises under [ability-to-pay formula] that shows how each amount is calculated.” H.R. 333, 107th Cong. § 102 (2001). The current versions of Schedules I and J do not contain all of the information necessary to apply the ability-to-pay formula set forth in the legislation. Thus, it appears likely that the Official Forms will have to be amended or supplemented.

Although the legislation gives U.S. Trustees/Bankruptcy Administrators primary responsibility to police the new section 707(b), clerks of court also will need some information about debtors’ ability to pay under the formula; the legislation amends 11 U.S.C. § 342 to require that “[i]n an individual case under chapter 7 in which the presumption of abuse is triggered under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has been triggered.” H.R. 333, 107th Cong. § 102 (2001) (emphasis added); Davis Polk & Wardwell Side-By-Side Comparison (hereinafter cited as “DPW”) p.68. In addition, parties in interest will be authorized to file motions to dismiss or convert a case for presumed abuse based on the debtor’s ability to pay under the formula.

Perhaps in recognition of the significant responsibility given to U.S. Trustees/Bankruptcy Administrators, the U.S. Trustees have been working for over a year on a set of worksheets that would implement the new requirements. We recently learned, however, that the Department of Justice does not plan to release the draft worksheets unless and until the legislation is signed into law. Thus, we cannot review those forms or use them as a starting point for the Committee’s analysis.

Exhibit A contains what I believe to be the most basic pieces of information necessary for a new or revised form. Exhibit B explains the calculations for each piece of information on Exhibit A. Whether the detailed calculations contained in Exhibit B also should be incorporated into Official Forms is something that the Committee may wish to discuss.



**EXHIBIT A**  
**Basic Information Necessary To Implement Section 102**  
**of the Bankruptcy Reform Act of 2001**

1. Debtor(s):
2. Marital Status:
3. Number of Dependents:
4. Total Family Size:
5. Safe Harbor Standard:
6. Gross Monthly Income:
7. Current Monthly Income:
8. Does Current Monthly Income Exceed Monthly Safe Harbor Standard? Yes \_\_\_ No \_\_\_
9. Total Expenses/Deductions As Permitted By Section 102:
  - a. Living Expense:
  - b. Transportation:
  - c. Food Clothing and Other Household Items:
  - d. "Other Necessary Expenses:"
  - e. Secured Debt Payments:
  - f. Priority Debt Payments:
  - g. Chapter 13 Administrative Expenses:
  - h. Miscellaneous Deductions:
10. Monthly Net Income:
11. Five -Year Net Income:
12. Total Nonpriority Unsecured Claims:
13. Does Five Year Net Income Equal or Exceed \$10,000? Yes \_\_\_ No \_\_\_
14. Is Five Year Net Income at least 25% of the debtor's unsecured non-priority claims, or \$6,000, whichever is greater? Yes \_\_\_ No \_\_\_

Check Box if Presumption of Abuse Arises (A Presumption of Abuse Arises if you answered "yes" to <u>either</u> question 13 or question 14) <input type="checkbox"/>
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**EXHIBIT B**  
**Explanations and Calculations For Information on Exhibit A**

1. **Debtor:** self-explanatory
2. **Marital status:** self-explanatory
3. **Number of dependents:**
  - a. “Dependents” is not defined in the legislation or the existing Bankruptcy Code.
4. **Total family/household size:** The bill does not define family size, but applying the safe harbor depends on some quantification of family size (as does application of some of the IRS Collection Financial Standards, which may or may not result in a different calculation). Family size will not necessarily be limited to “dependents” or to those living in the same household, however. One therefore might need sufficient information to count all dependents, all members of the debtor’s household who are not dependents, and the debtor’s spouse if it is a joint case and the spouse is not a dependent.
5. **Safe Harbor Standard**
  - a. **Background:**
    - i. All debtors will be required to submit at least some income and expense calculations, but debtors with incomes below the safe harbor cannot be the subject of a motion to dismiss or convert even if their cases are presumed abusive under the ability-to-pay formula.
    - ii. The safe harbor cannot simply be determined by looking at a Census Bureau chart, however. Although the calculation of the safe harbor begins with median income numbers, several adjustments must be made to establish the safe harbor in each case.
  - b. **Information necessary to calculate standard:**
    - i. Total family size (see 4, above)
    - ii. State of residence (the legislation refers to the “applicable state”)

- iii. Applicable median family income<sup>1</sup> in the applicable state,<sup>2</sup> subject to the following adjustments:
  - (1) The legislation recognizes that the median income figures for larger families tend to be lower than for smaller families. Thus, the legislation permits the safe harbor to be set by the highest median income for a family of equal or lesser size.
  - (2) Again, to ensure an appropriate safe harbor for large families, if the family has more than 4 members, the legislation requires that an additional \$6,300 be added for each extra family member to the highest median income figure for a family of four or less.

6. **Gross Monthly Income**

- a. Background: Gross Monthly Income will be used to apply the IRS Collection Financial Standards for food, clothing, and other household expenses, the amount of which is determined in part based on gross income. *See* 9(c), below.
- b. Calculation: Gross monthly income = Current Monthly Income (defined in 7, below) + Social Security Act benefits (if any) + payments to victim of war crimes or crimes against humanity (if any).

7. **Current Monthly Income**

- a. Background: A definition of Current Monthly Income will be added to 11 U.S.C. § 101. This definition requires something different than the information currently reported on Schedule I.
- b. Calculation:
  - i. Current Monthly Income is the “average monthly income from all sources . . . derived during the 6-month period preceding the date of determination.” DPW p. 3-4.

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<sup>1</sup>The legislation refers to “median family income of the applicable state” as the starting point for the safe harbor standard rather than “median household income” figures. On the national level, median family income figures tend to be higher than median household income figures. My research and consultation with Census Bureau staff suggest that state median family income is reported only once every 10 years. In the interim years, only state median household income is collected and reported. Thus, assuming no change in reporting procedures, it may not always be feasible to use median family income of the applicable state, as those figures will be out of date for safe harbor purposes much of the time.

<sup>2</sup>Although I have not independently verified this, I have been told that there are no median income figures for Puerto Rico, Guam, or the Northern Mariana Islands.

- (1) Include any monthly contributions from a non-filing spouse or any other source to household expenses of the debtor or the debtor's dependent.
  - (2) Exclude Social Security Act benefits and payments to victims of war crimes or crimes against humanity.
- ii. "Date of determination" generally will be assumed to be the last day of the calendar month immediately preceding the date of the filing. DPW p.3-4.
- c. *Note:* The inclusive definition of current monthly income presumably includes income from operating a business, but the ability-to-pay calculations do not expressly require the deduction for the expenses of operating a business (other than to the extent they reduce the debtor's tax liability). If the Committee decides to develop or adopt a detailed form, it might want to think about how to address this issue.
  - d. *Note:* One might encounter non-uniformity problems in the reporting of Current Monthly Income. For example, some people get paid the first and fifteenth of every month, while others get paid every two weeks. The payment schedule can make a difference when determining a six-month average.
8. **Does Current Monthly Income Exceed Safe Harbor Standard?**
- a. If the debtor's Current Monthly Income is equal to or less than the Safe Harbor Standard, only a judge, U.S. trustee, or bankruptcy administrator may bring section 707(b) motions based on other types of abuse (e.g., no creditor motions).

9. **Total Expenses/Deductions**

Background: Many of the allowable deductions are a combination of actual expenses and standard deductions based on the IRS Collection Financial Standards and other allowable expenses used in offers in compromise and other IRS workout procedures.<sup>3</sup> The IRS does not appear to update the Collection Financial Standards annually; the housing and transportation standards were last adjusted in October 1999.

- a. *Living Expense Standard:* The legislation uses the IRS Collection Financial Standards allowable living expenses standard. It is a local standard, meaning that

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<sup>3</sup>According to the IRS, the "Collection Financial Standards are used to help determine a taxpayer's ability to pay a delinquent tax liability." See [http://www.irs.ustreas.gov/prod/ind\\_info/coll\\_stds/](http://www.irs.ustreas.gov/prod/ind_info/coll_stds/). Most of the IRS standards are currently derived from the Bureau of Labor Statistics Consumer Expenditure Survey, except for the miscellaneous standard in the household expense allowances, which was established by the IRS itself. One shortcoming of the IRS Collection Financial Standards is that the figures that depend on state, county, region, or Metropolitan Statistical Area apparently are unavailable for places such as Puerto Rico, Guam, and the Northern Mariana Islands.

it varies by county and family size (2 or less, family of 3, or family of 4 or more).

- i. The living expenses standard covers monthly rent or mortgage payment, property taxes, homeowners or renters insurance, parking, necessary maintenance and repair, homeowner dues, condominium fees, gas, electricity, water, fuel oil, coal, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, and telephone. *See* Internal Revenue Service Form 433A, Publication 1854 (Rev. 1-1999). The allowance is nonetheless a single number and is not broken down into these components.
  - ii. It is somewhat unclear how to apply the standard to a debtor in bankruptcy who owns a home subject to a mortgage because the ability-to-pay formula provides a full deduction for mortgage payments (*see* 9(c), below), but does not indicate how to adjust the living expenses standard accordingly. For example, if the mortgage payment exceeds the total IRS housing allowance, does this mean that the debtor's utilities cannot be deducted from current monthly income at all?
  - iii. The legislation authorizes an additional deduction based on actual expenses for home energy costs if the debtor documents the expenses and demonstrates that they are "reasonable and necessary." DPW p. 242.
    - (1) The legislation does not indicate whether the debtor is permitted to demonstrate this in writing, and then take this deduction into account into her initial ability-to-pay calculations.
- b. *Transportation*
- i. The legislation uses the IRS Collection Financial Standard transportation allowance. Unlike the housing allowance, it is broken down into two components: ownership cost and operational expense/transportation. A debtor with no car payment (either lease or loan), or no car, gets no ownership cost allowance at all.
  - ii. The IRS Collection Financial Standards provide a national ownership cost allowance. The allowance varies depending on whether a debtor has one or two cars.
    - (1) In the bankruptcy context, the legislation provides that any secured debt payments, such as car loan payments, are deducted in full from current monthly income. Thus, the ownership cost allowance presumably does not apply or provide an additional allowance to someone with a car loan.
  - iii. The IRS Collection Financial Standards provide a regional or Metropolitan Statistical Area ("MSA") operational expense and

transportation expenses.

- (1) Thus, to apply these standards, the debtor must determine whether or not she resides in a MSA,<sup>4</sup> and if not, the applicable regional standard.
  - (2) The operational and transportation expense vary by whether the debtor has no car, one car, or two cars.
  - (3) Operating costs are intended to apply to insurance, registration fees, normal maintenance, fuel, public transportation, parking, and tolls, to the extent necessary to produce income or ensure health and welfare.
- c. *Food, clothing, and other household items*
- i. The IRS Collection Financial Standards provide separate allowances for food,<sup>5</sup> housekeeping supplies,<sup>6</sup> apparel and services,<sup>7</sup> personal care products and services, and miscellaneous. See [www.irs.ustras.gov/prod/ind\\_info?coll\\_stds/cfs-other.html](http://www.irs.ustras.gov/prod/ind_info?coll_stds/cfs-other.html).
  - ii. The allowance varies based on the consumer's gross monthly income and family size.<sup>8</sup>

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<sup>4</sup>For example, the Washington, D.C. MSA includes the District of Columbia along with the following counties or cities in Maryland: Calvert, Charles, Frederick, Montgomery, Prince George's County; along with the following counties or cities in Virginia: Arlington, Clarke, Culpepper, Fairfax, Fauquier, King George, Loudoun, Prince William, Spotsylvania, Stafford, Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city; and the following counties or cities in West Virginia: Berkeley, Jefferson. Similarly, the Boston MSA includes the following counties or cities in Massachusetts: Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth, Suffolk, Worcester; the following counties or cities in New Hampshire: Hillsborough, Merrimack, Rockingham, Strafford; the following county in Connecticut: Windham; and the following county in Maine: York. See [http://www.irs.ustreas.gov/prod/ind\\_info/coll\\_stds/cfs-trans.html](http://www.irs.ustreas.gov/prod/ind_info/coll_stds/cfs-trans.html).

<sup>5</sup>The Internal Revenue Manual reports that this category includes all meals, home or away. Internal Revenue Manual 5.15.1-2 (2001).

<sup>6</sup>The Internal Revenue Manual reports that this category includes postage, stationery, laundry and cleaning supplies, other household products, cleansing and toilet tissue, paper towels and napkins, lawn and garden supplies, and miscellaneous supplies. *Id.*

<sup>7</sup>The Internal Revenue Manual reports that this category includes hair care products, haircuts and beautician services, oral hygiene products and articles, shaving needs, cosmetics, perfume, bath preparations, deodorants, feminine hygiene products, electric personal care appliances, personal care services, and repair of personal care appliances. *Id.*

<sup>8</sup>This does not mean, however, that larger families get a greater allowance. The allowance for a low income larger family will be smaller than the allowance for a higher income

- iii. The allowance is a national standard except for certain regions, such as Alaska and Hawaii, which have their own tables.
  - iv. I have assumed that application of this standard depends on Gross Monthly Income as defined above (e.g., Current Monthly Income + Social Security Act Benefits + Any Payments to Victims), rather than the debtor's actual gross income at the time of filing, but the legislation does not specifically state that this is the required approach.
  - v. The legislation permits a debtor to obtain a 5% increase in the food and clothing allowances if "it is demonstrated that it is reasonable and necessary." DPW p. 241. It is unclear whether the debtor is permitted to deduct this additional 5% in her initial ability-to-pay calculations.
- d. *Other Necessary Expenses*
- i. The legislation permits the debtor to deduct from current monthly income the debtor's "actual monthly expenses for the categories specified as Other Necessary Expenses" by the IRS. DPW p. 241. The IRS Collection Financial Standards permit the deduction of such expenses if they contribute to health and welfare and/or production of income. There are no set allowances. The Internal Manual provides a non-exhaustive list of examples of expenses that might be considered necessary, including, *inter alia*, child care, taxes, health care, court-ordered payments, involuntary deductions, life insurance, disability insurance for the self-employed, union dues, professional association dues. *See* Internal Revenue Manual 5.15.1.3.2.3. (2001). The Internal Revenue Manual suggests that optional telephone service is only an allowable expense if it either promotes health and welfare or production of income. It is not clear whether a debtor can list expenses such as this, or expenses that are not mentioned at all as examples, in her initial ability-to-pay calculations. This is just an example of the type of expense that a form or worksheet might need to address.
- e. *Secured Debt Payments:*
- i. The debtor may deduct payments "as contractually due to secured creditors in each month of the 60 months following the date of the petition" and adequate protection payments that would have to be made if the debtor were in chapter 13. DPW p. 242 (emphasis added).
  - ii. Thus, the debtor must identify the secured claims, aggregate them, and divide by 60 to get the monthly secured debt figure. It is presumed for purposes of the ability-to-pay calculations that the payments are spread evenly throughout the 5 years.
  - iii. The legislation does not specifically address adjustable rate mortgages.
  - iv. The legislation does not specifically address balloon payments.

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individual or smaller family.

- f. *Priority Debt Payments*
  - i. The legislation permits the debtor to deduct all priority claims.
  - ii. Thus, the debtor must identify the claims entitled to priority, aggregate them, and divide by 60 to get the monthly priority debt figure. It is presumed for purposes of the ability-to-pay calculations that payments are spread evenly throughout the 5 years.
  
- g. *Chapter 13 Administrative Expenses:*
  - i. The legislation recognizes that a portion of the debtor's disposable income in chapter 13 would be consumed by administrative expenses. To take this into account, the debtor will be able to deduct a deduction for up to 10% of the projected plan payments. *See DPW 241.*
    - (1) The precise amount of the deduction depends on the actual administrative expenses associated with chapter 13 in the debtor's district.
    - (2) Thus, the debtor will need to know the actual percentage in that district to take the proper deduction.
  
- h. *Miscellaneous Deductions:*
  - i. Care of Elderly, Chronically Ill, or Disabled
    - (1) The legislation authorizes a deduction for reasonable and necessary actual expenses for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family who is not a dependent and who is unable to pay for such expenses. DPW p. 241. It is unclear whether the debtor can deduct those expenses in her initial ability-to-pay calculation.
  
  - ii. Elementary or Secondary School
    - (1) The legislation authorizes a deduction for "actual expenses for each dependent child under the age of 18 years up to \$1,500 per year per child to attend a private or public elementary or secondary school, if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary," assuming that those expenses are not already accounted for in the IRS allowances. DPW p. 241. It is unclear whether the debtor can deduct those expenses in her initial ability-to-pay calculations.
  
  - iii. Charitable Contributions
    - (1) Although the Internal Revenue Manual permits only limited allowances for charitable contributions, the Bankruptcy Code now takes a different approach. Section 707(b) was amended in 1999 to provide that a court may not take into account whether a debtor



made charitable contributions when determining whether granting chapter 7 relief to that debtor would be an abuse of the Bankruptcy Code. This amendment was intended to prevent courts from finding chapter 7 debtors able to repay creditors with the money that they otherwise are using to tithe and to make charitable contributions. This provision will still be in force, and thus arguably justifies a deduction in the ability-to-pay calculations, subject to the provisions of current section 707(b) (which incorporates by reference the definitions of charitable contribution and qualified religious or charitable entity or organization now set forth in 11 U.S.C. § 548).

10. **Monthly Net Income**

- a.  $\text{Current Monthly Income} - \text{Total Expenses/Deductions} = \text{Monthly Net Income}$

11. **Five-Year Net Income**

- a.  $\text{Monthly Net Income} \times 60 \text{ months} = \text{Five-Year Net Income}$

12. **Total Nonpriority Unsecured Claims:**

- a. This information is self-explanatory, but note that the debtor must know the amount of general unsecured claims in order to complete the ability-to-pay calculations.
- i. If the debtor's five-year net income is less than \$6,000, however, the debtor's chapter 7 case will not be presumed abusive regardless of the percentage of general unsecured debt she can pay.
  - ii. In addition, if the debtor's five-year net income equals or exceeds \$10,000, the debtor's chapter 7 case will be presumed abusive regardless of the percentage of general unsecured debt she can pay.

**11D**

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: "BUSINESS" AND MISCELLANEOUS RULES AMENDMENTS  
DATE: AUGUST 28, 2001

The pending bankruptcy reform legislation introduces several new concepts into the Bankruptcy Code and contains a number of other revisions that require amendments and additions to the rules. For example, the legislation amends the definition of a small business debtor under § 101 such that the debtor no longer will elect that status. Furthermore, there are a great many consequences that flow from being a small business debtor. Small business debtors have different time periods for the filing and confirmation of chapter 11 plans than do other chapter 11 debtors. There will be official forms for chapter 11 plans and disclosure statements available to small business debtors, and the confirmation process itself can be streamlined as compared to the process for other, larger chapter 11 debtors. The expedited plan confirmation process creates a need to amend the notice rules. These debtors also have different reporting obligations concerning their business operations during the bankruptcy case.

There are other changes to the business bankruptcy provisions of the Code that require

rules and forms amendments and additions. The reform legislation authorizes the court to dispense with a § 341 meeting of creditors in “prepack” cases. There are new provisions governing the election of trustees in chapter 11 cases, and a requirement found in the new chapter 15 of the Code (although it applies to cases under any chapter) that creditors with foreign addresses be given more notice of the time than “domestic” creditors to file proofs of claims.

The specific provisions of the bankruptcy reform legislation that create the need for the changes set out below are referenced in each of the Committee Notes following the proposed rule change. Again, these amendments are set out in the Davis, Polk & Wardwell side-by-side comparison of the House and Senate versions of the reform bills.

**Rule 1007. Lists, Schedules, and Statements; Time Limits**

\* \* \* \* \*

1  
2 (c)TIME LIMITS. The schedules and statements, other than the  
3 statement of intention, shall be filed with the petition in a voluntary  
4 case, or if the petition is accompanied by a list of all the debtor’s  
5 creditors and their addresses, within 15 days thereafter, except as

6 otherwise provided in subdivisions (d), (e), and (h) of this rule. In  
7 an involuntary case the schedules and statements, other than the  
8 statement of intention, shall be filed by the debtor within 15 days  
9 after entry of the order for relief. Schedules and statements filed  
10 prior to the conversion of a case to another chapter shall be deemed  
11 filed in the converted case unless the court directs otherwise.

12 Except as provided in § 1116(3) of the Code, any ~~Any~~ extension of  
13 time for the filing of the schedules and statements may be granted  
14 only on motion for cause shown and on notice to the United States  
15 trustee and to any committee elected under § 705 or appointed  
16 under § 1102 of the Code, trustee, examiner, or other party as the  
17 court may direct. Notice of an extension shall be given to the  
18 United States trustee and to any committee, trustee, or other party  
19 as the court may direct.

#### COMMITTEE NOTE

The rule is amended to recognize the limitation on the extension of the time to file schedules and statements when the debtor is a small business debtor. The bankruptcy reform

legislation added § 1116(3) to the Bankruptcy Code which establishes a specific standard for the courts to apply in the event that the debtor in possession or the trustee seeks an extension for the filing of these forms for a period beyond 30 days after the order for relief.

**Rule 1020. Election to be Considered a Small Business in a Chapter 11 Reorganization Case**

1           ~~In a chapter 11 reorganization case, a debtor that is a small~~  
2           ~~business may elect to be considered a small business by filing a~~  
3           ~~written statement of election not later than 60 days after the date of~~  
4           ~~the order for relief. [Abrogated]~~

COMMITTEE NOTE

Under § 101 of the Bankruptcy Code as amended by the bankruptcy reform legislation, debtors no longer may elect to be treated as a small business debtor. Thus, there is no longer any need for the rule.

**Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee**

1           (a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST.  
2           Except as provided in subdivisions (h), (i), ~~and (j)~~ (l), and (p) of

3 this rule, the clerk, or some other person as the court may direct,  
4 shall give the debtor, the trustee, all creditors and indenture trustees  
5 at least 20 days' notice by mail of:

6 \* \* \* \* \*

7 (b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN  
8 INTEREST. Except as provided in subdivision (l) of this rule, the  
9 clerk, or some other person as the court may direct, shall give the  
10 debtor, the trustee, all creditors and indenture trustees not less than  
11 25 days notice by mail of (1) the time fixed for filing objections  
12 and the hearing to consider approval of a disclosure statement or  
13 approval of a plan as a disclosure statement if the court has  
14 determined under § 1125(f) that a separate disclosure statement is  
15 not necessary; and (2) the time fixed for filing objections and the  
16 hearing to consider confirmation of a chapter 9, chapter 11, or  
17 chapter 13 plan.

18 \* \* \* \* \*

19 (p) Unless the courts for cause orders that a longer period be set, a

20 creditor with a foreign address shall be given at least 45 [60?]days  
21 notice of the time fixed for filing proofs of claims under Rule  
22 3003(c).

#### COMMITTEE NOTE

The bankruptcy reform legislation amended § 1125 to authorize the courts to dispense with a separate disclosure statement in some instances. In a small business case, the plan can serve as the disclosure statement if the court determines that the plan contains adequate information. The rule is amended to account for those instances in which the court makes such a determination. It is likely that the court will conditionally approve the plan as a disclosure statement, and the hearing on the final approval of the plan as the disclosure statement is likely to be consolidated with the hearing on confirmation of the plan itself.

Section 1514(d) of the Code, added by the bankruptcy reform legislation, requires that creditors with foreign addresses receive additional time over that provided to domestic creditors in which to file proofs of claims. Thus, subdivision (p) is added to the rule to grant those creditors at least 45 days [or 60 or some other amount] notice of the time within which to file proofs of claims. Other creditors continue to receive at least 20 days notice under subdivision (a)(7) of the rule. If cause exists, such as likely delays in the delivery of notices in particular locations, the court can extend the notice period for creditors with foreign addresses.



**Rule 2003. Meeting of Creditors or Equity Security Holders**

1 (a) DATE AND PLACE. Except as provided in § 341(e) of the  
2 Code, in ~~in~~ a chapter 7 liquidation or a chapter 11 reorganization  
3 case, the United States trustee shall call a meeting of creditors to be  
4 held no fewer than 20 and no more than 40 days after the order of  
5 relief. In a chapter 12 family farmer debt adjustment case, the  
6 United States trustee shall call a meeting of creditors to be held no  
7 fewer than 20 and no more than 35 days after the order for relief. In  
8 a chapter 13 individual's debt adjustment case, the United States  
9 trustee shall call a meeting of creditors to be held no fewer than 20  
10 and no more than 50 days after the order for relief. If there is an  
11 appeal from or a motion to vacate the order for relief, or if there is  
12 a motion to dismiss the case, the United States trustee may set a  
13 later date for the meeting. The meeting may be held at a regular  
14 place for holding court or at any other place designated by the  
15 United States trustee within the district convenient for the parties  
16 in interest. If the United States Trustee designates a place for the

17 meeting which is not regularly staffed by the United States trustee  
18 or an assistant who may preside at the meeting, the meeting may be  
19 held not more than 60 days after the order for relief.

COMMITTEE NOTE

The bankruptcy reform legislation added § 341(e) to the Code which authorizes the court to dispense with a meeting of creditors when prior to the commencement of the case the debtor has solicited acceptances for a plan. The rule is amended to recognize that in those cases, no meeting of creditors will be held.

**Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case**

1 \* \* \* \* \*

2 (b) Election of trustee

3 \* \* \* \* \*

4 (3) Report of Election and Resolution of Disputes.

5 (A) Report of Undisputed Election. If the election is not  
6 disputed, the United States trustee shall promptly file a  
7 report of the election, including the name and address of the

8 person elected and a statement that the election is  
9 undisputed. The United States trustee shall file with the  
10 report an application for approval of the appointment in  
11 accordance with subdivision (c) of this rule. ~~The report~~  
12 ~~constitutes appointment of the elected person to serve as~~  
13 ~~trustee, subject to court approval, as of the date of entry of~~  
14 ~~the order approving the appointment.~~

15 (B) Disputed Election. If the election is disputed, the United  
16 States trustee shall promptly file a report stating that the election is  
17 disputed, informing the court of the nature of the dispute, and  
18 listing the name and address of any candidate elected under any  
19 alternative presented by the dispute. The report shall be  
20 accompanied by a verified statement by each candidate elected  
21 under each alternative presented by the dispute, setting forth the  
22 person's connections with the debtor, creditors, any other party in  
23 interest, their respective attorneys and accountants, the United  
24 States trustee, and any person employed in the office of the United

25 States trustee. Not later than the date on which the report of the  
26 disputed election is filed, the United States trustee shall mail a  
27 copy of the report and each verified statement to any party in  
28 interest that has made a request to convene a meeting under §  
29 1104(b) or to receive a copy of the report, and to any committee  
30 appointed under § 1102 of the Code. ~~Unless a motion for the~~  
31 ~~resolution of the dispute is filed not later than 10 days after the~~  
32 ~~United States trustee files the report, any person appointed by the~~  
33 ~~United States trustee under § 1104(d) and approved in accordance~~  
34 ~~with subdivision (c) of this rule shall serve as trustee. If a motion~~  
35 ~~for the resolution of the dispute is timely filed, and the court~~  
36 ~~determines the result of the election and approves the person~~  
37 ~~elected, the report will constitute appointment of the elected person~~  
38 ~~as of the date of entry of the order approving the appointment.~~

39 (c) Approval of Appointment. An order approving the appointment  
40 of a trustee ~~elected under § 1104(b) or appointed under § 1104(d),~~  
41 or the appointment of an examiner under §1104(d) of the Code,

42 shall be made on application of the United States trustee. The  
43 application shall state the name of the person appointed and, to the  
44 best of the applicant's knowledge, all the person's connections  
45 with the debtor, creditors, any other parties in interest, their  
46 respective attorneys and accountants, the United States trustee, and  
47 persons employed in the office of the United States trustee. Unless  
48 the person has been elected under § 1104(b), the application shall  
49 state the names of the parties in interest with whom the United  
50 States trustee consulted regarding the appointment. The application  
51 shall be accompanied by a verified statement of the person  
52 appointed setting forth the person's connections with the debtor,  
53 creditors, any other party in interest, their respective attorneys and  
54 accountants, the United States trustee, and any person employed in  
55 the office of the United States trustee.

#### COMMITTEE NOTE

Under § 1104(b)(2) of the Code, as amended by the bankruptcy reform legislation, the courts no longer must appoint a trustee who is elected to serve in a chapter 11 case. Instead, the election itself

constitutes the appointment in the absence of any dispute. The section further provides that in the event of a dispute in the election of a trustee, the court must resolve the matter. The rule is thus amended to delete the provision that would authorize the appointment of a trustee in a disputed election other than by action of the court.

**Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case.**

1 (a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or  
2 debtor in possession, other than in a case of a small business  
3 debtor, shall (1) in a chapter 7 liquidation case and, if the court  
4 directs, in a chapter 11 reorganization case file and transmit to the  
5 United States trustee a complete inventory of the property of the  
6 debtor within 30 days after qualifying as a trustee or debtor in  
7 possession, unless such an inventory has already been filed; (2)  
8 keep a record of receipts and the disposition of money and property  
9 received; (3) file the reports and summaries required by §§ 308 and  
10 704(8) of the Code which shall include a statement, if payments are  
11 made to employees, of the amounts of deductions for all taxes

12 required to be withheld or paid for and in behalf of employees and  
13 the place where these amounts are deposited; (4) as soon as  
14 possible after the commencement of the case, give notice of the  
15 case to every entity known to be holding money or property subject  
16 to withdrawal or order of the debtor, including every bank, savings  
17 or building and loan association, public utility company, and  
18 landlord with whom the debtor has a deposit, and to every  
19 insurance company which has issued a policy having a cash  
20 surrender value payable to the debtor, except that notice need not  
21 be given to any entity who has knowledge or has previously been  
22 notified of the case; (5) in a chapter 11 reorganization case, on or  
23 before the last day of the month after each calendar quarter until a  
24 plan is confirmed or the case is converted or dismissed, file and  
25 transmit to the United States trustee a statement of disbursements  
26 made during such calendar quarter and a statement of the amount  
27 of the fee required pursuant to 28 U.S.C § 1930(a)(6) that has been  
28 paid for such calendar quarter.

\* \* \* \* \*

29  
30 (d) Unless the court, for cause, sets another reporting interval, the  
31 trustee or debtor in possession in a case of a small business debtor  
32 shall file and transmit to the United States trustee on the first day  
33 of the third month after the order for relief, and quarterly thereafter,  
34 a report on the appropriate Official Form as required by § 308 of  
35 the Code.

36 (e) (d) TRANSMISSION OF REPORTS. In a chapter 11 case the  
37 court may direct that copies or summaries of other reports shall be  
38 mailed to the creditors, equity security holders, and indenture  
39 trustees. The court may also direct the publication of summaries of  
40 any such reports. A copy of every report and summary mailed or  
41 published under pursuant to this subdivision shall be transmitted to  
42 the United States trustee.

#### COMMITTEE NOTE

The bankruptcy reform legislation added § 308 to the Code. That section requires the trustee or debtor in possession of a small business debtor to submit periodic reports on profitability and



projected and actual cash receipts and disbursements. The section also requires that the debtor in possession or trustee report on compliance with the rules generally as well as the filing of necessary tax returns. The rule is amended to implement the obligation to file the reports and to establish timing intervals for the filing of the reports. In some cases, the need for the reports may be greater or lesser than on a quarterly basis, and the court can set a different interval in those circumstances. [Should the Committee Note offer examples for the type of cases in which more or less frequent reporting is proper? E.g., farmers who plant “annual” crops; debtors whose inventory turns over every 30 or 60 days?]

Other amendments are stylistic.

#### **Rule 2020. Review of Acts by United States Trustee**

1            Except as provided in 28 U.S.C. § 586(d)(2), Rule 9014 governs a  
2            ~~A~~ proceeding to contest any act or failure to act by the United  
3            States trustee ~~is governed by Rule 9014.~~

#### COMMITTEE NOTE

The rule is amended to recognize that the bankruptcy reform legislation has created a category of actions under 28 U.S.C. § 586 (d)(2) for which the Attorney General will prescribe procedures and which therefore should not be governed by Rule 9014.

#### **Rule 3002. Filing Proof of Claim or Interest**

1 (c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12  
2 family farmer's debt adjustment, or chapter 13 individual's debt  
3 adjustment case, a proof of claim is timely filed if it is not later  
4 than 90 days after the first date set for the meeting of creditors  
5 called under § 341(a) of the Code, except as follows:

6 (1) A proof of claim filed by a governmental unit is timely  
7 filed if it is filed not later than 180 days after the date of the  
8 order for relief, or, for a claim for a tax based on a return filed  
9 under § 1308 [of the Code], not later than 60 days after the date  
10 on which the return was filed . On motion of a governmental  
11 unit before the expiration of such period and for cause shown,  
12 the court may extend the time for filing of a claim by the  
13 governmental unit.

14 (2) In the interest of justice and if it will not unduly delay the  
15 administration of the case, the court may extend the time for  
16 filing a proof of claim by an infant or  
17 incompetent person or the representative of either.

18 (3) An unsecured claim which arises in favor of an entity or  
19 becomes allowable as a result of a judgment may be filed  
20 within 30 days after the judgment becomes final if the  
21 judgment is for the recovery of money or property from that  
22 entity or denies or avoids the entity's interest in property. If the  
23 judgment imposes a liability which is not satisfied, or a duty  
24 which is not performed within such period or such further time  
25 as the court may permit, the claim shall not be allowed.

26 (4) A claim arising from the rejection of an executory  
27 contract or unexpired lease of the debtor may be filed  
28 within such time as the court may direct.

29 (5) A proof of claim filed by a creditor with a foreign address  
30 not later than 120 days after the first date set for the meeting of  
31 creditors called under § 341.

32 (5) If notice of insufficient assets to pay a dividend was  
33 given to creditors pursuant to Rule 2002(e), and  
34 subsequently the trustee notifies the court that payment

35 of a dividend appears possible, the clerk shall notify the  
36 creditors of that fact and that they may file proofs of  
37 claim within 90 days after the mailing of the notice.

#### COMMITTEE NOTE

The rule is amended to conform to changes in the Code made by the bankruptcy reform legislation. Governmental units asserting claims based on tax returns filed during the pendency of a chapter 13 case have additional time to file proof of those claims under § 502(b)(9) of the Code.

The rule also is amended to provide additional time for a creditor with a foreign address to file a proof of claim. Section 1514(d) was added to the Code and it requires that the rules provide additional time for these creditors to file claims in cases under all chapters of the Code.

#### **Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases**

1 (b) FILING PROOF OF CLAIM.

2 (1) Who May File. Any creditor or indenture trustee may file a  
3 proof of claim within the time prescribed by subdivision (c)(3)  
4 of this rule

5 (2) Who Must File. Any creditor or equity security holder

6 whose claim or interest is not scheduled or scheduled as  
7 disputed, contingent, or unliquidated shall file a proof of claim  
8 or interest within the time prescribed by subdivision (c)(3) of  
9 this rule; any creditor who fails to do so shall not be treated as a  
10 creditor with respect to such claim for the 11 purpose of voting  
11 and distribution.

12 (3) Time for Filing. The court shall fix and for cause shown  
13 may extend the time with which proofs of claim or  
14 interest may be filed. The court shall set an additional  
15 reasonable time within which a creditor with a foreign address  
16 may file a proof of claim. Notwithstanding the expiration of  
17 such time, a proof of claim may be filed to the extent and under  
18 the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

19 (4) Effect of Filing Claim or Interest. A proof of claim or  
20 interest executed and filed in accordance with this  
21 subdivision shall supersede any scheduling of that claim or  
22 interest pursuant to § 521(1) of the Code.

23 (5) Filing by Indenture Trustee. An indenture trustee may  
24 file a claim on behalf of all known or unknown holders of  
25 securities issued pursuant to the trust instrument under  
26 which it is trustee.

#### COMMITTEE NOTE

The rule is amended to implement § 1514(d) of the Code. That section requires that creditors with foreign addresses be provided additional time to file claims. Since the court has wide discretion in setting the claims bar date, the amendment does not set a specific time for the filing of proofs of claims by these creditors, but rather leaves that to the discretion of the court.

#### **Rule 3016. Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases**

1 (E) DISCLOSURE STATEMENT. Unless the court finds under §  
2 1125(f) that it is not necessary to file a disclosure statement, in ~~In~~ a  
3 chapter 9 or 11 case, a disclosure statement under § 1125 or  
4 evidence showing compliance with § 1126(b) of the Code shall be  
5 filed with the plan or within a time fixed by the court.

## COMMITTEE NOTE

The rule is amended to recognize that under the bankruptcy reform legislation, no disclosure statement is required in some cases. The legislation added § 1125(f) which provides that the plan proponent need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary.

### **Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case**

1 (A) CONDITIONAL APPROVAL OF DISCLOSURE  
2 STATEMENT. If the debtor is a small business ~~and has made a~~  
3 ~~timely election to be considered a small business in a chapter 11~~  
4 ~~case~~, the court may, on application of the plan proponent,  
5 conditionally approve a disclosure statement filed in accordance  
6 with Rule 3016(b). On or before conditional approval of the  
7 disclosure statement, the court shall:

8 (1) fix a time within which the holders of claims and  
9 interests may accept or reject the plan;

10 (2) fix a time for filing objections to the disclosure

11 statement;

12 (3) fix a date for the hearing on final approval of the  
13 disclosure statement to be held if a timely objection is filed; and

14 (4) fix a date for the hearing on confirmation.

15 (B) APPLICATION OF RULE 3017. Rule 3017(a), (b), (c),  
16 and (e) do not apply to a conditionally approved disclosure  
17 statement. Rule (d) applies to a conditionally approved disclosure  
18 statement, except that conditional approval is considered approval  
19 of the disclosure statement for the purpose of applying Rule  
20 3017(d).

21 (C) FINAL APPROVAL.

22 (1) Notice. Notice of the time fixed for filing objections and  
23 the hearing to consider final approval of the disclosure statement  
24 shall be given in accordance with Rule 2002 and may be combined  
25 with notice of the hearing on confirmation of the plan.

26 (2) Objections. Objections to the disclosure statement shall be  
27 filed, transmitted to the United States trustee, and served on



28 the debtor, the trustee, any committee appointed under the  
29 Code and any other entity designated by the court at any time  
30 before final approval of the disclosure statement or by an earlier  
31 date as the court may fix.

32 (3) Hearing. If a timely objection to the disclosure statement is  
33 filed, the court shall hold a hearing to consider final approval  
34 before or combined with the hearing on confirmation of the plan.

#### COMMITTEE NOTE

Under the bankruptcy reform legislation, status as a small business debtor no longer requires an election by the debtor. Rather, § 101 of the Code defines an entity as a small business debtor eliminating any need to elect that status. Therefore, the reference in the rule to election of that status is deleted.

#### **Rule 3019. Modification of Accepted Plan Before or After Confirmation in a Chapter 9 Municipality or a Chapter 11 Reorganization Case**

1 (a) In a chapter 9 or chapter 11 case, after a plan has been accepted  
2 and before its confirmation, the proponent may file a modification  
3 of the plan. If the court finds after hearing on notice to the trustee,

4 any committee appointed under the Code and any other entity  
5 designated by the court that the proposed modification does not  
6 adversely change the treatment of the claim of any creditor or the  
7 interest of any equity security holder who has not accepted in  
8 writing the modification, it shall be deemed accepted by all  
9 creditors and equity security holders who have previously accepted  
10 the plan.

11 (b) In the chapter 11 case of an individual, a request to modify a  
12 plan pursuant to § 1127(e) of the Code shall identify the proponent  
13 and shall be filed together with the proposed modification. The  
14 clerk, or some other person as the court may direct, shall give the  
15 debtor, the trustee, and all creditors not less than 20 days notice by  
16 mail of the time fixed for filing objections and, if an objection is  
17 filed, the hearing to consider the proposed modification, unless the  
18 court orders otherwise with respect to creditors who are not  
19 affected by the proposed modification. A copy of the notice shall  
20 be transmitted to the United States trustee. A copy of the proposed

21 modification shall be included with the notice. If required by the  
22 court, the proponent shall furnish a sufficient number of copies of  
23 the proposed modification to enable the clerk to include a copy  
24 with each notice. Any objection to the proposed modification shall  
25 be filed and served on the debtor, the trustee, and any other entity  
26 designated by the court, and shall be transmitted to the United  
27 States trustee. An objection to a proposed modification is governed  
28 by Rule 9014.

#### COMMITTEE NOTE

The bankruptcy reform legislation amended chapter 11 to provide for the modification of confirmed plans. The rule is amended to establish the procedure for the filing and consideration of these proposals to modify confirmed plans.

#### **Rule 5003. Records Kept by the Clerk.**

1 (E) REGISTER OF MAILING ADDRESSES OF FEDERAL  
2 AND STATE GOVERNMENTAL UNITS. The United States or  
3 the state or territory in which the court is located, or any local  
4 governmental unit collecting taxes within the district in which the

5           case is pending for purposes of § 505 of the Code may file a  
6           statement designating its mailing address. The clerk shall keep, in  
7           the form and manner as the Director of the Administrative Office  
8           of the United States Courts may prescribe, a register that includes  
9           there mailing addresses, but the clerk is not required to include in  
10          the register more than one mailing address for each department,  
11          agency, or instrumentality of the United States or the state or  
12          territory. If more than one address for a department, agency, or  
13          instrumentality is included in the register, the clerk shall also  
14          include information that each address is applicable, and mailing  
15          notice to only one applicable is sufficient to provide effective  
16          notice. The clerk shall update the register annually, effective  
17          January 2 of each year. The mailing address in the register is  
18          conclusively presumed to be a proper address for the governmental  
19          unit, but the failure to use that mailing address does not invalidate  
20          any notice that is otherwise effective under applicable law.

COMMITTEE NOTE

The rule is amended to implement the addition of § 505(b) (1) to the Code in the bankruptcy reform legislation. The rule now includes local governmental units that are collecting taxes among the entities that can designate addresses to which all notices must be sent. These address notice designations are operative only to the extent that the notices are served in matters pending under § 505 of the Code.

**Rule 9006. Time**

1 (B) ENLARGEMENT.

2 (1) In General. Except as provided in paragraphs (2) and (3) of this  
3 subdivision, when an act is required or allowed to be done at or  
4 within a specified period by these rules or by a notice given  
5 thereunder or by order of court, the court for cause shown may at  
6 any time in its discretion (1) with or without motion or notice order  
7 the period enlarged if the request therefor is made before the  
8 expiration of the period originally prescribed or as extended by a  
9 previous order or (2) on motion made after the expiration of the  
10 specified period permit the act to be done where the failure to act  
11 was the result of excusable neglect.

- 12 (2) Enlargement Not Permitted. The court may not enlarge the  
13 time for taking action under Rules 1007(d), 2003(a) and (d), 7052,  
14 9023, and 9024.
- 15 (3) Enlargement Limited. The court may enlarge the time for  
16 taking action under Rules 1006(b)(2), 1007(c), 1017(e), 3002(c),  
17 4003(b), 4004(a), 4007(c), 8002 and 9033, only to the extent and  
18 under the conditions stated in those rules.

#### COMMITTEE NOTE

The bankruptcy reform legislation places specific outside limits on the time for submitting schedules and a statement of affairs under § 1116(3) of the Code. The rule is amended to recognize that extensions of time for filing these documents are governed by that section and cannot be granted beyond the time set forth in the Code.



## Memorandum

To: Advisory Committee on Bankruptcy Rules

From: Subcommittees on Forms and Business Issues

Date: August 28, 2001

Re: Forms Needed to Implement Pending Bankruptcy Reform Legislation

This agenda item has two parts. The first part contains proposed amendments to the official forms that will be needed to implement various business-related provisions of the pending legislation. The forms included are Forms 1, 5, 6, 10, 16A, and 16C. The Committee Notes following each form explain the proposed amendments. Amendments also will be needed to Official Form 9 (the “§ 341 Notice”); drafts of proposed amendments to Form 9 will be distributed at the meeting.

The second part contains a memorandum from Professor Markell, with three appendices, and four attachments. These materials address the new forms that will be required in small business chapter 11 cases -- for disclosure statements, plans, and operating reports. The appendices contain: excerpts from the pending legislation, lists of relevant disclosure statement provisions, and excerpts from the United States Trustee Policy Manual on current financial reporting requirements from the Office of the United States Trustee. The attachments are samples of existing local forms: a disclosure statement form and a plan form from the Central District of California, and operating reports (cash and accrual methods) from the Eastern District of California.

Attachments



FORM B1 United States Bankruptcy Court District of Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): Name of Joint Debtor (Spouse) (Last, First, Middle): All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): Last four digits of Soc. Sec./Tax I.D. No. (if more than one, state all): Last four digits of Soc. Sec./Tax I.D. No. (if more than one, state all): Street Address of Debtor (No. & Street, City, State & Zip Code): Street Address of Joint Debtor (No. & Street, City, State & Zip Code): County of Residence or of the Principal Place of Business: County of Residence or of the Principal Place of Business: Mailing Address of Debtor (if different from street address): Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Type of Debtor (Check all boxes that apply) [ ] Individual(s) [ ] Corporation [ ] Partnership [ ] Health Care Business [ ] Other [ ] Railroad [ ] Stockbroker [ ] Commodity Broker [ ] Clearing Bank Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box) [ ] Chapter 7 [ ] Chapter 9 [ ] Chapter 11 [ ] Chapter 12 [ ] Chapter 13 [ ] Chapter 15 Nature of Debts (Check one box) [ ] Consumer/Non-Business [ ] Business Filing Fee (Check one box) [ ] Full Filing Fee attached [ ] Filing Fee to be paid in installments (Applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3. [ ] Filing Fee waiver requested (Applicable to individuals only). Must attach signed application detailing the debtor's income and expenses for the court's consideration. See Official Form No. Individual and Joint Debtors with primarily consumer debts filing under chapter 7: Current Monthly Income \$ Size of Household = persons

Statistical/Administrative Information [ ] Debtor estimates that funds will be available for distribution to unsecured creditors. [ ] Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors 1-15 16-49 50-99 100-199 200-999 1000-over THIS SPACE IS FOR COURT USE ONLY Estimated Assets \$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million Estimated Debts \$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million Individual and Joint Debtors with Primarily Consumer Debts Only: If debtor checks "consumer/non-business" above, debtor also must complete this box. Total Assets \$ Total Liabilities \$ (Give exact amounts rounded to the nearest dollar.)



**Voluntary Petition**  
*(This page must be completed and filed in every case)*

Name of Debtor(s):

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by § 342(b) of the Bankruptcy Code.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

**Signature of Non-Attorney Petition Preparer**

I declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). Official Form No. \_\_\_\_ is attached. I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy peption preparer.)

Address

X

Signature and title, if any, of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.*

**Signature of Attorney**

X

Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

COMMITTEE NOTE

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The form is amended to implement [reflect] amendments to the Bankruptcy Code contained in the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001). The period for which the debtor must provide all names used is extended to eight years to match the new minimum time between the granting of discharges to the same debtor. The amendments also require an individual debtor with primarily consumer debts to file information that will help the clerk to determine whether the presumption of abuse has been triggered in a case filed under chapter 7. The box indicating the debtor's selection of chapter under which to file the case been amended to delete "Sec. 304 - Case ancillary to foreign proceeding and replace it with the new "Chapter 15." A statement of venue to be used in a chapter 15 case also has been added. A new check box is provided for the debtor that is a "health care business" as defined in § 101 of the Code to so state, thereby alerting the court and the United States trustee of the necessity under § 332 of the Code to appoint an ombudsman to represent the interests of the patients of the health care business. A check box also has been added for a debtor to indicate that the debtor is applying for a waiver of the filing fee. The section of the form relating to a chapter 11 small business debtor is, because under the definition contained in the Bankruptcy Reform Act the debtor will not know at the time of filing whether the case will be a "small business case." The statistical section of the form is amended to require individuals with primarily consumer debts to state the actual dollar amounts of their assets and liabilities. A space is provided for individuals to certify that they have received budget and credit counseling prior to filing or to request a waiver of the requirement. The signature sections and the declaration under penalty of perjury by an individual debtor concerning the notice received about bankruptcy relief, the declaration under penalty of perjury by a non-attorney bankruptcy petition preparer, and the declaration and certification by an attorney all are amended to include new material mandated by the Bankruptcy Reform Act. In addition, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, the form is amended to require the debtor to provide only the last four digits of the debtor's Social Security or tax identification number.

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112, Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]</i>

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

[Declaration as in Form 2]

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COMMITTEE NOTE

The form is amended to direct that the name and address of any minor child not be disclosed. The amendment is required under the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. ,( ,2001).

**United States Bankruptcy Court**

**INVOLUNTARY  
PETITION**

**District of** \_\_\_\_\_

IN RE (Name of Debtor - If Individual: Last, First, Middle)

ALL OTHER NAMES used by debtor in the last 8 years  
(Include married, maiden, and trade names.)

Last four digits of SOC. SEC./TAX I.D. NO. (If more than one, state all.)

STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code)

MAILING ADDRESS OF DEBTOR (If different from street address)

COUNTY OF RESIDENCE OR  
PRINCIPAL PLACE OF BUSINESS

LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)

CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED

Chapter 7

Chapter 11

**INFORMATION REGARDING DEBTOR**

(Check one box)

Petitioners believe:

- Debts are primarily consumer debts
- Debts are primarily business debts (Complete section B)

TYPE OF DEBTOR (check any applicable box)

- Individual
- Partnership
- Other: \_\_\_\_\_
- Corporation
- Health Care Business

B. BRIEFLY DESCRIBE NATURE OF BUSINESS

**VENUE**

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.

**PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER  
OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)**

Name of Debtor	Case Number	Date
Relationship	District	Judge

**ALLEGATIONS  
(Check applicable boxes)**

COURT USE ONLY

1.  Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b).
2.  The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code.
- 3.a.  The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount;  
or
- b.  Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.





COMMITTEE NOTE

The form has been amended to delete statistical information no longer required and to add ~~“as to liability or amount” to the language concerning debts that are the subject of a bona fide~~ dispute, in conformity with amendments to § 303 of the Bankruptcy Code made by the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001). A new check box is provided for the petitioning creditors to identify the debtor that is a “health care business” as defined in § 101 of the Code, thereby alerting the court and the United States trustee of the necessity under § 332 of the Code to appoint an ombudsman to represent the interests of the patients of the health care business. In furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, petitioning creditors are directed to provide only the last four digits of the debtor’s Social Security or tax identification number.

## **SUMMARY OF SCHEDULES**

[To be developed if the pending legislation is enacted.]

The pending Bankruptcy Reform Act would require extensive additional statistical reporting by the Administrative Office. The summary of schedules would be the logical place to obtain much of the information that would be required and which is not provided on the first page of Official Form 1, Voluntary Petition. If a bill is enacted, staff from the Bankruptcy Judges Division and the Statistics Division will cooperate to develop an amended Summary of Schedules for the committee's review.

In addition, the "means test" and the further statistical reporting obligations in the pending legislation may require some supplementary amendments to the various schedules constituting Official Form 6 in order to facilitate collection of the required information. If a bill is enacted, further proposed amendments to implement those provisions will be submitted to the committee for consideration. Accordingly, all of the currently proposed amendments to Official Form 6 relating to the pending Bankruptcy Reform Act are preliminary in nature and represent only those provisions in the legislation on which the House and Senate versions of the bill appear to agree.

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." ~~If providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."~~

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>1. Cash on hand.</p> <p>2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.</p> <p>3. Security deposits with public utilities, telephone companies, landlords, and others.</p> <p>4. Household goods and furnishings, including audio, video, and computer equipment.</p> <p>5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.</p> <p>6. Wearing apparel.</p> <p>7. Furs and jewelry.</p> <p>8. Firearms and sports, photographic, and other hobby equipment.</p> <p>9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.</p> <p>10. Annuities. Itemize and name each issuer.</p> <p><del>11. Interests in an education IRA as defined in 26 U.S.C. § 529(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars of the contribution record(s) of any such interest(s) in 26 U.S.C. § 529(c) or Rule 1007(c).</del></p>				

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p><del>11-12</del> Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize: <u>Give particulars.</u></p> <p>13. Stock and interests in incorporated and unincorporated businesses. Itemize. <u>Indicate for stock whether it is closely held or publicly traded and for every type of interest whether the debtor holds a substantial or controlling interest.</u></p> <p>14. Interests in partnerships or joint ventures. Itemize. <u>Indicate whether the debtor holds a substantial or controlling interest.</u></p> <p>15. Government and corporate bonds and other negotiable and non-negotiable instruments.</p> <p>16. Accounts receivable.</p> <p>17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.</p> <p>18. Other liquidated debts owing debtor including tax refunds. Give particulars.</p> <p>19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.</p> <p>20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</p> <p>21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each. <u>Indicate whether the debtor holds a substantial or controlling interest.</u></p>	N O N E		—	

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>22. Patents, copyrights, and other intellectual property. Give particulars.</p> <p>23. Licenses, franchises, and other general intangibles. Give particulars.</p> <p><del>24. Personally identifiable information as defined in 11 U.S.C. § 541(c)(2) provided by individuals to the debtor in connection with obtaining a product or service from the debtor primarily for personal, family or household purposes. Give details, including whether the debtor has disclosed a policy to an individual prohibiting the transfer of personally identified information to non-affiliated third persons and whether the policy remains in effect.</del></p> <p>25. Automobiles, trucks, trailers, and other vehicles and accessories.</p> <p>26. Boats, motors, and accessories.</p> <p>27. Aircraft and accessories.</p> <p>28. Office equipment, furnishings, and supplies.</p> <p>29. Machinery, fixtures, equipment, and supplies used in business.</p> <p>30. Inventory.</p> <p>31. Animals.</p> <p>32. Crops - growing or harvested. Give particulars.</p> <p>33. Farming equipment and implements.</p> <p>34. Farm supplies, chemicals, and feed.</p> <p>35. Other personal property of any kind not already listed. Itemize.</p>				
<p>_____ continuation sheets attached Total ▶</p>				\$

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

- 11 U.S.C. § 522(b)(12):
- 11 U.S.C. § 522(b)(23):

Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**  
 Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the ~~180~~ 730 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and if the debtor's domicile has not been located at a single state for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place; the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law; and certain retirement funds to the extent provided in 11 U.S.C. §§ 522(b)(3)(C) and (b)(4).

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION

In re \_\_\_\_\_  
Debtor

## SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and ~~last four digits of the~~ account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

~~If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; Federal Bankruptcy Rule 1007(m).~~

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Code debtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Code debtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					

\_\_\_\_\_ continuation sheets attached

Subtotal ▶ (Total of this page)	\$
Total ▶ (Use only on last page)	\$

(Report total also on Summary of Schedules)

~~Use only last four digits of account number~~

In re \_\_\_\_\_,  
Debtor

## SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					
ACCOUNT NO. *								
			VALUE \$					

Sheet no. \_\_\_ of \_\_\_ continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal	\$
(Total of this page)	
Total	\$
(Use only on last page)	

(Report total also on Summary of Schedules)

Use only last four digits of account number



In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition.

~~If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).~~

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

~~Alimony, Maintenance, or Support Domestic Support Obligations~~

~~Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(1). Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).~~

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(5).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,650\* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(6).

In re \_\_\_\_\_,  
Debtor (if known)

Case No. \_\_\_\_\_

**Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$4,650\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

**Deposits by individuals**

Claims of individuals up to \$2,100\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

**Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

**Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

**Claims for Death or Personal Injury while Debtor was Intoxicated**

Claims for death or personal injuries resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated. 11 U.S.C. § 507(a)(10).

\* Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

\_\_\_\_\_ continuation sheets attached

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								

Sheet no. \_\_\_ of \_\_\_ sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal > \$ \_\_\_\_\_  
(Total of this page)  
Total > \$ \_\_\_\_\_

(Use only on last page of the completed Schedule E.)  
(Report total also on Summary of Schedules)

Use only last four digits of account number.

In re \_\_\_\_\_ Debtor

## SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and ~~last four digits of the~~ account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

~~If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 542, Fed. R. Bankr. P. 1007(m).~~

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							

\_\_\_\_\_ continuation sheets attached

Subtotal > \$ \_\_\_\_\_  
Total > \$ \_\_\_\_\_

(Report also on Summary of Schedules)

~~Use only last four digits of account number.~~

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
Subtotal							\$
(Total of this page)							
Total							\$

Sheet no. \_\_\_ of \_\_\_ sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

(Use only on last page of the completed Schedule E.)  
(Report total also on Summary of Schedules)

**Use only last four digits of account number**

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, indicate that by stating "a minor child." Do not include the name or address of the minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

**NOTE:** A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

### SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the six-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the six-year period immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, indicate that by stating "a minor child." Do not include the name and address of a minor child in this schedule. See 11 U.S.C. § 112, Fed. Bankr. P. 107(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

# DECLARATION CONCERNING DEBTOR'S SCHEDULES

## DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ (Total shown on summary page plus 1.) sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

## CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify, declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h) and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_ Social Security No \_\_\_\_\_  
~~I, the bankruptcy petition preparer, is not an individual, state the name, title (if any), address, and social security number of the officer, principal responsible person, or partner who signs this document.~~

Address \_\_\_\_\_

X \_\_\_\_\_  
Signature and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_ Date  
~~I, the bankruptcy petition preparer, is not individual, this certification must be signed by an officer, principal responsible person or partner of the bankruptcy petition preparer.~~

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

## DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

Date \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	List dependents of debtor and spouse. Indicate age and relationship of each, but do not disclose the name of any minor child.	
<b>Employment:</b>	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

**Income:** (Estimate of average monthly income)  
 Current monthly gross wages, salary, and commissions  
 (pro rate if not paid monthly.)  
 Estimated monthly overtime

	DEBTOR	SPOUSE
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>

**SUBTOTAL**

**LESS PAYROLL DEDUCTIONS**  
 a. Payroll taxes and social security  
 b. Insurance  
 c. Union dues  
 d. Other (Specify: \_\_\_\_\_)

\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____

**SUBTOTAL OF PAYROLL DEDUCTIONS**

<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>
<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>

**TOTAL NET MONTHLY TAKE HOME PAY**

Regular income from operation of business or profession or farm  
 (attach detailed statement)  
 Income from real property  
 Interest and dividends  
 Alimony, maintenance or support payments payable to the debtor for the  
 debtor's use or that of dependents listed above.  
 Social security or other government assistance  
 (Specify) \_\_\_\_\_  
 Pension or retirement income  
 Other monthly income  
 (Specify) \_\_\_\_\_

\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
\$ _____	\$ _____	\$ _____
<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>

**TOTAL MONTHLY INCOME**

**TOTAL COMBINED MONTHLY INCOME**      \$ \_\_\_\_\_

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE J—CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	\$ _____
Are real estate taxes included?      Yes _____ No _____	
Is property insurance included?      Yes _____ No _____	
Utilities Electricity and heating fuel	\$ _____
Water and sewer	\$ _____
Telephone	\$ _____
Other _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____
Food	\$ _____
Clothing	\$ _____
Laundry and dry cleaning	\$ _____
Medical and dental expenses	\$ _____
Transportation (not including car payments)	\$ _____
Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ _____
Charitable contributions	\$ _____
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	\$ _____
Life	\$ _____
Health	\$ _____
Auto	\$ _____
Other _____	\$ _____
Taxes (not deducted from wages or included in home mortgage payments) (Specify) _____	\$ _____
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)	
Auto	\$ _____
Other _____	\$ _____
Other _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____
Payments for support of additional dependents not living at your home	\$ _____
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ _____
Other _____	\$ _____
<b>TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)</b>	<b>\$ _____</b>

**[FOR CHAPTER 12 AND 13 DEBTORS ONLY]**

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	\$ _____
B. Total projected monthly expenses	\$ _____
C. Excess income (A minus B)	\$ _____
D. Total amount to be paid into plan each _____	\$ _____

(interval)

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

# DECLARATION CONCERNING DEBTOR'S SCHEDULES

## DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_  
(Total shown on summary page plus 1.)  
sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

## CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify, declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(f) and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_

Social Security No \_\_\_\_\_

~~I, the bankruptcy petition preparer, is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.~~

Address \_\_\_\_\_

X \_\_\_\_\_  
Signature and title (if any) of Bankruptcy Petition Preparer

\_\_\_\_\_ Date

~~A bankruptcy petition preparer is not individual; this certification must be signed by an officer, principal, responsible person, or partner of the bankruptcy petition preparer.~~

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110, 18 U.S.C. § 156.

## DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

Date \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

COMMITTEE NOTE

The forms of the Schedules of Assets and Liabilities are amended to implement the ~~provisions of the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001).~~ Some amendments occur in several of the schedules. These include directions to avoid disclosing the name and address of any minor child and, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, to disclose only the last four digits of any account number reported on the schedules.

The “means test” mandated for individual debtors with primarily consumer debts who file under chapter 7 or chapter 13 of the Bankruptcy Code is provided for with amended [supplemented] Schedules I and J. Those and other amendments specific only to one schedule are discussed separately with respect to each schedule.

[The Summary of Schedules is amended to include additional information needed to prepare statistical reports required under 28 U.S.C. § 159, which was enacted as part of the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001).]

Schedule B - Personal Property is amended to require the debtor to list any interests in an education IRA. The schedule also requires the debtor to indicate whether the debtor’s stock in a corporation is publicly traded or closely held, and whether the stock or other interest the debtor has in a corporation and any unincorporated business, partnership, or joint venture constitutes a substantial or controlling interest in any of those entities. The schedule also is amended to require the debtor to list any personally identifiable information provided by an individual to the debtor in connection with obtaining a product or service from the debtor for personal, family, or household purposes.

Schedule C - Property Claimed as Exempt is amended to conform to provisions in the Bankruptcy Reform Act of 2001 requiring a longer period of domicile before a debtor can claim certain exemptions and requiring a debtor to indicate the basis on which certain retirement funds are eligible for exemption.

Schedule D - Creditors Holding Secured Claims is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account numbers to only the last four digits.

Schedule E - Creditors Holding Unsecured Priority Claims is amended to implement the changes in priority to which a claim may be entitled under 11 U.S. C. § 507 as amended by the

Bankruptcy Reform Act of 2001 and to add the new priority included in the Reform Act for claims for death or personal injury while the debtor was intoxicated. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the list of any account numbers to only the last four digits.

Schedule F - Creditors Holding Unsecured Nonpriority Claims is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account number to only the last four digits.

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~~Schedule G - Executory Contracts and Unexpired Leases is amended to advise the debtor not to disclose on the form the name and address of any minor child.~~

Schedule H - Codebtors is amended to direct a debtor who resides or formerly resided in a community property state, commonwealth, or territory to disclose the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property jurisdiction. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child.

Schedule I - Current Income of Individual Debtor(s) is amended to delete the listing of dependents' names, which will avoid disclosure of the names of minor children. Limiting the information disclosed to the age and relationship of the debtor's dependents should be sufficient for purposes of the bankruptcy case. The Bankruptcy Reform Act of 2001 provides for the debtor to provide the name of any minor child confidentially to the court. [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Schedule J - Current Expenditures of Individual Debtor(s). [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Declaration Concerning Debtor's Schedules - The declaration and certification by a non-attorney bankruptcy petitioner are amended to include material mandated by 11 U.S.C. § 110 as amended by the Bankruptcy Reform Act of 2001.



# EXPLANATIONS

FORM B9A (DRAFT)

Filing of Chapter 7  
Bankruptcy Case

A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.

Creditors Generally May  
Not Take Certain Actions

Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

Do Not File a Proof of Claim  
at This Time

There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.

Discharge of Debts

The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

Exempt Property

The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

UNITED STATES BANKRUPTCY COURT \_\_\_\_\_ District of \_\_\_\_\_

## Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on \_\_\_\_\_ (date).]  
 or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter \_\_\_\_\_ on  
 \_\_\_\_\_ (date) and was converted to a case under chapter 7 on \_\_\_\_\_.]

You may be a creditor of the debtor. You may want to consult an attorney to protect your rights.  
 All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.  
 NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor (name(s) and address):	Case Number:
	Last four digits of Taxpayer ID Nos.:
Attorney for Debtor (name and address):	Bankruptcy Trustee (name and address):
Telephone number:	Telephone number:

### Meeting of Creditors:

Date:         /         /         Time:         (    ) A.M.         Location:  
   (    ) P.M.

### Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

**Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.**

<b>Address of the Bankruptcy Clerk's Office:</b>	<b>For the Court:</b>
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:



Filing of Chapter 7  
Bankruptcy Case

A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.

Creditors Generally May  
Not Take Certain Actions

Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

Do Not File a Proof of  
Claim at This Time

There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.

Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.

Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—



# EXPLANATIONS

FORM B9C (DRAFT)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	



# EXPLANATIONS

FORM B9D (DRAFT)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
—Refer To Other Side For Important Deadlines and Notices—	



# EXPLANATIONS

FORM B9E (DRAFT)

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Legal Advice</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.</p>

UNITED STATES BANKRUPTCY COURT \_\_\_\_\_ District of \_\_\_\_\_

## Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on \_\_\_\_\_ (date).]  
 or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter \_\_\_\_\_ on  
 \_\_\_\_\_ (date) and was converted to a case under chapter 11 on \_\_\_\_\_.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):	Case Number:
	Last four digits of Social Security/Taxpayer ID Nos.:
Attorney for Debtor(s) (name and address):	Telephone number:

### Meeting of Creditors:

Date:         /         /                          Time:         (     ) A.M.                          Location:  
   (     ) P.M.

### Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

#### Deadline to File a Proof of Claim:

For all creditors (except a governmental unit or a creditor with a foreign address):                          For a governmental unit:  
 For a creditor with a foreign address: *or* [A creditor with a foreign address should contact the court concerning the applicable deadline.]

#### Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

#### Deadline to File a Complaint Objecting to Discharge of the Debtor:

*First date set for hearing on confirmation of plan.*  
 Notice of that date will be sent at a later time.

#### Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

### Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:	<b>For the Court:</b>
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:



# EXPLANATIONS

FORM B9E (ALT.) (DRAFT)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.



# EXPLANATIONS

FORM B9F (DRAFT)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. [If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that deadline.]
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—



# EXPLANATIONS

FORM B9F (Alt.) (DRAFT)

## Filing of Chapter 11 Bankruptcy Case

A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.

## Creditors Generally May Not Take Certain Actions

Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or may not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

## Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.

## Claims

A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim may expose the creditor to the risk of not receiving any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]

## Discharge of Debts

Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. [If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.]

## Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

## Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—



# EXPLANATIONS

FORM B9G (DRAFT)

## Filing of Chapter 12 Bankruptcy Case

A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.

## Creditors Generally May Not Take Certain Actions

Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and ~~garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited~~ in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

## Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

## Claims

A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nontemporary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]

## Discharge of Debts

The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

## Exempt Property

The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

## Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

## Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.





# EXPLANATIONS

FORM B9H (DRAFT)

Filing of Chapter 12  
Bankruptcy Case

A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.

Creditors Generally May  
Not Take Certain Actions

Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under ~~certain circumstances, the stay may limited in duration or not exist at all, although the debor may have~~ the right to request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

Claims

A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from the other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court with consequences a lawyer can explain.]

Discharge of Debts

The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

UNITED STATES BANKRUPTCY COURT \_\_\_\_\_ District of \_\_\_\_\_

**Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines**

[The debtor(s) listed below filed a chapter 13 bankruptcy case on \_\_\_\_\_ (date).]  
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter \_\_\_\_\_ on \_\_\_\_\_ (date) and was converted to a case under chapter 13 on \_\_\_\_\_.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.  
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

**See Reverse Side For Important Explanations.**

Debtor(s) (name(s) and address):	Case Number:
Attorney for Debtor(s) (name and address):	Last four digits of Social Security/Taxpayer ID Nos.:
Telephone number:	Bankruptcy Trustee (name and address):
	Telephone number:

**Meeting of Creditors:**

Date:        /        /        Time:     (    ) A.M.     Location:  
  (    ) P.M.

**Deadlines:**

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

**Deadline to File a Proof of Claim:**

For all creditors (except a governmental unit or a creditor with a foreign address):     For a governmental unit:  
For a creditor with a foreign address:     or [A creditor with a foreign address should contact the court concerning the applicable deadline.]

**Deadline to Object to Exemptions:**

Thirty (30) days after the *conclusion* of the meeting of creditors.

**Filing of Plan, Hearing on Confirmation of Plan**

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:  
Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_]  
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]  
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

**Creditors May Not Take Certain Actions:**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:	<b>For the Court:</b>
Telephone number:	
Hours Open:	Date:

# EXPLANATIONS

FORM B91 (DRAFT)

## Filing of Chapter 13 Bankruptcy Case

A bankruptcy case under chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.

## Creditors Generally May Not Take Certain Actions

Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; ~~repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and~~ garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay. Consult a lawyer to determine your rights in this case.

## Meeting of Creditors

A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

## Claims

A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its security regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. A secured creditor who files a Proof of Claim may surrender important nonmentary rights, including the right to a jury trial concerning the claim. A secured creditor should consult a lawyer before filing a Proof of Claim. [A secured creditor need not file a Proof of Claim to retain rights in its security, but failure to file a Proof of Claim will deny the creditor any distribution from other assets of the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain.]

## Discharge of Debts

The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.

## Exempt Property

The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

## Bankruptcy Clerk's Office

Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.

## Legal Advice

The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

COMMITTEE NOTE

The form is amended to implement the provisions of the Bankruptcy Reform Act of 2001, ~~Pub. L. No. 107-  
Stat.~~, ( ~~2001~~). ~~Forms 9A and 9C are amended to include a box in~~ which the clerk can notify creditors whether, in a chapter 7 case filed by an individual with primarily consumer debts, the presumption of abuse has been triggered, as required by § 342(d) of the Bankruptcy Code. In cases involving serial filers (debtors who have filed more than one case within a specified period), the automatic stay provided by § 362(a) of the Code may not apply or may be limited in duration, unless the stay is extended or imposed by court order. All versions of the form are amended to alert creditors to check the court's records concerning the status of the stay in the case. The form is further amended to accommodate the extended period for filing a proof of claim afforded to a creditor with a foreign address under § 1514, which was added to the Code by the Reform Act. Section 1514 also requires that a secured creditor with a foreign address in any case under the Code be advised whether the creditor is required to file a proof of claim, and the form is amended to include a general statement addressing that issue. Forms 9E, 9E Alt., 9F, and 9F Alt. are amended to inform creditors that in a case in which the debtor has filed a plan for which it has solicited acceptances before filing the case, the court may, after notice and a hearing, order that the United States trustee not convene a meeting of creditors. Forms 9E and 9E Alt. also are amended to state that an individual chapter 11 debtor's discharge is not effective until completion of all payments under the plan, as provided in § 1141(d)(5) which was added to the Code by the Reform Act. [Forms 9F and 9F Alt. have been amended to prescribe a deadline for filing a complaint to determine the dischargeability of certain debts in conformity with § 1141(d)(2) as amended by the Reform Act.]

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor _____	Case Number _____	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): _____	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent: _____	Telephone number: _____	
Last four digits of account or other number by which creditor identifies debtor: _____	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
<b>2. Date debt was incurred:</b> _____	<b>3. If court judgment, date obtained:</b> _____	
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed See reverse side for important explanations.		
<b>Unsecured Nonpriority Claim</b> \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.	<b>Secured Claim</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).  Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	
<b>Unsecured Priority Claim</b> <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority.  Amount entitled to priority \$ _____  Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).	<input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) _____ (secured) _____ (priority) _____ (Total) <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.  <b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.  <b>8. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date _____	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): _____	

## INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

### — DEFINITIONS —

#### **Debtor**

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

#### **Creditor**

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

#### **Proof of Claim**

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

#### **Secured Claim**

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

#### **Unsecured Claim**

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

#### **Unsecured Priority Claim**

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

### Items to be completed in Proof of Claim form (if not already filled in)

#### **Court, Name of Debtor, and Case Number:**

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

#### **Information about Creditor:**

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

#### **1. Basis for Claim:**

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

#### **2. Date Debt Incurred:**

Fill in the date when the debt first was owed by the debtor.

#### **3. Court Judgments:**

If you have a court judgment for this debt, state the date the court entered the judgment.

#### **4. Classification of Claim**

##### **— Secured Claim:**

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the

amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

##### **Unsecured Priority Claim:**

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

##### **Unsecured Nonpriority Claim:**

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount not entitled to priority.

#### **5. Total Amount of Claim at Time Case Filed:**

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

#### **6. Credits:**

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

#### **7. Supporting Documents:**

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

COMMITTEE NOTE

The form is amended to conform to the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001), and to ~~provide spaces for stating the amount of any unsecured nonpriority~~ claim. The contents of the form also are rearranged and the instructions amended to include the separate listing of a general unsecured claim. In furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, a creditor asserting a claim for wages, salary, and compensation is directed to provide only the last four digits of the creditor's Social Security number. A trustee can request the full information necessary for tax withholding and reporting at the time the trustee makes a distribution to creditors.

Form 16A. CAPTION (FULL)

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_, )  
Set forth here all names including married, )  
maiden, and trade names used by debtor within )  
last 68 years.] )  
Debtor ) Case No. \_\_\_\_\_ )  
 ) )  
 ) )  
Address \_\_\_\_\_ )  
 ) )  
 ) ) Chapter \_\_\_\_\_ )  
 ) )  
Social Security No(s):\* \_\_\_\_\_ )  
Employer's Tax Identification No(s). [if any]:\* \_\_\_\_\_ )  
\_\_\_\_\_ )

*[Designation of Character of Paper]*

\*Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice given by the debtor and the use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c).



COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years, to implement the provision of the Bankruptcy Reform Act of 2001, Pub. L. No. 107-~~11~~, Stat. ~~1103~~, (~~10/17/01~~, 2001), ~~extending from six years to eight years the~~ period during which a debtor is barred from receiving successive discharges. The form also is amended to direct that only the last four digits of the debtor's Social Security or tax identification number be provided unless the caption is for a notice given by the debtor and use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c). This amendment implements the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files.

**FORM 16C. CAPTION OF COMPLAINT IN ADVERSARY PROCEEDING  
FILED BY A DEBTOR**

**United States Bankruptcy Court**  
\_\_\_\_\_ District Of \_\_\_\_\_

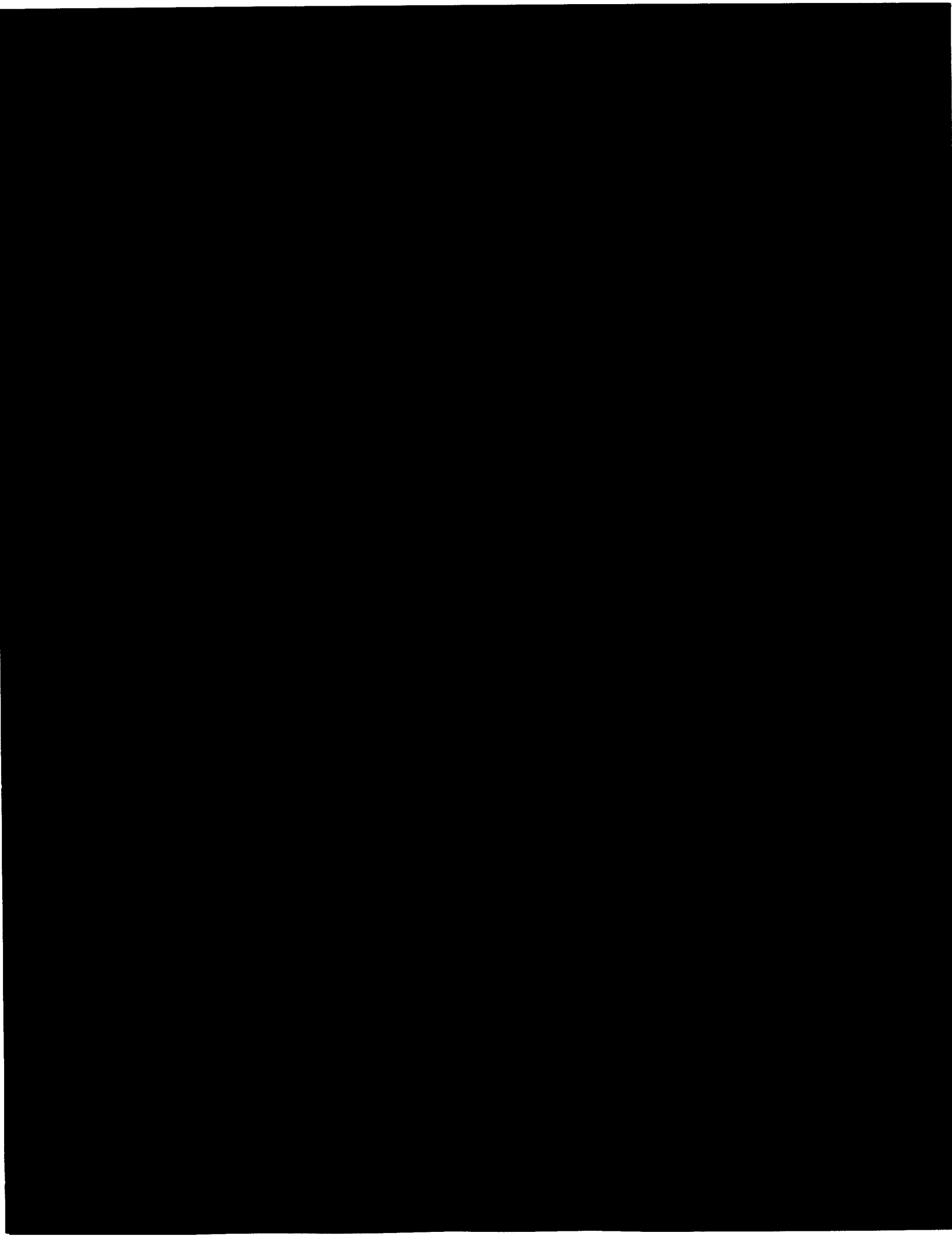
In re _____, <i>Debtor</i>	)	Case No. _____
	)	
Address _____	)	Chapter _____
_____	)	
Social Security No(s).: * _____ or	)	
Employer's Tax Identification No(s). [if any]: * _____	)	
_____	)	
	)	
_____ ,	)	
<i>Plaintiff</i>	)	
	)	
v.	)	
	)	
_____ ,	)	Adv. Proc. No. _____
<i>Defendant</i>	)	

**COMPLAINT**

\* Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice is given by the debtor and the use of the full Social Security number is required by 11 U.S.C. § 342(c).

COMMITTEE NOTE

The form is amended to include a note directing that, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal ~~information contained in court case files, only the last four digits of a debtor's Social Security or~~ tax identification number should be used, unless the caption is for a notice given by the debtor and use of the full Social Security number is required by 11 U.S.C. § 342(c). [Section 342(c) of the Code requires a debtor to provide the debtor's Social Security number on any notice furnished to a creditor by the debtor. A complaint, when combined with a summons and served on a defendant, functions as a notice of the commencement of an adversary proceeding. The form is amended to advise the debtor of the statutory basis for requiring disclosure of the Social Security number.]



## Memorandum

To: Jeff Morris, Reporter  
From: Bruce A. Markell, Consultant to the Advisory Committee  
Date: August 10, 2001  
Re: Forms for Small Businesses Required by Bankruptcy Reform Act of 2001

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This memorandum highlights the issues the Advisory Committee needs to address with respect to small businesses should the Bankruptcy Reform Act of 2001 (H.R. 333; S. 420) become law. Time has been too short to prepare final forms, but I have identified some of the major issues that require resolution before the Committee can adopt final forms.

This memorandum: (1) sets forth the relevant mandates in the pending legislation; (2) highlights issues relevant to those mandates; and (3) frames the issues for discussion at the Committee's semi-annual meeting.

### I. Relevant Provisions in the Legislation

As of the date of this memorandum, both the House and Senate have passed a version of the Bankruptcy Reform Act of 2001. H.R. 333, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2001); S. 420, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2001). Both houses have appointed conferees, but the conference committee has not met. With respect to provisions related to small business, however, there is not at the moment much difference between the two bills (to the point of keeping identical section numbers for the relevant sections). As a consequence, reference to the pending legislation will simply be to a single section number, with that reference serving as a joint reference to the identical section number in both bills.

The full text of the provision relevant to forms is set forth in the appendix. In summary, there are five sections that require the Committee in some way to develop forms related to small business:

- *Section 419*, regarding enhanced reporting of the assets and operations of any entity, including a closely-held corporation, in which the debtor holds a substantial or controlling interest;
- *Section 433*, which directs the Committee to prepare standard forms of disclosure statements and plans of reorganization for small business debtors;
- *Section 434*, which would add section 308 to the Bankruptcy Code regarding periodic reporting of financial operations by small business debtors;
- *Section 435*, which specifically directs the Committee to develop forms to implement new section 308; and
- *Section 436*, which would add section 1116 to the Bankruptcy Code regarding enhanced filing and other duties of small business debtors.

These sections are discussed in detail in the next portion of this memorandum.

## II. Issues Raised in Implementing Legislation

### A. *Issues Raised by Section 419 — Reporting for Entities in Which the Debtor Has a Substantial or Controlling Interest*

Section 419 requires the Committee to propose forms and rules designed to “to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.” The information covered is “the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.”

At the July 16, 2001 meeting of the Forms Sub-Committee, this section was discussed, and a tentative decision was made to defer work on this mandate until other provisions (primarily the small business disclosure obligations) were dealt with. Some points were made, however, that bear repeating:

- This provision applies to more than just small business debtors, even though it is in the small business subtitle. For example, it will apply not only to individual debtors and their incorporated small business, but also to international joint ventures in which large multinational corporate debtors are a party.
- There is no statutory definition of “substantial or controlling interest.” This may be a place where the Committee may consider promulgating clarifying rules.
- In many respects, the decisions on the scope of “value, operations and profitability” will turn on how those concepts are handled in the small business sections.

### B. *Issues Raised by Section 433 — Standard Form Disclosure Statements and Plans*

Section 433 directs the Committee to propose “for adoption standard form disclosure statements and plans of reorganization for small business debtors . . . , designed to achieve a practical balance between—[¶] (1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and [¶] (2) economy and simplicity for debtors.”

The function of section 433 is not to provide the *only* acceptable forms. Counsel to plan proponents will still be able to craft their own plans and disclosure statements without reference to any forms the Committee adopts. Rather, Section 431 of the legislation will amend section 1125(f) to provide that ““(f) Notwithstanding subsection (b), in a small business case—[¶] . . . (2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28.” As a consequence, use of the forms developed by the committee will serve as a “safe harbor” for plan proponents; that is, a proper form, properly filled out, should provided sufficient information to make a decision on whether to confirm the particular plan at issue.

## 1. Disclosure Statements

Section 1125(b) of the Code indicates that a valid disclosure statement must be provided to each creditor or interest holder before a vote on the plan is taken. That disclosure statement, in turn, must contain “adequate information,” defined in section 1125(a) as “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.” Complicating matters is language in the legislative history that indicates a limited role for the Committee in specifying adequate information in particular cases. H.R. 595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 409 (1977) (“The Supreme Court's rulemaking power will not extend to rulemaking that will prescribe what constitutes adequate information . . .”).

Courts and the Office of the United States Trustee have often promulgated long lists of required information. These lists are set forth in Appendix B. In many cases, however, these lists have been developed for larger chapter 11 cases, where securities are proposed to be issued in the plan. They may not be appropriate for smaller cases.

*Collier on Bankruptcy* states that, for smaller cases, “the disclosure statement must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” 7 COLLIER ON BANKRUPTCY ¶1125.02[1] (15<sup>th</sup> Rev. ed. 2001). Forced compliance with the longer lists, the treatise surmises, “would all but doom the small and medium size businesses which might have been able to make use of the old Chapter XI.” *Id.* at ¶ 1125.02[1][a].

*Collier* boils down the basic types of information for all disclosure statements, including those for small businesses, to the following:

- a description of the business;
- its history;
- financial information about the business;
- description of the plan;
- facts respecting its execution;
- a liquidation analysis;
- identification of management and its compensation;
- transactions with insiders; and
- tax consequences of the plan

*Id.* at ¶ 1125.02[1], citing *In re Malek*, 35 B.R. 443 (Bankr. E.D. Mich. 1983).

Disclosure statement forms could be designed along the “fill in the blank” model, with the above items as categories. For purposes of assisting those preparing the documents, an issue exists as to whether to “annotate” the model form, by referring to cases which are good examples of the disclosure of the category indicated.

In addition, given that uniform national financial reporting forms are part of the Committee's task, these forms (or information from these forms) could form the basis of a discussion of the debtor's post-petition financial operations.

Some information normally provided in disclosure statements can be classified as boilerplate, and thus common to every disclosure statement. See Chapter 11 Manual of the Office of the United States Trustee ¶ 3-10.3.1. This information might include the standard for acceptance under section 1126, qualifications regarding valuation generally, the nature of the plan process and other possibilities. There are several ways to handle disclosure of this information. It could be built into the actual form. Alternatively, it could exist on a Committee web site, and users of the form could simply incorporate the information by reference, or by downloading the information to their particular statement.

## **2. Plans of Reorganization**

Standardized plans of reorganization present much the same issues as disclosure statements. Many plan provisions, such as retention of post-confirmation jurisdiction or use of certain definitions, could be standardized using the above suggestions. In addition, section 1123 requires certain things of a plan for confirmation.

In another sense, however, plans are very different from disclosure statements. The means of implementing plans under section 1123(a)(5) are quite broad; the section contains ten subparagraphs illustrating acceptable means of implementation. In theory, there could be ten forms indicating language appropriate to each means of implementation. In actuality, there could be many more, especially since section 1123(b) contains optional provisions and means for implementation.

Again, the Committee will need to give guidance as to how detailed and varied it wishes the forms to be. Some courts currently have adopted standardized plans and disclosure statements already, and those documents are being collected for use in drafting Committee forms. *See, e.g.,* Central District of California, Approved Forms of Disclosure Statement and Plan of Reorganization, available from <http://www.cacb.uscourts.gov/>.

## **3. Issues on Plans and Disclosure Statements**

- Does the Committee wish to provide standardized text in the forms, and then simply indicate areas in which the plan proponent will need to supply information?
- With respect to plans and disclosure statements, does the Committee wish to go further and, in areas in which the plan proponent is to supply information, then indicate cases or clauses which courts have previously approved, and which may be adapted to the particular case?
- As a supplement to the above, does the Committee wish to explore the possibility of providing a centralized and easily accessible repository of standardized



“boilerplate” clauses (such as a Rules Committee website) that plan proponents could refer to in their documents without the need to recopy them in the actual documents provided to creditors and interest holders? Central to any such recommendation will be the degree of accessibility of such a central repository and of the provisions kept there.

- With respect to plans of reorganization, does the Committee wish to have different forms for different common situations, such as a form liquidation plan, a form “new value” plan or a form “pot plan”?

C. *Issues Raised by Section 434 and 435 — Periodic Reporting by Small Business Debtors*

Section 435 charges the Committee with created forms to implement section 434; indeed, section 435(b) delays the applicability of the reporting requirements of section 434(a) until the Committee promulgates forms and rules related to the requirements. section 434(a), in turn, requires from small business debtors “periodic financial and other reports containing information, including information relating to— [¶] (1) the debtor’s profitability; [¶] (2) the debtor’s cash receipts and disbursements; and [¶] (3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.”

In drafting these forms, the Committee is charged to “achieve a practical balance among— [¶] (1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information; [¶] (2) the small business debtor’s interest that required reports be easy and inexpensive to complete; and [¶] (3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor’s financial condition and plan the small business debtor’s future.”

This mandate may be very difficult to achieve. The current reporting requirements of the Office of the United States Trustee, set forth in Appendix C, are quite extensive and often are a burden to small businesses which, if they had in place the systems necessary to generate the required information, might not have felt the need to file bankruptcy in the first place.

A small task force of the Business Sub-Committee has been studying the possibility of requiring different types of reports at different times. For example, a debtor might easily comply with reporting cash receipts and disbursements on a monthly basis, but not be able to use those figures to derive “profitability” over the same period. As a possible alternative, the task force has considered making “profitability” reporting a quarterly requirement. section 434 is broad enough to permit this; it speaks only of “periodic” reports, and does not define the period referred to nor does it require the imposition of a unity notion of “period.”

If the Committee accepts this suggestion, then forms could be drafted based on this notion. Judge Klein, a member of the task force, has indicated that the reporting forms in the Eastern District of California, already make this distinction, and can be used as a basis to begin drafting. These forms are available at <http://www.caeb.uscourts.gov/> by searching under “Forms and Publications” for “operating reports.”

Another potential problem is that the legislation charges the Office of the United States Trustee with the job of collecting period information that is very similar to that required by section 434. Section 602(a) of the legislation would add 28 U.S.C. § 589b which would require the Attorney General to promulgate forms for periodic reporting by chapter 11 debtors, including small business debtors. In particular, the legislation would provide that:

Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include--

\* \* \*

- '(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;
- '(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

There are obvious points of similarity with these requirements. It would be contrary to the spirit of the small business provisions for the Rules and Forms to require quarterly profitability reporting while the Office of the United States Trustee requires the same information monthly.

It may be that working with the Office of the United States Trustee can resolve this difference, but until the Committee has some notion of what ought to be required, discussions with the United States Trustee would not be productive.

*D. Issues Raised by Section 436 — Enhanced Filing and Reporting Duties by Small Business Debtors*

Section 436 of the legislation adds a new section 1116 to the Code. This section adds to the filing requirements of small business debtors, both at the time of filing and thereafter. No forms are likely to be initially required, but implementing rules as to when documents such as tax returns and other evidence of payments should be filed could be subject to a rule.

### **III. Summary of Issues For Which Guidance is Sought**

In summary, the drafting of forms required by the legislation is subject to several policy level questions with respect to the various forms. The specific questions are listed in the text above.

Put generally, however, the questions are as follows:

- With respect to standardized disclosure statements and forms, the level of detail to be provided and the acceptability of incorporation by reference requires discussion and direction.
- With respect to reporting of financial data, the acceptability of requiring different types of reports at different times remains an issue, as does the coordination with the Office of the United States Trustee.





**Appendix A**  
**Relevant Provisions of the Legislation<sup>1</sup>**

**SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.**

(a) IN GENERAL-

(1) DISCLOSURE- The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION- The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE- The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

**SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.**

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between--

- (1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and
- (2) economy and simplicity for debtors.

**SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.**

(a) REPORTING REQUIRED-

(1) IN GENERAL- Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

**'Sec. 308. Debtor reporting requirements**

'(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

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<sup>1</sup>The bills are virtually identical on the points discussed in this memorandum. The minor differences are indicated as follows: language in H.R. 333 that differs from the Senate bill is indicated by ~~strikethrough~~ text; language in S. 420 that differs from the House bill is indicated by double underline.

- ‘(b) A small business debtor shall file periodic financial and other reports containing information including--
- ‘(1) the debtor’s profitability;
  - ‘(2) reasonable approximations of the debtor’s projected cash receipts and cash disbursements over a reasonable period;
  - ‘(3) comparisons of actual cash receipts and disbursements with projections in prior reports;
  - ‘(4)(A) whether the debtor is--
    - ‘(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and
    - ‘(ii) timely filing tax returns and other required government filings and paying taxes and other administrative *expenses*claims when due;
  - ‘(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and
  - ‘(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.’.

(2) CLERICAL AMENDMENT- The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following: ‘308. Debtor reporting requirements.’.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

### **SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.**

(a) PROPOSAL OF RULES AND FORMS- The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to--

- (1) the debtor’s profitability;
- (2) the debtor’s cash receipts and disbursements; and
- (3) whether the debtor is timely filing tax returns and paying taxes and other administrative *expenses*claims when due.

(b) PURPOSE- The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among--

- (1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

- (2) the small business debtor's interest that required reports be easy and inexpensive to complete; and
- (3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

**SEC. 436. DUTIES IN SMALL BUSINESS CASES.**

(a) DUTIES IN CHAPTER 11 CASES- Subchapter I of ~~chapter 11~~ of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

**'Sec. 1116. Duties of trustee or debtor in possession in small business cases**

'In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall--

'(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief--

'(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

'(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

'(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances;

'(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

'(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

'(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

'(6) (A) timely file tax returns and other required government filings; and

'(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

'(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.'

(b) CLERICAL AMENDMENT- The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

'1116. Duties of trustee or debtor in possession in small business cases.'







**Appendix B**  
**Lists of Relevant Disclosure Statement Provisions**

*The Nineteen Factor Test:*

- (1) The circumstances that gave rise to the filing of the chapter 11 petition;
- (2) A complete description of the available assets and their value;
- (3) The anticipated future of the debtor;
- (4) The source of the information provided in the disclosure statement;
- (5) A disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;
- (6) The condition and performance of the debtor while in chapter 11;
- (7) Information regarding claims against the estate;
- (8) A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- (9) The accounting and valuation methods used to produce the financial information in the disclosure statement;
- (10) Information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor;
- (11) A summary of the plan of reorganization;
- (12) An estimate of all administrative expenses, including attorneys' fees and accountants' fees;
- (13) The collectibility of any accounts receivable;
- (14) Any financial information, valuations or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
- (15) Information relevant to the risks being taken by the creditors and interest holders;
- (16) The actual or projected value that can be obtained from avoidable transfers;
- (17) The existence, likelihood and possible success of non-bankruptcy litigation;
- (18) The tax consequences of the plan; and
- (19) The relationship of the debtor with affiliates

*In re* U.S. Brass Corp., 194 B.R. 420, 424 (Bankr. E.D. Tex. 1996); *In re* Scioto Valley Mortgage Co., 88 B.R. 168 (Bankr. S.D. Ohio 1988); *In re* A.C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982).

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United States Trustee Policy Manual  
Volume 3, 1999  
(taken from [http://www.usdoj.gov/ust/ustp\\_manual/vol3toc.htm](http://www.usdoj.gov/ust/ustp_manual/vol3toc.htm))

**3-10.1**      INTRODUCTION

Section 586(a)(3)(B) of title 28 provides that the United States Trustee shall monitor plans and disclosure statements filed in cases under chapter 11 and file with the court comments with respect to

such plans and disclosure statements. The disclosure process is the heart of the reorganization provisions of the Bankruptcy Code. Full disclosure is required before solicitation of acceptances of a plan of reorganization, thereby enabling creditors to make an informed judgment in accepting or rejecting a plan.

As stated in the legislative history of the Bankruptcy Code:

The premise underlying the consolidated chapter 11 of this bill is the same as the premise of the securities law. If adequate disclosure is provided to all creditors and stockholders whose rights are to be affected, then they should be able to make an informed judgment of their own, rather than having the court or the Securities and Exchange Commission inform them in advance of whether the proposed plan is a good plan. Therefore, the key to the consolidated chapter is the disclosure section.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 226 (1977).

Pursuant to 11 U.S.C. §§ 1125(b), acceptance or rejection of a plan may not be solicited unless accompanied by a disclosure statement found by the court to contain "adequate information" regarding the plan. The practical approach to disclosure embodied in 11 U.S.C. §§ 1125, however, is quite unlike the standardized approach to disclosure embodied in the federal securities laws. This is illustrated by 11 U.S.C. § 1125(a)(1), which qualifies the sufficiency requirement with the following reasonableness standard:

"adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan

....

11 U.S.C. §§ 1125(a)(1). Section 1125(d) elaborates by providing that "adequate information is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation. . . ."

The United States Trustee's review of disclosure statements focuses on the adequacy of disclosure. The role of the United States Trustee in reviewing disclosure statements is critical to the protection of creditors who have not directly participated in the negotiations, or when committees are inactive or have not been appointed.

The Bankruptcy Code permits the court to "approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets." 11 U.S.C. §§ 1125(b). Congress recognized that the circumstances will vary widely from one chapter 11 case to the next and, therefore, the parameters of "adequate information" will also vary. The legislative history states:

The Supreme Court's rulemaking power will not extend to rulemaking that will prescribe what constitutes adequate information. . . . Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation, and, of course, the need for investor protection. There will be a balancing of interests in each case. In reorganization cases, there is frequently great uncertainty. Therefore, the need for flexibility is greatest.

H.R. Rep. No. 595 at 409.

A review of case law illustrates what courts consider "adequate information" based on the facts of each case. See In re Northwest Recreational Activities, Inc., 8 B.R. 10, 12 (Bankr. N.D. Ga. 1980) (perfunctory and modest disclosure statement approved because information already was available to all creditors, all five being lien holders); In re Bel Air Assocs., Ltd., 4 B.R. 168, 175 (Bankr. W.D. Okla. 1980) (no disclosure statement required where plan contained adequate information and movant, a limited partner in debtor, had other sources of information). Information may vary depending upon the sophistication of the class. See In re Bloomingdale Partners, 155 B.R. 961, 972 (Bankr. N.D. Ill. 1993); In re Egan, 33 B.R. 672, 676-77 (Bankr. N.D. Ill. 1983) (disclosure statement containing statements of opinion without factual support, along with lack of cooperation by the debtor, disapproved and petition dismissed); In re Adana Mortgage Bankers, Inc., 14 B.R. 29 (Bankr. N.D. Ga. 1981) (mere summary of the plan inadequate-the disclosure statement must discuss the plan as well as provide other information). But see In re Walker, 198 B.R. 476, 479-80 (Bankr. E.D. Va. 1996) (court held that the information need only be the best prediction that the debtor can make based upon information available).

The process for obtaining approval of a disclosure statement and soliciting votes for a plan of reorganization has been simplified for

small business debtors. A small business debtor may obtain conditional approval of a disclosure statement which can then be utilized to solicit votes regarding a plan. The conditionally approved disclosure statement can be mailed to creditors as few as ten days prior to the date of the hearing on confirmation of the plan. The court can then hold a single hearing to consider both final approval of the disclosure statement and plan confirmation. 11 U.S.C. §§§§ 105(d)(2)(B)(vi) and 1125(f)(3); Fed. R. Bankr. P. 3017.1.

### 3-10.2 THE CONCEPTUAL FRAMEWORK

#### 3-10.2.1 Items to Include

The United States Trustee should not advocate a "checklist approach to the review of disclosure statements. The disclosure statement certainly should discuss the elements set out in 11 U.S.C. §§ 1123 insofar as they are in the plan filed. Reference to case law regarding information to be included is essential. See, e.g., Hall v. Vance, 887 F.2d 1041, 1043 (10th Cir. 1989); In re Metrocraft Publ'g Servs., Inc., 39 B.R. 567, 568-69 (Bankr. N.D. Ga. 1984); In re Malek, 35 B.R. 443, 443-44 (Bankr. E.D. Mich. 1983); In re A.C. Williams Co., 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982).

#### 3-10.2.2 "Safe Harbor," 11 U.S.C. §§ 1125(e)

Under 11 U.S.C. §§ 1125(e), a person who solicits acceptances or rejections of a plan in good faith and in compliance with the Bankruptcy Code is not liable on account of such solicitation for the violation of any applicable law, rule, or regulation governing the offer, issuance, sale, or purchase of securities. The purpose of this section is to protect creditors, creditors' committees, counsel for committees, and others involved in a case from potential liability for use of an approved disclosure statement.

This safe harbor rule was intended to codify the result of Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), reh'g denied, 425 U.S. 986 (1976), which held that proof of scienter is a prerequisite to the imposition of civil liability under the antifraud provisions of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. It was also intended to extend the good faith safe harbor to the imposition of injunctive liability. See H.R. Rep. No. 595 at 229-31.

#### 3-10.2.3 Factors Affecting Adequacy of Disclosure

Several factors can affect the appropriate quantity and quality of disclosure in a given case, including: (1) the nature of the proposed plan of reorganization or liquidation; (2) the sophistication of the various holders of claims and interests and their familiarity with the debtor and its business; (3) whether the expense of the disclosure would substantially outweigh its anticipated benefit to creditors and stockholders; (4) the peculiarities of the debtor's business or financial condition; (5) the need for an expeditious resolution; and (6) the access of a plan proponent, other than the debtor, to factual information regarding the debtor.

An inordinately long or complex disclosure statement may confuse rather than enlighten creditors. In such cases, the deletion of certain materials or the preparation of a summary may be suggested; however, care must be taken to ensure that significant material is not deleted.

### 3-10.3 CONDUCTING THE REVIEW

#### 3-10.3.1 Standard Language

The use of some standardized language in disclosure statements is appropriate. For example, all documents should indicate that any representations made in order to secure an acceptance of the plan that are not contained in the disclosure statement are to be reported to the debtor, the creditors' committee, the United States Trustee, and the bankruptcy court for such action as may be appropriate.

Similarly, there should be a statement that the plan represents a legally binding arrangement and should be read in its entirety, as opposed to relying on the summary in the disclosure statement. Accordingly, creditors may wish to consult with their own lawyers and the creditors' committee and its lawyer to understand the plan more fully. The disclosure statement should also refer to "the right to vote for acceptance or rejection" of the plan or "the right to vote upon" the plan. While the disclosure statement may serve the parallel purpose of solicitation, the solicitation aspect of the statement should be clearly identified as such and kept distinct from the disclosure aspect. For example, the disclosure statement may state that "as a creditor, your acceptance is important" but such a statement should not be included in a paragraph describing voting procedures. It is permissible, however, for a discussion of the voting process to state that it is important for each creditor to vote.

The disclosure statement should indicate that bankruptcy court approval of the disclosure statement is not a ruling by the bankruptcy court on the merits of the plan. The disclosure statement should

indicate which classes are impaired and are, therefore, entitled to vote on the plan and should define impairment in plain language. The voting requirements under 11 U.S.C. §§ 1126 for acceptance must be set forth in the disclosure statement. Voters should be told where the ballots must be sent and the deadline for voting. The ballots should not be sent to the United States Trustee.

### 3-10.3.2 Description of the Debtor's Business

The disclosure statement should describe the nature of the debtor's business. In cases in which the plan contemplates cash payments upon confirmation, a brief narrative description should suffice. If the plan contemplates deferred payments or the issuance of common or preferred stocks to creditors and, therefore, its implementation depends upon the future course of the business, the description should be more detailed. Items to look for in the latter case are: (1) material factors peculiar to the specific business of the debtor, such as seasonality, limited sources of supply, limited number of potential customers, patents or licenses, special capital needs, regulatory problems, or backlog; (2) principal product and services present, contemplated, or under development; (3) competitive conditions in the applicable market; and (4) material contracts and leases, including important terms such as expiration dates. Of course, if detailed information would have a detrimental impact on the debtor's competitive position, general terms may be permissible.

### 3-10.3.3 Reasons for Financial Difficulties and Correction of Those Factors

The disclosure statement should give a brief narrative description of the factors leading to the debtor's financial difficulties, together with a listing of the steps already taken or to be taken by the debtor to correct the problems. This description should be reviewed from the standpoint of the assistance it will provide the holders of claims and interests in assessing the likelihood of any recurrence of prior difficulties and, thus, the feasibility of the proposed plan. In cases in which the plan has neither deferred payments nor issuance of common or preferred stock, an elaboration of the reasons for the debtor's financial difficulties and the correction of those factors are less important and may be dealt with summarily.

### 3-10.3.4 Historical and Current Financial Information

Historical financial information, such as cash flow statements and profit and loss statements (statements of operation), should, where relevant, provide the holders of claims and interests some



perspective regarding the debtor's financial situation and future prospects (as reflected in any projections included in the disclosure statements). See "Projections" infra.

Current financial information, such as cash flow statements, profit and loss statements (statements of operations), and balance sheets, provide holders of claims and interests with important information about the debtor's performance during the pendency of the chapter 11 case. Of particular importance is the comparison of the current balance sheet with the balance sheet as of the commencement of the case.

The disclosure statement should include, as an exhibit, a summary of the results of the operations during the pendency of the chapter 11 case. In re Merrimack Valley Oil Co., 32 B.R. 485, 488 (Bankr. D. Mass. 1983); In re Western Management, Inc., 6 B.R. 438, 442-43 (Bankr. W.D. Ky. 1980). The summary should be in a format consistent with the projections so that creditors can make a meaningful comparison of the past with future projections. The format of the summary and the projections should be consistent with regard to time and designation of income and expense items.

The disclosure statement should also include a projection of the financial condition of the debtor upon confirmation of the plan. This information enables the court and creditors to determine if the debtor will need further financial reorganization or if the plan will be followed by a liquidation. 11 U.S.C. §§ 1129(a)(11).

The extent to which financial statements are prepared in accordance with generally accepted accounting principles ("GAAP") will vary. The period covered by historical financial information may vary based on the nature of the plan, the condition of the debtor's books and records (11 U.S.C. §§ 1125(a)(1) expressly recognizes this as a variable), and the nature of the debtor's business. Any financial statements that have not been prepared in accordance with GAAP due to the condition of the debtor's books and records should contain appropriate disclaimers and a brief explanation of the accounting methods employed.

The American Institute of Certified Public Accountants issued Statement of Position (SOP) 90-7, on November 19, 1990. The statement provides guidance for the financial reporting of entities currently in chapter 11 which expect to reorganize as going concerns.

### 3-10.3.5 Material Postpetition Events

The disclosure statement should briefly describe all material postpetition events including: (1) borrowings, (2) issuance of

securities, (3) sales or transfers of assets other than in the ordinary course of business, and (4) lease assumptions and/or assignments or rejections (along with other executory contracts).

### 3-10.3.6 Outline of the Plan

The degree of detail in which the proposed plan of reorganization should be outlined in the disclosure statement will vary greatly with the complexity of the plan. In some instances, cross-references in the disclosure statement to pertinent plan provisions will suffice. In other instances, complex features of the plan may need to be separately, but briefly, described in the disclosure statement. For example, if the plan contemplates deferred payments to unsecured creditors out of retained earnings in excess of a stated figure, look for some explanation of this feature in the disclosure statement. Similarly, complex plan provisions often involve definitional problems that should be clarified in the disclosure statement. For example, the amount of deferred payments to a particular class of creditors may be expressed as a percentage of "net sales," a term which should be defined. Any default provisions or affirmative and negative covenants contained in the plan (e.g., dividend restrictions, limitations on further borrowing, and board memberships) should be explained. Information on the amount of claims in each class should be provided in tabular form in order to allow computations of the possible distribution to be made under the plan. The disclosure statement should also predict when confirmation will occur.

### 3-10.3.7 Means of Effectuating the Plan

Information relating to the source and application of funds to effectuate the proposed plan of reorganization should appear in the disclosure statement, including an estimate of the amounts necessary for the initial payments under the plan. This number should be compared to the cash on hand. If the amount needed to confirm is greater than the cash available, there should be an explanation concerning the source of the additional funds. There should also be a brief description of the structure of any transaction related to carrying out the plan (e.g., the sale of stock or of assets). There should be an indication as to whether there exists any avoidable transfers (preferences and/or fraudulent conveyances) and whether the debtor (or acquiring entity) intends to prosecute these claims. These potential causes of action should be factored into the estimated liquidation analysis.

The disclosure statement should contain a brief description of the terms of any material agreements relating to the effectuation of the

plan which the debtor has executed or proposes to execute (e.g., funding agreements, security agreements, guarantees, trust indentures, and agreements for the sale of stock or assets). For example, the plan may contemplate the use of a trust indenture in connection with deferred payments to creditors. In that event, the scope of discretionary authority lodged in the indenture trustee (e.g., the discretion to pledge assets to facilitate new financing or to subordinate the security interest granted to creditors) and the identity and affiliations of the indenture trustee should be disclosed. If there are to be guarantees for debtor's obligations under the plan, the guarantors should be identified and the nature and scope of guarantees described. In addition, the guarantor's ability to support the guarantee (e.g., a net worth statement in the case of an individual guarantor) should be discussed.

If a third party (including debtor's principal) is to provide the necessary funds for confirmation, there should be some financial information with respect to the third party. If the third party does not want to be disclosed or does not want to disclose its financial condition, there are acceptable alternatives. For instance, if the funds are deposited in an identifiable escrow account for confirmation or by an irrevocable letter of credit, financial disclosure about the third party may not be necessary. Terms of the advance loan or contribution to capital should also be set forth. This should also be reflected in a projection which assumes confirmation of the plan.

The disclosure statement should indicate if there are any conditions that have to be met by any party in order for the plan to be confirmed. The disclosure statement should also state the likelihood of the requisite events occurring as scheduled.

### 3-10.3.8 Securities to be Issued

In rare instances, a case will involve the issuance of securities. If such a case arises, the disclosure statement should provide information about any securities to be issued pursuant to the plan of reorganization, where applicable, as to: (1) dividend rights, management's dividend policies, and external constraints on the payment of dividends (e.g., a negative covenant in a loan agreement); (2) liquidation rights and preferences; (3) voting rights; (4) sinking fund payments; (5) conversion features; (6) preemptive rights; (7) redemption provisions; (8) provisions relating to interest, amortization, and maturity; (9) provisions restricting the issuance of additional securities; and (10) other special rights and preferences (e.g., the right to elect a majority of the board of directors in the event of defaults on payments in respect to debentures issued or the right to veto certain corporate changes, such as recapitalization, that

could adversely affect the security holders' rights).

The disclosure statement should indicate whether the issuance of the securities in question is exempt from the registration requirements of federal and state securities laws by virtue of 11 U.S.C. §§ 1145(a) or a different exemption, or whether it is contemplated that the securities will be registered.

It may be appropriate for the disclosure statement to include information relating to the current and anticipated postconfirmation distribution of ownership of equity securities. This information could serve to inform the holders of claims and interests as to any dilution or changes in control likely to result from the issuance of securities contemplated by the plan of reorganization. Even in those cases where existing stockholders do not have preemptive rights, if the stock is being diluted, the existing stockholders are impaired. Cf. In re Barrington Oaks General Partnership, 15 B.R. 952 (Bankr. D. Utah 1981).

If there is a market for the securities to be issued (or the securities into which they are convertible), the disclosure statement should identify the principal markets involved. If the securities are traded on an exchange, information as to high and low sales prices in the recent past should be included. If the principal market for such securities is not an exchange, there should be included information as to high and low bid quotations in the recent past (together with disclosure of the source of those quotations). If there is no market for such securities, the disclosure statement should so state, and should also state whether it is expected that a market will exist for securities distributed under the confirmed plan. If the securities are publicly held, but not traded because of past failure to disseminate public information (see Securities Exchange Act Rule 15c2-11), that fact should be disclosed. If it is expected that the disclosure being made will cure the deficiency so that trading can resume, then that expectation should be noted.

Finally, the disclosure statement should briefly describe applicable law relating to the resale of the securities to be issued under the plan of reorganization. There is a limited exemption in 11 U.S.C. §§ 1145(d) from the provisions of the Trust Indenture Act of 1939.

### 3-10.3.9 Projections

"[T]he essence of disclosure in a reorganization case, and the essence of valuation of a business as a going concern, is a projection of future earnings of the business." H.R. Rep. No. 595 at 230-31. If the plan of reorganization does not contemplate any deferred payments or the issuance of any equity security, such projections are

unnecessary. In all other cases, projections are critical to the creditors' and shareholders' ability to assess the viability of the plan and of the debtor. It should be noted that the Securities and Exchange Commission encourages the use of projections of future economic performance. See Securities Act Release No. 33-5992 (November 7, 1978), 43 F.R. 53246.

The projections should include both cash flow and earnings estimates. All payments contemplated under the plan should be factored into the cash flow projections. If earlier projections are available, they should be compared in the disclosure statement with actual results for the periods covered. Creditors will then be able to assess management's powers of projection.

There may be instances in which payments under the plan are tied to specific financial measures (e.g., net sales, pre-tax profits, retained earnings, or other measures). In such circumstances, the projections should set forth estimates in terms of the appropriate measure.

The United States Trustee should ensure that the underlying assumptions utilized by management in developing the projections are disclosed as specifically as possible. There may exist, however, legitimate reasons for a vague statement concerning such items as the introduction of a new product or the gearing down of operations. It should be understood that the disclosure of "adequate information" may conflict with the debtor's legitimate need to protect its competitive position. For example, the disclosure of market study results for a proposed new product, while of significant informational value to creditors, might not be appropriate. Where the assumptions made relate to the factors cited as reasons for the debtor's financial difficulties and are intended to correct those factors, the connection should be made clear.

Cases may arise in which alternative sets of projections, or at least ranges of projections, would be appropriate. For example, the plan of reorganization may offer creditors two or more payment options. Alternative sets of projections or ranges of projections may be desirable to reflect the different results that would flow from the election of each option. Similarly, alternative sets of projections or ranges of projections may be appropriate when there is a reasonable prospect of a change affecting the debtor's business (e.g., regulatory changes, introduction of a new product, or new market entrants).

3-10.3.10 Management, 11 U.S.C. §§ 1129(a)(5)

Even if the plan of reorganization contemplates exclusively cash payments upon confirmation, the disclosure statement must identify the anticipated postconfirmation directors and executive officers of

the debtor, and indicate the extent to which this represents a change from preconfirmation management. The disclosure statement should contain a brief account of the business experience of each director and executive director, together with their age, tenure, and possible retirement where relevant. Information as to compensation arrangements with the debtor's directors and executive officers should also be disclosed. The disclosure statement should also include any other information relevant to the integrity and competence of management (e.g., criminal or regulatory proceedings and prior bankruptcies or receiverships).

### 3-10.3.11 Controlling Persons

In the case of a plan of reorganization that will be implemented over time, the disclosure statement should identify any "persons" (as defined in 11 U.S.C. §§ 101(41)) that will "control" the debtor following confirmation of the proposed plan of reorganization.

With respect to any "person" that is to "control" the debtor, the disclosure statement should provide at least the following information: (1) the nature and extent of "control" to be exercised; (2) a brief narrative description of the business of the controlling person; (3) the identity of persons that control such controlling person; (4) the identity and experience of management of the controlling person; (5) the identity of affiliates of the controlling person; (6) an outline of the transaction whereby control is to be acquired; (7) if known, the business plans of the controlling person for the debtor; and (8) pertinent financial information regarding the controlling person, if available.

### 3-10.3.12 Insider and Affiliate Claims

The disclosure statement should list any claims held by "insiders" (as defined in 11 U.S.C. §§ 101(31)) or "affiliates" (as defined in 11 U.S.C. §§ 101(2)) of the debtor and should include: (1) the identity of the claimant; (2) the claimant's affiliation with the debtor; (3) the circumstances giving rise to the claim; (4) the amount of the claim; and (5) the treatment to be afforded the claim in accordance with the plan.

### 3-10.3.13 Transactions with Insiders and Affiliates

The disclosure statement should contain a brief description of any present or proposed material transactions of the debtor in which "insiders" or "affiliates" of the debtor (as defined in 11 U.S.C. §§§§ 101(31) and (2), respectively) have any interest. The insider or

affiliate should be identified, the affiliation with the debtor described, and the nature of the interest in the transaction explained. For example, rentals paid by or to the debtor should be compared to existing market rates. If any transactions have given rise to claims either on behalf of or against the debtor in the chapter 11 case, they should be disclosed.

#### 3-10.3.14 Disputed Claims

Any material claims that the debtor disputes or proposes to dispute, in whole or in part, should be listed and there should be a disclosure of: (1) the identity of the claimant; (2) the nature of the claim; (3) the full amount of the claim and the amount subject to dispute; and (4) the grounds of the debtor's challenge to the claim (e.g., voidable preference, fraudulent transfer, or lack of collateral value). It may also be appropriate for the disclosure statement to explain the effect upon the plan of reorganization (and the related projections, if any) of the allowance or disallowance of the disputed claim.

#### 3-10.3.15 Legal Proceedings

The disclosure statement should give a brief description of any material legal proceedings to which the debtor is a party, which the debtor contemplates instituting, or which are threatened against the debtor. This disclosure should include information as to: (1) the identity of the parties to the litigation; (2) the nature of the claims; (3) the factual basis alleged to underlie the proceedings; (4) the court in which the litigation is pending; (5) the relief sought; (6) the present status of the litigation; and (7) a statement as to whether a judgment adverse to the debtor might seriously affect the debtor's business or financial conditions or the debtor's ability to effectuate the plan of reorganization.

#### 3-10.3.16 Tax Consequences

In some instances, the proposed plan of reorganization will engender federal tax consequences for the debtor that may have a material affect upon the future financial prospects of the debtor. If material in their affect, these tax consequences should be explained. For example, the discharge of the debtor from indebtedness pursuant to the plan of reorganization may affect the debtor's net operating loss carryovers, investment tax credits, capital loss carryovers, or basis in assets. Similarly, a plan that contemplates a corporate reorganization (e.g., transfer of the debtor's assets to another corporation in exchange for stock) may or may not be tax-free at the corporate

level. Information relating to the tax consequences upon the debtor of the plan of reorganization obviously will be relevant and feasible only in larger chapter 11 cases.

3-10.3.17 Trustee or Examiner

If a trustee or an examiner has been appointed in a chapter 11 case, the identity and the reasons for the appointment of the trustee or examiner should be disclosed. Similar information regarding an elected trustee should be provided. If the trustee or the examiner has prepared a report regarding the operations of the debtor, and if it is not too voluminous, a copy should be attached to the disclosure statement. If it is not attached, it should be summarized in the disclosure statement, with directions on how to obtain a copy of the report.

3-10.3.18 Creditors' Committees and Equity Security Holders' Committees

The disclosure statement should indicate whether there are any creditors' or equity security holders' committees, together with a list of the members of such committees, their addresses, and whether the proposed plan of reorganization has been negotiated with the committees. Any professionals retained by the committees should also be disclosed. The position of the committees on the plan should be disclosed and what role, if any, the committees will play after confirmation.

3-10.3.19 Information Regarding Plan Proponent

Occasionally, a plan and disclosure statement may be offered by a party other than the debtor, the trustee, or the creditors' committee. The proponent must be a "party in interest" under 11 U.S.C. §§ 1121. In those situations, the disclosure statement should clearly describe the position of the proponent relative to the debtor (e.g., a supplier holding an unsecured claim against the debtor in the amount of \$20,000), since it may affect the proponent's access to the information and, thus, the quality and quantity of disclosure. On the other hand, disclaimers by an "outside" plan proponent as to the absence of information regarding the debtor must also be scrutinized, since the formulation of a plan by the proponent necessarily involved certain assumptions, if not "hard" information, regarding the debtor. The standard of adequate information should not change depending upon the proponent of the plan. Any assumptions should be disclosed and the proponent should be compelled to obtain the necessary, existing information in order for



the disclosure statement to be approved. See In re Civitella, 15 B.R. 206, 208 (Bankr. E.D. Pa. 1981) (disclosure statement for a plan proposed by three secured creditors denied approval because no factual information provided, only allegations and opinions). Where other plans have been proposed, their existence and the fact that they are on file with the court should be disclosed. These are potential alternatives to the plan that creditors/equity holders are being asked to vote upon.

### 3-10.3.20 Liquidation Analysis

A creditor cannot make an informed judgment regarding a proposed plan of reorganization without information as to the available alternatives. The most obvious alternative is liquidation of the debtor under chapter 7. Any reference to liquidation should be prefaced with the term "estimated," since liquidation has not occurred. These statements of alternatives should be neutral. Other alternatives may have been considered by the proponent of the plan during the course of the chapter 11 case (e.g., a competing plan of reorganization) and, in that event, the disclosure statement could briefly describe the alternatives considered and the reasons for finding the proposed plan of reorganization preferable.

In most cases an elaborate liquidation analysis should not be necessary. A brief tabular presentation, setting forth estimated administration expenses (including pre and postconfirmation United States Trustee quarterly fees; estimated priority, secured, and unsecured claims; and estimated asset values, together with disclosure of the source of those estimates) should suffice. The disclosure statement should indicate the percentage distribution, if any, to creditors on liquidation.

The disclosure statement should enable the reader to determine what assumptions were made in connection with the estimate of claims and asset values (e.g., the assumptions regarding disallowance of certain claims, recoverable transfers, the book figures upon which the liquidation values are based, and the method employed in computing the book figures or the discount applied to accounts receivable and how this discount relates to the debtor's actual prepetition and postpetition collection experience). Certain assets, such as leases and real estate, may not be reflected accurately on the balance sheet, although quite valuable upon liquidation. Any adjustments that are made should be disclosed.

If liquidation will not be immediate, an estimate of the length of time that would be required to liquidate the assets of the debtor should be included. If relevant, the liquidation analysis should factor in available exemptions provided by the Bankruptcy Code. If claims

incorporated in the liquidation analysis are held by "insiders" or "affiliates" of the debtor, that fact should be mentioned. In the case of a partnership, the disclosure statement should include financial information about the partners so that creditors can determine if the plan is in their "best interest." 11 U.S.C. §§ 1129(a)(7); see also 11 U.S.C. §§ 723 (partnership distributions in chapter 7).

Section 1112(c) of the Bankruptcy Code provides that the court may not convert the chapter 11 case of a "farmer" (as defined in 11 U.S.C. § 101(20)) or "a corporation that is not a moneyed, business, or commercial corporation" unless the debtor so requests. Arguably then, a liquidation analysis is unnecessary with respect to cases involving farmers or charitable institutions. There are, however, three factors that should be considered in determining whether a liquidation analysis should be included in such circumstances. First, there may be a legitimate question as to whether the debtor fits the definition of "farmer" in 11 U.S.C. § 101(20) or is a "corporation that is not a moneyed, business, or commercial corporation." Second, 11 U.S.C. § 1112(c) seems to prohibit involuntary conversion to chapter 7, but does not seem to prohibit dismissal of the chapter 11 case, and the ultimate effect of dismissal may be liquidation of the debtor. Finally, a creditor faced with the proposed plan may elect to reject the plan and seek to structure a competing plan which provides for partial or complete liquidation of the debtor. 11 U.S.C. §§ 1123(b)(4).

Section 1125(b) of the Bankruptcy Code indicates that the court may approve a disclosure statement without a valuation of the debtor or an appraisal of its assets. Appraisals are, however, performed in most cases and their incorporation in the disclosure statement enhances the liquidation analysis. (Disclosure of information relating to an appraisal may be restricted.) If an appraisal is too voluminous, a summary and information on how to obtain a copy of the appraisal will generally suffice. In either event, the disclosure statement should (1) identify the appraiser, (2) identify the party who commissioned the appraisal, and (3) disclose the purpose of the appraisal. The proponent of the plan of reorganization may want to argue that one of the appraisals is especially reliable and the reasons for this conclusion.

### 3-10.3.21 Vote Required for Acceptance

The disclosure statement should briefly describe the vote required for acceptance of the plan by the various classes of holders of claims and interests under 11 U.S.C. §§ 1126, and should specifically identify which classes are impaired and voting on the plan. The disclosure statement should also establish a record date for voting on

the plan of reorganization by holders of equity securities.

3-10.3.22 "Cram Down"

Although the application of 11 U.S.C. §§ 1129(b) is essentially a question for confirmation, the discussion in the disclosure statement of "cram down" raises a difficult problem. The term "cram down" is used to describe the power of the bankruptcy court to confirm a reorganization plan even though one or more impaired classes of creditors does not accept the plan. 5 Lawrence P. King, Collier on Bankruptcy, ¶¶ 1111.02 (15th ed. rev. 1998). At a minimum, if the debtor intends to invoke the "cram down" provisions against a dissenting class, that intention should be disclosed. Moreover, if the invocation of "cram down" is intended, the disclosure statement should contain a brief summary of the operation of 11 U.S.C. §§ 1129(b) as it would affect the class in question, as well as a brief outline of the "fair and equitable" standard that would be applied should "cram down" be invoked.

The disclosure problem is further complicated to the extent there may be, as a legal matter, significant doubt as to the availability of "cram down" in a given case. For example, although a plan of reorganization proposes that stockholders will receive cash payments in exchange for their shares, the disclosure statement may state (or at least suggest) that 11 U.S.C. §§ 1129(b) "may be" invoked against unsecured creditors as a class. The availability of "cram down" in those circumstances may be questionable. It is misleading to even suggest to creditors that the debtor may invoke 11 U.S.C. §§ 1129(b) without an explanation. Thus, in every case in which the debtor states or suggests that "cram down" is contemplated, the United States Trustee should analyze the legal issue and formulate a judgment as to the availability of "cram down" under the circumstances. If the United States Trustee questions the availability of "cram down," an objection to the disclosure statement should be made. The remedy may be deletion or the inclusion of an explanation of the legal issues involved.

Moreover, the disclosure statement should include a statement to the effect that, if a senior class of creditors rejects the plan, the court may find that the junior class (or classes) may not receive a distribution under the plan or retain its interests in the reorganized debtor unless they satisfy the "new value exception" which would require that the junior class (or classes) contribute new value to the debtor that is new, substantial, money, or money's worth; necessary for a successful reorganization; and in an amount reasonably equivalent to the value of the interest or distribution that they are retaining or receiving. In re One Times Square Assocs. Ltd.

Partnership, 159 B.R. 695, 706-08 (Bankr. S.D.N.Y. 1993).

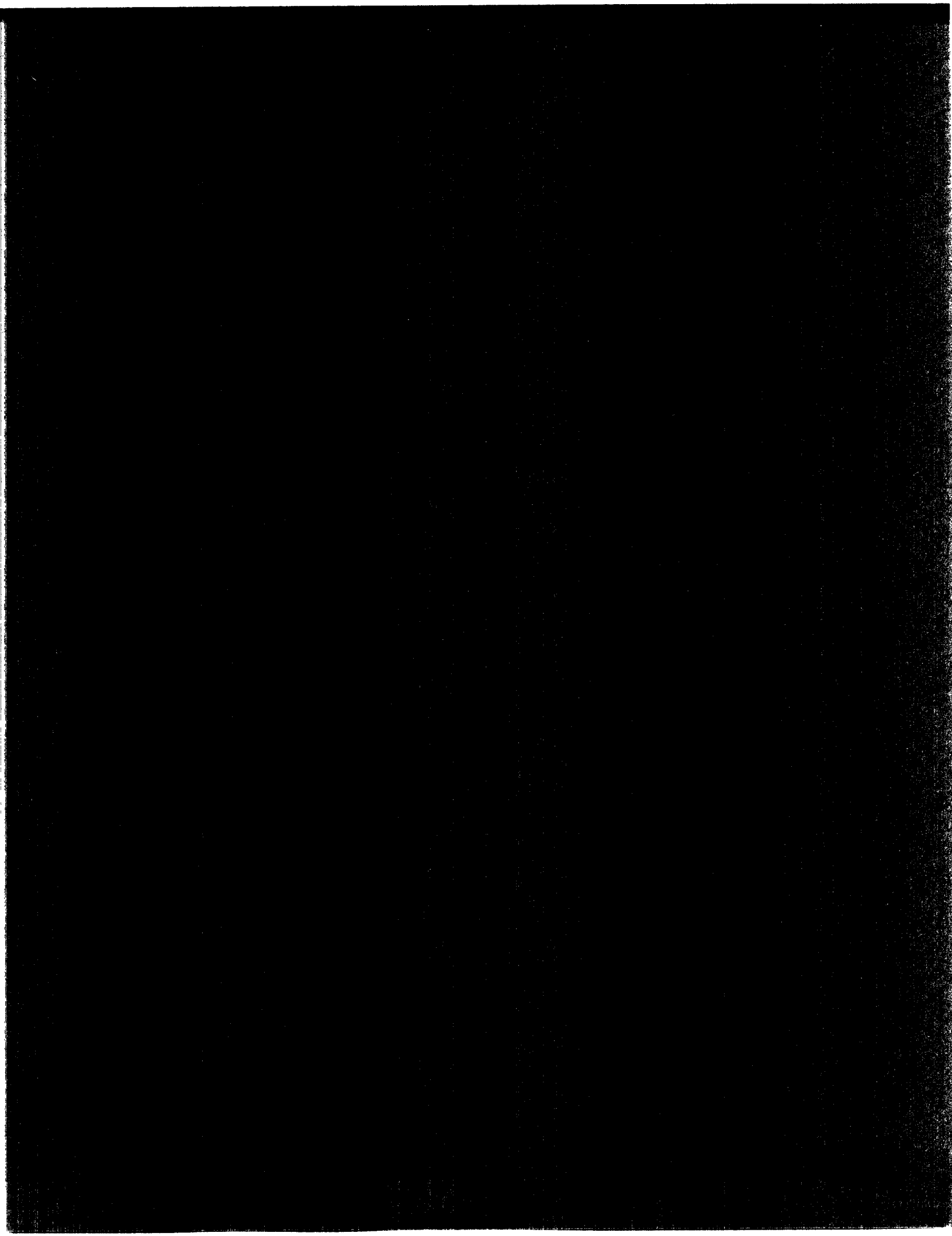
3-10.3.23 Miscellaneous Matters

The disclosure statement should identify the leases or executory contracts being assumed or rejected under the plan. To the extent a lease or executory contract is being rejected, a claim for damages may arise. An estimate of these damage claims should be set forth and factored into the estimated amount of claims in each class.

The disclosure statement should set forth any default provisions under the plan and the consequences attendant to a default. For example, a default could trigger an acceleration of the total future payments under the plan or an immediate conversion to chapter 7.

3-10.3.24 Summary and Table of Contents

If the disclosure statement is voluminous, the inclusion of a table of contents and a brief summary of the plan, of alternatives to the plan, and of the debtor's future prospects may be appropriate.



**Appendix C**  
**Current Financial Reporting Requirements of the Office of the United States Trustee**

United States Trustee Policy Manual  
Volume 3, 1999  
(taken from [http://www.usdoj.gov/ust/ustp\\_manual/vol3toc.htm](http://www.usdoj.gov/ust/ustp_manual/vol3toc.htm))

3-3.3 FINANCIAL REPORTS

The timely filing of reports of operations is crucial to the efficient administration of chapter 11 cases. These reports are designed to provide the United States Trustee, the court, creditors, and other parties in interest with reliable information regarding the current status of a Case. The United States Trustee should use the information contained in the reports to identify cases lacking a realistic prospect of reorganization and to evaluate the feasibility of a proposed plan of reorganization.

The debtor in possession should file operating reports each month throughout the pendency of the case. A deadline for the submission of the initial report should be set at the initial debtor interview. The report should be filed with both the United States Trustee and the clerk of the court. The debtor should also provide a copy of the report to the Chair of any creditors' committee appointed to serve in the case.

The United States Trustee retains the discretion to waive or modify the reporting requirements. The rationale underlying any such decision, however, should be documented in writing and maintained in the file. Moreover, this discretion should be exercised sparingly, given both the importance of timely and accurate financial information in the reorganization process, as well as the need to avoid the appearance that a debtor is receiving disparate treatment. The debtor's obligation to file monthly operating reports ends when a case is converted or dismissed. Postconfirmation, the United States Trustee should require submission and filing of reports pursuant to 11 U.S.C. §§ 1106(a)(7). See USTM 3-10.7.

Different reporting formats may be used for different types of cases. For example, the operating report form used for a case involving an ongoing manufacturing concern may be different from the form more suitable for use in a real estate case. Generally, the debtor's operating reports should be premised on the accrual basis of accounting. Under this method, revenue is considered earned in the period in which sales are made or services are rendered (regardless of when payment is collected), and expenses are considered in the period in which they are incurred regardless of when they are paid.

The operating report form used in a standard business reorganization under chapter 11 should encompass the elements described in the following subsections.

3-3.3.1 Cash Receipts and Disbursements Statement

The United States Trustee should require the submission of cash statements showing the receipts and disbursements of the debtor, as well as a separate cash account reconciliation statement for each of its bank accounts, e.g., general account, tax escrow account, and payroll account. The information contained in these statements will reflect whether the debtor's operations are generating a positive cash flow. The information should be analyzed with appropriate consideration given to the seasonality of the debtor's business and any historical information that is relevant.

Aside from the income and other items comprising cash receipts, the cash statement should contain the debtor's expenditures for inventory, salaries, taxes, etc. The United States Trustee can use the information reported in these statements to discover:

1. whether the debtor is making unauthorized payments to professionals;
2. whether the debtor is improperly paying prepetition debts;
3. whether the debtor has sufficient cash flow to effectively reorganize;
4. whether inordinate payments are being made for travel, entertainment, or other employee benefits; and,
5. whether improper payments are being made by the debtor that will hamper its ability to reorganize.

3-3.3.2 Statement of Operations

The debtor should provide a regular monthly statement of operations (income statement) that indicates whether the debtor is generating sufficient funds to reorganize. The statement of operations form is a comparative statement designed to allow the United States Trustee to review all the information from a particular debtor on one spreadsheet.

A detailed review and analysis of this statement is important as it provides a better picture of a debtor's operations than does the cash statement. Many expenses are paid less frequently than on a monthly basis. In addition, there are non-cash accounts (e.g., depreciation and

amortization) that do not appear on a cash statement, yet must be taken into account in analyzing the ongoing viability of the debtor. For example, although depreciation is a non-cash item, the debtor will eventually need to buy new machinery and equipment or pay for other capital improvements.

The accrual income statement is also important since it indicates the cost of goods sold. This requires a beginning inventory figure based upon a physical or perpetual inventory. The beginning inventory figure is critical since it is only after purchases have been added and ending inventory deducted that one arrives at the cost of goods sold. This will determine the debtor's gross profit margin. At this point, a comparative financial analysis can be accomplished using statistics from prior years.

#### 3-3.3.3 Balance Sheet

The debtor is required to provide a balance sheet on a monthly basis to allow the United States Trustee to review the debtor's changing assets and debts on a single spreadsheet.

Careful analysis of the balance sheet is required as it can uncover whether the debtor is making payments on prepetition debts, whether assets are being dissipated, and whether the debtor is accumulating unpaid postpetition liabilities and uncollected postpetition accounts receivable. If any of these occur, the United States Trustee should take appropriate action.

#### 3-3.3.4 Schedule of Postpetition Liabilities

The debtor should provide an accounting of the amount of obligations unpaid since the commencement of the case, as well as an aging schedule for these sums. If the total amount of unpaid obligations increases and the amounts owed are becoming further past due, it may indicate a negative cash flow and/or administrative insolvency. However, there will almost always be certain postpetition obligations which have not been paid simply because they have not become due in the ordinary course of business or because their payment is not yet authorized (e.g., payment of attorney or accountant fees).

#### 3-3.3.5 Postpetition Taxes Payable (Tax Reconciliation) Statement

The taxes payable or tax reconciliation statement provides a means for monitoring and verifying that a debtor is current with its postpetition tax obligations. Aging information about these obligations should be provided. Close scrutiny of this form is critical



and prompt remedial action should be undertaken by the United States Trustee if unpaid postpetition obligations accumulate.

The United States Trustee should maintain an information exchange program with the Special Procedures Staff of the Internal Revenue Service. This exchange will provide an independent means of checking and verifying the debtor's information regarding federal tax obligations. The Internal Revenue Service, in turn, is authorized to notify the United States Trustee when its records indicate that a debtor has failed to satisfy a postpetition tax obligation.

#### 3-3.3.6 Additional Reporting Requirements

In addition to the five standard forms previously discussed, the United States Trustee retains the discretion to require any additional reports necessary to ensure that a case is properly monitored and administered. Examples would include:

1. A requirement that copies of previous years' tax returns and financial statements be filed with the United States Trustee.
2. A requirement that a debtor file a list of inventory.
3. A requirement that a debtor file a list of its employees and their current salaries.
4. A requirement that a debtor provide an aging statement regarding its accounts receivable.
5. In a real estate case, a requirement that a debtor submit a rent roll.
6. A requirement that a debtor submit a check register.
7. A requirement that a debtor submit a statement of sources and uses of cash (Cash Flow Statement).



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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA



***CENTRAL DISTRICT OF CALIFORNIA***  
***APPROVED FORM FOR PRODUCING A***  
**CHAPTER 11 DISCLOSURE STATEMENT**

WordPerfect 6.1 (Windows) Format

1 NAME OF ATTORNEY - State Bar No. \_\_\_\_\_  
NAME OF ATTORNEY - State Bar No. \_\_\_\_\_  
2 NAME OF LAW FIRM  
Address  
3 City, State Zip Code  
Telephone ( ) -  
4 Attorneys for \_\_\_\_\_  
5  
6

7 UNITED STATES BANKRUPTCY COURT  
8 CENTRAL DISTRICT OF CALIFORNIA

9 In re  
10 NAME OF DEBTOR,  
11 Debtor

Bk. No. \_\_\_\_-\_\_\_\_-\_\_\_\_  
In a Case Under Chapter  
11 of the Bankruptcy Code  
(11 U.S.C. § 1101 et seq.)

1 DISCLOSURE STATEMENT  
DESCRIBING 2 CHAPTER 11  
PLAN

Disclosure Statement Hearing

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Ctrm: { Insert Courtroom # }  
{ Insert Full  
Court Address  
Here }

Plan Confirmation Hearing  
Complete This Section When  
Applicable

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Ctrm: { Insert Courtroom # }  
{ Insert Full  
Court Address  
Here }

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I.

INTRODUCTION

1  
2  
3        3 is the Debtor in a Chapter 11 bankruptcy case.  
4 On 4, 5 commenced a bankruptcy case by filing  
5 6 Chapter 11 6b petition under the United States  
6 Bankruptcy Code ("Code"), 11 U.S.C. § 101 et seq., Chapter 11  
7 allows the Debtor, and under some circumstances, creditors and  
8 others parties in interest, to propose a plan of reorganization  
9 ("Plan"). The Plan may provide for the Debtor to reorganize by  
10 continuing to operate, to liquidate by selling assets of the  
11 estate, or a combination of both. 7 is the party  
12 proposing the Plan sent to you in the same envelope as this  
13 document. THE DOCUMENT YOU ARE READING IS THE DISCLOSURE  
14 STATEMENT FOR THE ENCLOSED PLAN.

15        This is a 8 plan. In other words, the Proponent  
16 seeks to accomplish payments under the Plan by 9. The  
17 Effective Date of the proposed Plan is 10.

18 **A. Purpose of This Document**

19        This Disclosure Statement summarizes what is in the Plan,  
20 and tells you certain information relating to the Plan and the  
21 process the Court follows in determining whether or not to  
22 confirm the Plan.

23        READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO  
24 KNOW ABOUT:

- 25        (1) WHO CAN VOTE OR OBJECT,  
26        (2) WHAT THE TREATMENT OF YOUR CLAIM IS (i.e., what your  
27        claim will receive if the Plan is confirmed), AND HOW  
28        THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD

- 1
- 2 RECEIVE IN LIQUIDATION,
- 3 (3) THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS
- 4 DURING THE BANKRUPTCY,
- 5 (4) WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR
- 6 NOT TO CONFIRM THE PLAN,
- 7 (5) WHAT IS THE EFFECT OF CONFIRMATION, AND
- 8 (6) WHETHER THIS PLAN IS FEASIBLE.

9 This Disclosure Statement cannot tell you everything about  
10 your rights. You should consider consulting your own lawyer to  
11 obtain more specific advice on how this Plan will affect you and  
12 what is the best course of action for you.

13 Be sure to read the Plan as well as the Disclosure  
14 Statement. If there are any inconsistencies between the Plan and  
15 the Disclosure Statement, the Plan provisions will govern.

16 The Code requires a Disclosure Statement to contain  
17 "adequate information" concerning the Plan. The Bankruptcy Court  
18 ("Court") has approved this document as an adequate Disclosure  
19 Statement, containing enough information to enable parties  
20 affected by the Plan to make an informed judgment about the Plan.  
21 Any party can now solicit votes for or against the Plan.

22 **B. Deadlines for Voting and Objecting; Date of Plan**  
23 **Confirmation Hearing**

24 THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS  
25 DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE  
26 NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS  
27 THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL  
28 CREDITORS AND INTEREST HOLDERS IN THIS CASE.



1           **1. Time and Place of the Confirmation Hearing**

2           The hearing where the Court will determine whether or not to  
3 confirm the Plan will take place on \_\_\_\_\_<sup>11</sup>, at \_\_\_\_ {A.M./  
4 P.M.}, in Courtroom \_\_\_\_, {Insert Courthouse Name}, {Insert Full  
5 Court Address, City, State, Zip Code}.

6           **2. Deadline For Voting For or Against the Plan**

7           If you are entitled to vote, it is in your best interest to  
8 timely vote on the enclosed ballot and return the ballot in the  
9 enclosed envelope to \_\_\_\_\_<sup>12</sup>.

10          Your ballot must be received by \_\_\_\_\_<sup>13</sup> or it will not  
11 be counted.

12          **3. Deadline For Objecting to the Confirmation of the Plan**

13          Objections to the confirmation of the Plan must be filed  
14 with the Court and served upon \_\_\_\_\_<sup>14</sup> by \_\_\_\_\_<sup>15</sup>.

15          **4. Identity of Person to Contact for More Information**  
16                 **Regarding the Plan**

17          Any interested party desiring further information about the  
18 Plan should contact \_\_\_\_\_<sup>16</sup>.

19          **C. Disclaimer**

20          The financial data relied upon in formulating the Plan is  
21 based on \_\_\_\_\_<sup>17</sup>. The information contained in this  
22 Disclosure Statement is provided by \_\_\_\_\_<sup>18</sup>. The Plan  
23 Proponent represents that everything stated in the Disclosure  
24 Statement is true to the Proponent's best knowledge. The Court  
25 has not yet determined whether or not the Plan is confirmable and  
26 makes no recommendation as to whether or not you should support  
27 or oppose the Plan.

1 II.

2 BACKGROUND

3 A. Description and History of the Debtor's Business

4 The Debtor is a \_\_\_\_\_<sup>19</sup>.

5 The Debtor is in the business of \_\_\_\_\_<sup>20</sup>.

6 The Debtor has been in this business since \_\_\_\_\_<sup>21</sup>.

7 B. Principals/Affiliates of Debtor's Business

8 \_\_\_\_\_<sup>22</sup>.

9 C. Management of the Debtor Before and After the Bankruptcy

10 \_\_\_\_\_<sup>23</sup>.

11 D. Events Leading to Chapter 11 Filing

12 Here is a brief summary of the circumstances that led to the  
13 filing of this Chapter 11 case:

14 \_\_\_\_\_<sup>24</sup>.

15 E. Significant Events During the Bankruptcy

16 1. Bankruptcy Proceedings

17 The following is a chronological list of significant events  
18 which have occurred during this case: \_\_\_\_\_<sup>25</sup>

19 The Court has approved the employment of the following  
20 professionals: \_\_\_\_\_<sup>26</sup>

21 Currently, the following significant adversary proceedings  
22 and motions are still pending: \_\_\_\_\_<sup>27</sup>.

23 2. Other Legal Proceedings

24 In addition to the proceedings discussed above, the Debtor  
25 is currently involved in the following nonbankruptcy legal  
26 proceedings:

27 \_\_\_\_\_<sup>28</sup>.

What about other litigation?

3. Actual and Projected Recovery of Preferential or Fraudulent Transfers <sup>29</sup>

<sup>30</sup> is estimated to be realized from the recovery of fraudulent and preferential transfers. The following is a summary of the fraudulent conveyance and preference actions filed or to be filed in this case: <sup>31</sup>

4. Procedures Implemented to Resolve Financial Problems

To attempt to fix the problems that led to the bankruptcy filing, Debtor has implemented the following procedures: <sup>32</sup>

5. Current and Historical Financial Conditions

<sup>33</sup>.

The identity and fair market value of the estate's assets are listed in Exhibit A. See also the Debtor's financial history set forth in Exhibit B.

III.

SUMMARY OF THE PLAN OF REORGANIZATION

A. What Creditors and Interest Holders Will Receive Under The Proposed Plan

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes according to their right to priority. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive.

B. Unclassified Claims

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired

1 and they do not vote on the Plan because they are automatically  
2 entitled to specific treatment provided for them in the  
3 Bankruptcy Code. As such, the Proponent has not placed the  
4 following claims in a class.

5 **1. Administrative Expenses**

6 Administrative expenses are claims for costs or expenses of  
7 administering the Debtor's Chapter 11 case which are allowed  
8 under Code section 507(a)(1). The Code requires that all  
9 administrative claims be paid on the Effective Date of the Plan,  
10 unless a particular claimant agrees to a different treatment.<sup>34</sup>

11 The following chart lists all of the Debtor's § 507(a)(1)  
12 administrative claims and their treatment under the Plan<sup>35</sup> (see  
13 Exhibit F for detailed information about each administrative  
14 expense claim):

Name	Amount Owed	Treatment
Clerk's Office Fees		Paid in full on Effective Date <sup>36</sup>
Office of the U.S. Trustee Fees		Paid in full on Effective Date
	TOTAL	

23 Court Approval of Fees Required:

24 The Court must rule on all fees listed in this chart before  
25 the fees will be owed. For all fees except Clerk's Office fees  
26 and U.S. Trustee's fees, the professional in question must file  
27 and serve a properly noticed fee application and the Court must  
28 rule on the application. Only the amount of fees allowed by the  
Court will be owed and required to be paid under this Plan.

1 As indicated above, the Debtor will need to pay <sup>37</sup>  
 2 worth of administrative claims on the Effective Date of the Plan  
 3 unless the claimant has agreed to be paid later or the Court has  
 4 not yet ruled on the claim. As indicated elsewhere in this  
 5 Disclosure Statement, Debtor will have <sup>38</sup> amount of  
 6 cash on hand on the Effective Date of the Plan. The source of  
 7 this cash will be <sup>39</sup>.

8 **2. Priority Tax Claims**

9 Priority tax claims are certain unsecured income,  
 10 employment and other taxes described by Code Section 507(a)(8)<sup>40</sup>.  
 11 The Code requires that each holder of such a 507(a)(8)  
 12 priority tax claim receive the present value of such claim in  
 13 deferred cash payments, over a period not exceeding six years  
 14 from the date of the assessment of such tax.

15 The following chart lists all of the Debtor's Section  
 16 507(a)(8)<sup>41</sup> priority tax claims and their treatment under the  
 17 Plan:

Description	Amount Owed	Treatment <sup>42</sup>
● Name =		● Pymt interval <sup>43</sup> =
● Type of tax =		● Pymt amt/interval <sup>44</sup> =
● Date tax assessed =		● Begin date <sup>45</sup> =
		● End date <sup>46</sup> =
		● Interest Rate % <sup>47</sup> =
		● Total Payout Amount <sup>48</sup> % = \$
● Name =		● Pymt interval =
● Type of tax =		● Pymt amt/interval =
● Date tax assessed =		● Begin date =
		● End date =
		● Interest Rate % =
		● Total Payout Amount % = \$

27 **C. Classified Claims and Interests**

28 **1. Classes of Secured Claims**

Secured claims are claims secured by liens on property of

the estate. The following chart lists all classes containing Debtor's secured pre-petition claims and their treatment under this Plan<sup>48a</sup>:

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>INSIDERS</u> (Y/N)	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =		<sup>49</sup>	● Pymt interval = ● Pymt amt/interval = ● Balloon pymt <sup>50</sup> = ● Begin date = ● End date = ● Interest rate % = ● Total payout <sup>50a</sup> __ % = \$ ● Treatment of Lien =
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =			● Pymt interval = ● Pymt amt/interval = ● Balloon pymt = ● Begin date = ● End date = ● Interest rate % = ● Total payout % = \$ ● Treatment of Lien =

**2. Classes of Priority Unsecured Claims**

Certain priority claims that are referred to in Code Sections 507(a)(3), (4), (5), (6), and (7)<sup>51</sup> are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed

amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claims.

The following chart lists all classes containing Debtor's 507(a)(3), (a)(4), (a)(5), (a)(6), and (a)(7)<sup>52</sup> priority unsecured claims and their treatment under this Plan (see Exhibit G for more detailed information about each priority unsecured claim)<sup>53</sup>.

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
	Priority unsecured claim pursuant to _____ <sup>54</sup> ● Total amt of claims = _____ <sup>55</sup>		● Paid in full in cash on Effective Date <sup>56</sup>
	Priority unsecured claim pursuant to _____ <sup>57</sup> ● Total amt of claims = _____ <sup>58</sup>		● Paid in full in cash on Effective Date

### 3. Class of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Code Section 507(a). The following chart identifies this Plan's treatment of the class containing all of Debtor's general unsecured claims (see Exhibit H for detailed information about each general unsecured claim):

<u>CLASS#</u>	<u>DESCRIPTION</u>	<u>IMPAIRED</u> (Y/N)	<u>TREATMENT</u>
	General unsecured claims ● Total amt of claims = _____	<sup>59</sup>	● Pymt interval = ● Pymt amt/interval = ● Begin date = ● End date = ● Interest rate % = ● Total payout <sup>59a</sup> ___ % = \$

<sup>59b.</sup>  
<sup>59c.</sup>

1           **4. Class(es) of Interest Holders**

2           Interest holders are the parties who hold ownership interest  
3 (i.e., equity interest) in the Debtor. If the Debtor is a  
4 corporation, entities holding preferred or common stock in the  
5 Debtor are interest holders. If the Debtor is a partnership, the  
6 interest holders include both general and limited partners. If  
7 the Debtor is an individual, the Debtor is the interest holder.  
8 The following chart identifies the Plan's treatment of the  
9 class<sup>60</sup> of interest holders (see Exhibit I for more detailed  
10 information about each interest holder):

11

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
	Interest holders	61	

12  
13

14           **D. Means of Effectuating the Plan**

15           **1. Funding for the Plan**

16           The Plan will be funded by the following: 62.

17           **2. Post-confirmation Management**

18           63

19           **3. Disbursing Agent**

20           64 shall act as the disbursing agent for the  
21 purpose of making all distributions provided for under the Plan.  
22 The Disbursing Agent shall serve 65 bond and shall  
23 receive 66 for distribution services rendered and  
24 expenses incurred pursuant to the Plan.

25           **E. Risk Factors**

26           The proposed Plan has the following risks: 67

27  
28



1 **F. Other Provisions of the Plan**

2 **1. Executory Contracts and Unexpired Leases**

3 **a. Assumptions**

4 The following are the unexpired leases and executory  
5 contracts to be assumed as obligations of the reorganized Debtor  
6 under this Plan (see Exhibit C for more detailed information on  
7 unexpired leases to be assumed and Exhibit D for more detailed  
8 information on executory contracts to be assumed):

9 68

10 On the Effective Date, each of the unexpired leases and  
11 executory contracts listed above shall be assumed as obligations  
12 of the reorganized Debtor. The Order of the Court confirming the  
13 Plan shall constitute an Order approving the assumption of each  
14 lease and contract listed above. If you are a party to a lease  
15 or contract to be assumed and you object to the assumption of  
16 your lease or contract, you must file and serve your objection to  
17 the Plan within the deadline for objecting to the confirmation of  
18 the Plan. See Section {I.B.3.} of this document for the specific  
19 date.

20 **b. Rejections**

21 On the Effective Date, the following executory contracts and  
22 unexpired leases will be rejected:

23 69

24 The order confirming the Plan shall constitute an Order  
25 approving the rejection of the lease or contract. If you are a  
26 party to a contract or lease to be rejected and you object to the  
27 rejection of your contract or lease, you must file and serve your  
28 objection to the Plan within the deadline for objecting to the  
confirmation of the Plan. See Section {I.B.3.} of this document

1 for the specific date.

2 THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM  
3 ARISING FROM THE REJECTION OF A LEASE OR CONTRACT IS 70.

4 Any claim based on the rejection of a contract or lease will be  
5 barred if the proof of claim is not timely filed, unless the  
6 Court later orders otherwise.

7 **2. Changes in Rates Subject to Regulatory Commission**  
8 **Approval**

9 This Debtor 71 subject to governmental  
10 regulatory commission approval of its rates<sup>71a</sup>.

11 **3. Retention of Jurisdiction.**

12 The Court will retain jurisdiction to the extent provided  
13 by law.<sup>71b</sup>

14 **G. Tax Consequences of Plan**

15 CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN  
16 MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN  
17 ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure  
18 of possible tax consequences is intended solely for the purpose  
19 of alerting readers about possible tax issues this Plan may  
20 present to the Debtor. The Proponent CANNOT and DOES NOT  
21 represent that the tax consequences contained below are the only  
22 tax consequences of the Plan because the Tax Code embodies many  
23 complicated rules which make it difficult to state completely and  
24 accurately all the tax implications of any action.

25 The following are the tax consequences which the Plan will  
26 have on the Debtor's tax liability: 72

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IV.

CONFIRMATION REQUIREMENTS AND PROCEDURES

PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION <sup>OF ?</sup> ~~OR~~ THIS PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following discussion is intended solely for the purpose of alerting readers about basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing claims. The proponent CANNOT and DOES NOT represent that the discussion contained below is a complete summary of the law on this topic.

Many requirements must be met before the Court can confirm a Plan. Some of the requirements include that the Plan must be proposed in good faith, acceptance of the Plan, whether the Plan pays creditors at least as much as creditors would receive in a Chapter 7 liquidation, and whether the Plan is feasible. These requirements are not the only requirements for confirmation.

**A. Who May Vote or Object**

**1. Who May Object to Confirmation of the Plan**

Any party in interest may object to the confirmation of the Plan, but as explained below not everyone is entitled to vote to accept or reject the Plan.

**2. Who May Vote to Accept/Reject the Plan**

A creditor or interest holder has a right to vote for or against the Plan if that creditor or interest holder has a claim which is both (1) allowed or allowed for voting purposes and (2) classified in an impaired class.

**a. What Is an Allowed Claim/Interest**

As noted above, a creditor or interest holder must first

1 have an allowed claim or interest to have the right to vote.  
2 Generally, any proof of claim or interest will be allowed, unless  
3 a party in interest brings a motion objecting to the claim. When  
4 an objection to a claim or interest is filed, the creditor or  
5 interest holder holding the claim or interest cannot vote unless  
6 the Court, after notice and hearing, either overrules the  
7 objection or allows the claim or interest for voting purposes.

8 THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE WAS  
9 73. A creditor or interest holder may have an allowed  
10 claim or interest even if a proof of claim or interest was not  
11 timely filed. A claim is deemed allowed if (1) it is scheduled  
12 on the Debtor's schedules and such claim is not scheduled as  
13 disputed, contingent, or unliquidated, and (2) no party in  
14 interest has objected to the claim. An interest is deemed allowed  
15 if it is scheduled and no party in interest has objected to the  
16 interest. Consult Exhibits F through L to see how the Proponent  
17 has characterized your claim or interest.

18 **b. What Is an Impaired Claim/Interest**

19 As noted above, an allowed claim or interest only has the  
20 right to vote if it is in a class that is impaired under the  
21 Plan. A class is impaired if the Plan alters the legal,  
22 equitable, or contractual rights of the members of that class.  
23 For example, a class comprised of general unsecured claims is  
24 impaired if the Plan fails to pay the members of that class 100%  
25 of what they are owed.

26 In this case, the Proponent believes that classes 74  
27 are impaired and that holders of claims in each of these classes  
28 are therefore entitled to vote to accept or reject the Plan. The  
Proponent believes that classes 75 are unimpaired and that

*4 interest*

1 holders of claims in each of these classes therefore do not have  
2 the right to vote to accept or reject the Plan. Parties who  
3 dispute the Proponent's characterization of their claim or  
4 interest as being impaired or unimpaired may file an objection to  
5 the Plan contending that the Proponent has incorrectly  
6 characterized the class.

7 **3. Who is Not Entitled to Vote**

8 The following four types of claims are not entitled to vote:  
9 (1) claims that have been disallowed; (2) claims in unimpaired  
10 classes; (3) claims entitled to priority pursuant to Code  
11 sections 507(a)(1), (a)(2), and (a)(8)<sup>76</sup>; and (4) claims in  
12 classes that do not receive or retain any value under the Plan.  
13 Claims in unimpaired classes are not entitled to vote because  
14 such classes are deemed to have accepted the Plan. Claims  
15 entitled to priority pursuant to Code sections 507(a)(1), (a)(2),  
16 and (a)(7) are not entitled to vote because such claims are not  
17 placed in classes and they are required to receive certain  
18 treatment specified by the Code. Claims in classes that do not  
19 receive or retain any value under the Plan do not vote because  
20 such classes are deemed to have rejected the Plan. **EVEN IF YOUR**  
21 **CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT**  
22 **TO OBJECT TO THE CONFIRMATION OF THE PLAN.**

23 **4. Who Can Vote in More Than One Class**

24 A creditor whose claim has been allowed in part as a secured  
25 claim and in part as an unsecured claim is entitled to accept or  
26 reject a Plan in both capacities by casting one ballot for the  
27 secured part of the claim and another ballot for the unsecured  
28 claim.

1           **5. Votes Necessary to Confirm the Plan**

2           If impaired classes exist, the Court cannot confirm the Plan  
3 unless (1) at least one impaired class has accepted the Plan  
4 without counting the votes of any insiders within that class, and  
5 (2) all impaired classes have voted to accept the Plan, unless  
6 the Plan is eligible to be confirmed by "cramdown" on non-  
7 accepting classes, as discussed later in Section {IV.A.8.}.

8           **6. Votes Necessary for a Class to Accept the Plan**

9           A class of claims is considered to have accepted the Plan  
10 when more than one-half (1/2) in number and at least two-thirds  
11 (2/3) in dollar amount of the claims which actually voted, voted  
12 in favor of the Plan. A class of interests is considered to have  
13 accepted the Plan when at least two-thirds (2/3) in amount of the  
14 interest-holders of such class which actually voted, voted to  
15 accept the Plan.

16           **7. Treatment of Nonaccepting Classes**

17           As noted above, even if all impaired classes do not accept  
18 the proposed Plan, the Court may nonetheless confirm the Plan if  
19 the nonaccepting classes are treated in the manner required by  
20 the Code. The process by which nonaccepting classes are forced  
21 to be bound by the terms of the Plan is commonly referred to as  
22 "cramdown." The Code allows the Plan to be "crammed down" on  
23 nonaccepting classes of claims or interests if it meets all  
24 consensual requirements except the voting requirements of  
25 1129(a)(8), and if the Plan does not "discriminate unfairly" and  
26 is "fair and equitable" toward each impaired class that has not  
27 voted to accept the Plan as referred to in 11 U.S.C. § 1129(b)  
28 and applicable case law.

*Must explain that  
a class of claims prior  
to classed  
at nothing*

1           **8. Request for Confirmation Despite Nonacceptance by**  
2                   **Impaired Class(es)**

3           The party proposing this Plan       77       asks the Court to  
4 confirm this Plan by cramdown on impaired classes       77a       if  
5 any of these classes do not vote to accept the Plan.

6           Please note that the proposed Plan treatment described by  
7 this Disclosure Statement cannot be crammed down on the following  
8 classes :       78      . AS A RESULT, IF ANY OF THESE CLASSES DOES  
9 NOT VOTE TO ACCEPT THE PLAN, THE PLAN WILL NOT BE CONFIRMED.<sup>79</sup>

10 **B. Liquidation Analysis**

11           Another confirmation requirement is the "Best Interest  
12 Test", which requires a liquidation analysis. Under the Best  
13 Interest Test, if a claimant or interest holder is in an impaired  
14 class and that claimant or interest holder does not vote to  
15 accept the Plan, then that claimant or interest holder must  
16 receive or retain under the Plan property of a value not less  
17 than the amount that such holder would receive or retain if the  
18 Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

19           In a Chapter 7 case, the Debtor's assets are usually sold by  
20 a Chapter 7 trustee. Secured creditors are paid first from the  
21 sales proceeds of properties on which the secured creditor has a  
22 lien. Administrative claims are paid next. Next, unsecured  
23 creditors are paid from any remaining sales proceeds, according  
24 to their rights to priority. Unsecured creditors with the same  
25 priority share in proportion to the amount of their allowed claim  
26 in relationship to the amount of total allowed unsecured claims.  
27 Finally, interest holders receive the balance that remains after  
28 all creditors are paid, if any.

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For the Court to be able to confirm this Plan, the Court must find that all creditors and interest holders who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a Chapter 7 liquidation. The Plan Proponent maintains that this requirement is met here for the following reasons: 80.

Below is a demonstration, in balance sheet format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or interest holder would receive under a Chapter 7 liquidation. (See Exhibit E for a detailed explanation of how the following assets are valued. This information is provided by 18.)



1	<b>ASSETS VALUE AT LIQUIDATION VALUES<sup>81</sup>:</b>	
2	CURRENT ASSETS	
3	a. Cash on hand	\$
3	b. Accounts receivable	\$
4	c. Inventories	\$
5	TOTAL CURRENT ASSETS	\$
6	FIXED ASSETS	
6	a. Office furniture & equipment	\$
7	b. Machinery & equipment	\$
7	c. Automobiles	\$
8	d. Building & Land <sup>82</sup>	\$
9	TOTAL FIXED ASSETS	\$
10	OTHER ASSETS	
10	a. Customer list	\$
11	b. Other intangibles	\$
12	TOTAL OTHER ASSETS	\$
13	<b>TOTAL ASSETS AT LIQUIDATION VALUE</b>	<b>\$</b>
13		=====
14	<b>Less:</b>	
14	Secured creditor's recovery <sup>1</sup>	\$
15	<b>Less:</b>	
15	Chapter 7 trustee fees and expenses	\$
16	<b>Less:</b>	
16	Chapter 11 administrative expenses	\$
17	<b>Less:</b>	
17	Priority claims,	\$
18	excluding administrative expense claims	
18	<b>Less:</b>	
19	Debtor's claimed exemptions	\$
19		=====
20	(1) Balance for unsecured claims	\$
21	(2) Total amt of unsecured claims	\$
22		-
23	<b>% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WOULD RECEIVE</b>	
23	<b>OR RETAIN IN A CH. 7 LIQUIDATION<sup>2</sup>: =</b>	$\frac{83}{84}$
24	<b>% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WILL RECEIVE</b>	
24	<b>OR RETAIN UNDER THIS PLAN: =</b>	$\frac{84}{84}$

26 <sup>1/</sup> - Note: The deficiency portion of a secured recourse claim must be added to the total amount of  
27 unsecured claims.

28 <sup>2/</sup> - Note: If this percentage is greater than the amount to be paid to the unsecured creditors on a  
obtains "present value basis" under the Plan, the Plan is not confirmable unless Proponent  
acceptance by every creditor in the general unsecured class.

Below is a demonstration, in tabular format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or holder would receive under a Chapter 7 liquidation.

<u>CLAIMS &amp; CLASSES</u> <sup>85</sup>	<u>PAYOUT PERCENTAGE UNDER THE PLAN</u>	<u>PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION</u>
Administrative Claims		
Priority Tax Claims		
Class 1 - <u>86</u>		
Class 2 - <u>87</u>		
Class 3 - <u>88</u>		
Class 4 - <u>89</u>		

**C. Feasibility**

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses which are entitled to be paid on such date. The Plan Proponent maintains that this aspect of feasibility is satisfied as illustrated here:

Cash Debtor will have on hand by Effective Date <sup>90</sup>	\$ _____
To Pay: Administrative claims	- _____
To Pay: Statutory costs & charges	- _____
To Pay: Other Plan Payments due on Effective Date	- _____
Balance after paying these amounts.....	\$ _____

1 The sources of the cash Debtor will have on hand by the Effective  
2 Date, as shown above are:

3	\$ _____	Cash in DIP Account now
4	+ _____	Additional cash DIP will accumulate from net earnings between now and Effective Date
5	+ _____	Borrowing
6	+ _____	Capital Contributions
7	+ _____	Other
8	\$ _____	<b>Total</b> <sup>91</sup>

9  
10 Borrowing is from \_\_\_\_\_<sup>92</sup> and will be paid back as  
11 follows: \_\_\_\_\_<sup>93</sup>.

12 The second aspect considers whether the Proponent will have  
13 enough cash over the life of the Plan to make the required Plan  
14 payments.<sup>94</sup>

15 The Proponent has provided financial statements which  
16 include both historical and projected financial information.  
17 Please refer to Exhibit B for the relevant financial statements.  
18 YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL  
19 ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL  
20 STATEMENTS.

21 In summary, the Plan proposes to pay \_\_\_\_\_<sup>95</sup> each  
22 \_\_\_\_\_<sup>96</sup>. As Debtor's financial projections demonstrate,  
23 Debtor will have an average cash flow, after paying operating  
24 expenses and post-confirmation taxes, of \_\_\_\_\_<sup>97</sup> each \_\_\_\_\_<sup>98</sup>  
25 for the life of the Plan. The final Plan payment is expected to  
26 be paid on \_\_\_\_\_<sup>99</sup>. The Plan Proponent contends that Debtor's  
27 financial projections are feasible. As shown by Debtor's  
28 historical financial statements, Debtor's average \_\_\_\_\_<sup>100</sup>  
cash flow, after paying operating expenses and post-confirmation

1 taxes, in the three years preceding the filing of this bankruptcy  
2 case is <sup>101</sup>\_\_\_\_\_. Debtor's average <sup>102</sup>\_\_\_\_\_ cash flow, after  
3 paying operating expenses and post-confirmation taxes, during the  
4 bankruptcy case is <sup>103</sup>\_\_\_\_\_. Furthermore, as discussed  
5 earlier in the Disclosure Statement at Section {II.E.4}, Debtor  
6 has implemented procedures to <sup>104</sup>\_\_\_\_\_.

7  
8  
9 V.

10 EFFECT OF CONFIRMATION OF PLAN

11 A. Discharge<sup>105</sup>

12 This Plan provides that upon <sup>106</sup>\_\_\_\_\_, Debtor shall be  
13 discharged of liability for payment of debts incurred before  
14 confirmation of the Plan, to the extent specified in 11 U.S.C. §  
15 1141. However, the discharge will not discharge any liability  
16 imposed by the Plan.

17 B. Revesting of Property in the Debtor

18 Except as provided in Section {V.E.}, and except as provided  
19 elsewhere in the Plan, the confirmation of the Plan revests all  
20 of the property of the estate in the Debtor. -

21 C. Modification of Plan

22 The Proponent of the Plan may modify the Plan at any time  
23 before confirmation. However, the Court may require a new  
24 disclosure statement and/or revoting on the Plan.

25 The Proponent of the Plan may also seek to modify the Plan  
26 at any time after confirmation only if (1) the Plan has not  
27 been substantially consummated and (2) the Court authorizes the  
28

1 proposed modifications after notice and a hearing.

2 **D. Post-Confirmation Status Report**

3 Within 120 days of the entry of the order confirming the  
4 Plan, Plan Proponent shall file a status report with the Court  
5 explaining what progress has been made toward consummation of the  
6 confirmed Plan. The status report shall be served on the United  
7 States Trustee, the twenty largest unsecured creditors, and those  
8 parties who have requested special notice. Further status reports  
9 shall be filed every 120 days and served on the same entities.

10 **E. Post-Confirmation Conversion/Dismissal**

11 A creditor or party in interest may bring a motion to  
12 convert or dismiss the case under § 1112(b), after the Plan is  
13 confirmed, if there is a default in performing the Plan. If the  
14 Court orders the case converted to Chapter 7 after the Plan is  
15 confirmed, then all property that had been property of the  
16 Chapter 11 estate, and that has not been disbursed pursuant to  
17 the Plan, will revert in the Chapter 7<sup>o</sup> estate. The automatic  
18 stay will be reimposed upon the reverted property, but only to  
19 the extent that relief from stay was not previously authorized by  
20 the Court during this case.

21 The order confirming the Plan may also be revoked under very  
22 limited circumstances. The Court may revoke the order if the  
23 order of confirmation was procured by fraud and if the party in  
24 interest brings an adversary proceeding to revoke confirmation  
25 within 180 days after the entry of the order of confirmation.

26 **F. Final Decree**

27 Once the estate has been fully administered as referred to  
28 in Bankruptcy Rule 3022, the Plan Proponent, or other party as  
the Court shall designate in the Plan Confirmation Order, shall

*Creditors  
Committee*

1 file a motion with the Court to obtain a final decree to close  
2 the case.

3  
4 Date: \_\_\_\_\_

5  
6 \_\_\_\_\_  
7 Name and Identity of Plan Proponent

8 \_\_\_\_\_  
9 Signature of Plan Proponent  
(optional unless party is pro se)

10  
11 \_\_\_\_\_  
12 Signature of Attorney for Plan Proponent

13 \_\_\_\_\_  
14 Name of Attorney for Plan Proponent

15 \_\_\_\_\_  
16 Name of Law Firm for Plan Proponent

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VI.  
SUPPORTING DECLARATIONS<sup>107</sup>

EXHIBIT A - LIST OF ALL ASSETS<sup>108</sup>



**EXHIBIT B - FINANCIAL STATEMENTS**

As directed by the Court, the historical financial statements for the three years preceding the petition date and projected financial statements for the life of the Plan are attached.<sup>109</sup> This information is supplied by \_\_\_\_\_<sup>18</sup> and is based on the \_\_\_\_\_<sup>17</sup>.

**EXHIBIT C - UNEXPIRED LEASES TO BE ASSUMED<sup>109a</sup>**

<b>LEASES</b>	<b>ARREARS/DMGS</b>	<b>METHODS OF CURE</b>
<ul style="list-style-type: none"> <li>● Description = <sup>110</sup></li> <li>● Lessor's name =</li> <li>● Lessee's name =</li> <li>● Expiration date =</li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss<sup>111</sup> =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring future performance<sup>112</sup> =</li> </ul>
<ul style="list-style-type: none"> <li>● Description =</li> <li>● Lessor's name =</li> <li>● Lessee's name =</li> <li>● Expiration date =</li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring future performance =</li> </ul>
<ul style="list-style-type: none"> <li>● Description =</li> <li>● Lessor's name =</li> <li>● Lessee's name =</li> <li>● Expiration date =</li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring future performance =</li> </ul>

**EXHIBIT D - EXECUTORY CONTRACTS TO BE ASSUMED**

<b>CONTRACT</b>	<b>DEFAULT/DMGS</b>	<b>METHODS OF CURE</b>
<ul style="list-style-type: none"> <li>• Contract description =</li> <li>• Contracting parties =               <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Default amt =</li> <li>• Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>• Method of curing default &amp; loss =</li> <li>• Means of assuring performance =</li> </ul>
<ul style="list-style-type: none"> <li>• Contract description =</li> <li>• Contracting parties =               <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Default amt =</li> <li>• Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>• Method of curing default &amp; loss =</li> <li>• Means of assuring performance =</li> </ul>
<ul style="list-style-type: none"> <li>• Contract description =</li> <li>• Contracting parties =               <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Default amt =</li> <li>• Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>• Method of curing default &amp; loss =</li> <li>• Means of assuring performance =</li> </ul>

**EXHIBIT E - LIQUIDATION ANALYSIS**  
**SUPPORTING VALUATION**

**CURRENT ASSETS:**

**CASH ON HAND<sup>113</sup>**

a. Acct Number:	\$	
b. Acct Number:	\$	
c. Total Cash	\$ _____	\$ _____

**ACCOUNTS RECEIVABLE**

a. Accounts receivable	\$	
b. <b>Less:</b> uncollectible accounts	\$ _____	
c. Net Accounts Receivables		\$ _____

**INVENTORIES<sup>114</sup>**

\$ \_\_\_\_\_

**FIXED ASSETS:**

**OFFICE FURNITURE, MACHINERY & EQUIPMENT<sup>115</sup>**

\$ \_\_\_\_\_

**TRANSPORTATION EQUIPMENT<sup>116</sup>**

\$ \_\_\_\_\_

**BUILDINGS, LAND & OTHER REAL PROPERTY<sup>117</sup>**

a. Real Property at:	\$	
b. Real Property at:	\$ _____	
c. Total		\$ _____

**OTHER ASSETS:<sup>118</sup>**

\$ \_\_\_\_\_

**TOTAL ASSETS AT LIQUIDATION VALUE**

\$ \_\_\_\_\_  
=====























## CROSS REFERENCE KEY

### I. Overview to Cross Reference Key

This Disclosure Statement is a "fill in the blank form."

The user only fills in the blanks. DO NOT CHANGE THE LANGUAGE IN THE REST OF THE FORM, EXCEPT IN THE FEW PLACES WHERE THE INSTRUCTIONS EXPRESSLY TELL YOU THAT YOU MAY OMIT A SENTENCE OR CLASS IF IT IS NOT NEEDED FOR YOUR CASE.

As you read this Form, you will notice blanks with numbers in them, and also numbers at the end of certain sentences or phrases.

- \* Here is an example of a blank with a number:

1

- \* Here is an example of a sentence with a number:

This is an example.<sup>2</sup>

These numbers refer to the numbered instructions in this "Cross Reference Key." When you encounter one of these numbers in the form itself, you need to refer to the "Cross Reference Key," and read the applicable numbered instruction. In our example above, instructions number 1 and 2 would be applicable instructions. Follow the instructions to fill in the needed information.

#### **a. Why the Instructions in this Cross Reference Key are in Two Different Types of Print**

When you read the numbered instructions in the "Cross Reference Key" you will see that these instructions are printed in two different types of print, Courier New 12 pt. and Helvetica 10 pt.

Instructions in Courier New 12 pt. font (the font you are currently reading), mean that you are to simply provide the information requested in the endnote and insert it in the corresponding blank. For example, if instruction number 1 states "Debtor's name", then you should insert the Debtor's name in blank number 1.

Instructions in Helvetica 10 pt. font may contain explanations on how to use the disclosure statement form, explanations of the law, or examples of what should be inserted in a particular blank. Read and follow these instructions also.

II. Key Notes 1 through 118

1. Put which version of Disclosure Statement (Original, First Amended, Second Amended Disclosure Statement). Do not use the term "Modified" when describing any version subsequent to the Original.
2. Put what Plan is being described (Original, First Amended, Second Amended Plan, etc.)
3. Debtor's name.
4. Petition date.
5. Insert the applicable information, depending on who filed the petition:
  - (a) Debtor's name
  - (b) Names of the petitioning creditors
6. Insert one of the following:
  - (a) a voluntary
  - (b) an involuntary
- 6b. If case was commenced in a chapter other than Chapter 11 and later converted to Chapter 11, so state and state date of conversion to Chapter 11.
7. Proponent's name.
8. Insert the applicable phrases:
  - (a) liquidating
  - (b) reorganizing
  - (c) combined liquidating and reorganizing
9. Provide a brief summary of how Proponent proposes to fund the Plan. If applicable, include statement that this plan is a joint plan, or is otherwise related to a plan in another bankruptcy case, or is a consensual plan between one or more parties to this Chapter 11 case.
10. Effective date of the Plan.
11. Date of the confirmation hearing.
12. Name, address, and telephone number of the Plan Proponent or Counsel to the Plan Proponent.

If applicable, the Disclosure Statement should indicate that there are two or more competing plans, and should tell readers to look at their ballots for special instructions on marking them. The ballots should be modified to contain any applicable special instructions.
13. Deadline for receipt of ballots. (Note: This date will be provided by the Court at the hearing where the Court approves the Disclosure Statement.)



14. Name and address of the Plan Proponent or Counsel to the Plan Proponent.
15. Deadline for filing and serving any objection to the confirmation of the Plan. **(Note:** This date will be provided to you by the Court at the hearing where the Court approves the Disclosure Statement.)
16. Name, address, and telephone number of Plan Proponent or Counsel to the Plan Proponent. In cases where there is a creditor's committee, include the name, address, and telephone number of counsel for the creditor's committee.
17. Insert documents such as Debtor's books and records, financial statements such as projections, appraisals, and evaluations, as well as who provided these documents.
18. Identify by name and title the party providing the financial information (i.e., corporate officer, managing agent, accountant, accounting firm, bookkeeper, etc.). Accountants who assist clients in the preparation of financial statements should consult Statement of Position 90-7, Financial Reporting by Entities in Reorganization Under the Bankruptcy Code, dated November 19, 1990 and prepared by the AICPA Task Force on Financial Reporting by Entities in Reorganization Under the Bankruptcy Code.
19. Insert the applicable phrase:
  - (a) corporation
  - (b) partnership
  - (c) individual

**(Note:** If the Debtor is an entity that is not listed above, provide a description of Debtor's entity and verify that such an entity is eligible to be a debtor.)
20. Type of business conducted by the Debtor (if applicable). **(Note:** See examples on next page.)

Note: For example, if the Debtor is in the business of developing real estate, the following should be listed:

- (a) The location of the properties/lots
- (b) The size of the lots
- (c) The stage of the development for each lot
- (d) The type of development, e.g., commercial, industrial or residential

If the Debtor is a manufacturer or service provider, the following should be listed:

- (a) The type of products manufactured or services provided
- (b) The location of Debtor's business

If the Debtor is in the business of renting real estate, the following should be listed:

- (a) Location of the building(s)
- (b) Size of the building(s)
- (c) Current occupancy rate(s)
- (d) Type(s) of building, e.g., residential, commercial, industrial
- (e) Debtor's interest in the building(s) being leased

If the Debtor is an individual, the following should be listed:

- (a) Debtor's employer and description of the employer's type of business
- (b) Length of Debtor's employment
- (c) Debtor's position, including title, number of hours worked, salaried or hourly
- (d) Description of Debtor's duties
- (e) Amount of Debtor's compensation

If Debtor is no longer in business, the above information should still be provided with respect to Debtor's business immediately preceding the bankruptcy. The date Debtor ceased to conduct business should also be provided.

21. Approximate date and year debtor's business commenced.
22. Detailed list of the names and identity of Debtor's principals and affiliates. Include the amount of compensation currently paid to principals and affiliates. (Note: See examples below.)

For example, if Debtor is a corporation, the following must be listed:

- (a) Key members of the board of directors
- (b) Key officers of the corporation
- (c) Key shareholders and their respective percentage interest

If Debtor is a partnership, the following must be provided:

- (a) Identity of all general partners since the inception of the partnership
- (b) Identity of all current limited partners
- (c) If the general partner is a corporation, the board members, officers and shareholders must be listed

23. List key management of the Debtor before the bankruptcy petition was filed; list key management of the Debtor during the course of the bankruptcy; and lastly, list key management of the Debtor after the bankruptcy.
24. Discuss the specific events and dates which led the debtor to file bankruptcy. (Note: A statement to the effect that the recession caused debtor's business to fail is not specific enough.) Proponent must disclose the receipt of any notices from any governmental agency relating in any manner to actual or potential liability on the part of the Debtor for any environment

or toxic waste hazards, whether or not occurring on the Debtor's premises.

25. In chronological order, list the significant events and orders that have been entered in this case and the entry dates of the orders. Also, give a brief description of the proceedings that led to the entry of the orders.
26. Detailed list of the professionals who have obtained court approval of their employment, including (1) the professional's name, (2) scope of employment, and (3) date court approved the employment.
27. Brief description of the following: (1) each significant adversary proceeding or motion that is still pending, including objections to claims, (2) the status of each matter, (3) the effects winning or losing the matter will have on the Plan, and (4) the anticipated cost of pursuing or defending the matter.
28. Brief description of the following: (1) each significant matter that is still pending in other courts, (2) status of each matter, (i.e. whether the matter is stayed), (3) effect the outcome of the matter will have on the Plan, and (4) the anticipated cost of pursuing or defending the matter.
29. If no preference or fraudulent conveyance actions exist and none are expected to be filed, then insert an affirmative statement to that effect and delete the rest of the text under this heading.
30. Estimated total recovery in dollar amount from avoiding preferential and fraudulent transfers and anticipated total expense of pursuing those matters.
31. Provide a brief summary of each fraudulent conveyance or preference action. For each action, include the name of the defendant, summary of the underlying facts, status of the action, and the estimated amount of recovery.
32. Describe post-petition efforts made by the Debtor to remedy the problems that led to the filing of bankruptcy. **(Note: Be specific.)** Also describe the goals Debtor had in mind when implementing these procedures (e.g., save costs, increase profits).
33. The Proponent should provide a textual discussion pertaining to the Debtor's current financial condition. This discussion should inform the reader about the Debtor's current income and expenses and whether Debtor's operations, if any, are currently profitable. Each document shall identify (i) the accounting method used (e.g. cash or accrual), (ii) whether the financial statements are prepared in conformity with generally accepted accounting principles, and (iii) if the financial statements have been audited.
34. If professional(s) have agreed to payment over time, state the precise terms and payment schedule (e.g. \$\_\_\_\_\_ per months over \_\_\_\_\_ months).
35. For each chart, add more rows to the tables as necessary.
36. **NOTE:** Pursuant to policy of the Central District Clerk's Office, Court will not sign the order confirming the Plan until the Clerk's Office fees have been paid in full.
37. Total amount of administrative claims to be paid on Effective Date.

38. Amount of cash on hand on Effective Date.
39. The source(s) of all cash Debtor will have on Effective Date.

(Note: Be specific. If several sources of cash exist, list each source and the amount of cash expected to be generated from that source.)
40. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.
41. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.
42. Section 507(a)(7) [now renumbered 507(a)(8) for cases filed after October 22, 1994] describing certain priority tax claims. All 507(a)(7) tax claims must be fully paid within 6 years from the date of assessment. Only unsecured tax claims of the kind described by 11 U.S.C. § 507(a)(7)[8] should be inserted here.
43. Identify the proposed payment interval (e.g., monthly, quarterly, yearly).
44. Amount of payment per payment interval.
45. The date Plan payments will commence.
46. The date Plan payments will end.
47. The interest rate paid to a Section 507(a)(8) priority tax claimant should be consistent with the rate provided by 26 U.S.C. § 6621.
48. Total percentage of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to the claimant over life of the Plan.
- 48.a Each secured claim should be placed in a separate class, unless the secured claims have identical collateral, priority, and terms of indebtedness.

Begin numbering the classes with the number "1". The subsequent class should be numbered with the number "2". Do not use subclasses, e.g., 1.1, 1.2, etc.
49. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."
50. Balloon payment amount, if any.
- 50a. Total percent of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over the life of Plan.
51. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because

- priority would not exist for cases filed before that date.
52. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.
53. Each of the four categories of priority unsecured claims should be placed in a separate class. A separate class is not necessary for a particular category of priority unsecured claims if no claim exist in that category.
54. Insert one of the following:  
(a) 11 U.S.C. § 507(a)(3)  
(b) 11 U.S.C. § 507(a)(4)  
(c) 11 U.S.C. § 507(a)(5)  
(d) 11 U.S.C. § 507(a)(6)
55. Total amount of claims in this class.
56. If the Plan does not provide for cash payment in full on Effective Date, Plan Proponent must be able to prove that this class has accepted deferred payments pursuant to 11 U.S.C § 1129(a)(9) before the Plan can be confirmed.
57. Insert one of the following:  
(a) 11 U.S.C. § 507(a)(3)  
(b) 11 U.S.C. § 507(a)(4)  
(c) 11 U.S.C. § 507(a)(5)  
(d) 11 U.S.C. § 507(a)(6)
58. Total amount of claims in this class.
59. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."  
  
If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."
- 59a. Total percent of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over the life of Plan.
- 59b. If you have a convenience class allowed under 1122(b), then add as an additional unsecured class here, and at Page 5, line 17 of the Plan form, ",except general unsecured claims placed in the convenience class described hereafter."
- 59c. If you have an additional general unsecured class(es), add each here, with a separate class number. The norm is to have a single general unsecured class, or where appropriate, to have a general unsecured class plus a convenience general unsecured class (as described in footnote 59a). However, there are a few limited circumstances where it is permissible to have additional general unsecured classes, primarily where one or more general unsecured creditors are agreeing to

receive worse treatment than is being given to the

rest of the general unsecured creditors, then the creditors agreeing to be treated worse can be placed in a separate general unsecured class. Do not use more than one general unsecured class unless you can justify doing so under applicable law.

60. If there is more than one class of equity holders (e.g. preferred stock and common stock), put each in a separate class and change "class" to "classes."

61. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

62. Describe the source of funding for this Plan. Be specific and consistent with the information set forth in Section {IV.C.}

1. If property of the estate is being sold and 11 U.S.C. § 1129(B)(2)(A)(ii) applies, then explain how that section impacts on the rights of a lienholder at a sale of the property.
2. If a buyer of the property has already been identified, then disclose the financial solvency of the proposed buyer.

63. For each entity who will be involved in post-confirmation management, state or explain the following:

- (a) Identity
- (b) Post-confirmation managerial duties
- (c) Amount of compensation paid pre-petition, paid currently, and to be paid post-confirmation
- (d) Description of expertise

64. Name and identity of disbursing agent.

65. Select one:

- (a) with
- (b) without

66. Explain whether Disbursing Agent will be compensated or reimbursed for services and expenses rendered and incurred in connection with making distributions under the Plan.

If Disbursing Agent will be compensated or reimbursed, specify the exact amount and the interval of payment.

**NOTE:** If disbursing agent will be compensated or reimbursed, be sure to account for these additional costs when evaluating feasibility of the Plan.

67. Detailed description of all the risks that may exist which may prevent the successful consummation of the proposed Plan.

**Note:** For example, if the Plan will be funded by sale of property, the following risks should be disclosed:

- (a) Failure to find a buyer or a buyer willing to pay the listed price by the stated deadline set by the Plan
- (b) Inability of proposed buyer to complete sale
- (c) Possibility of foreclosure by secured creditor if debtor defaults under the plan
- (d) Terms of the sale, if known

For plans which provide for payment over time, the following risks should be discussed:

- (a) Possibility of default under terms of the Plan, i.e., possibility of inability to pay Plan payments
- (b) Financial projections provided by the Proponent may not be realized, thereby causing inability to pay Plan payments
- (c) Business environment
- (d) Debtor's competition
- (e) Nonbankruptcy law and regulation
- (f) Nonbankruptcy litigation

68. List the unexpired leases and executory contracts in sufficient detail to enable the reader to determine which Leases and contracts will be assumed. This list will enable a party to a lease or contract to quickly ascertain whether he or she needs to refer to Exhibit C or D.

Exhibits C and D are intended to provide detailed information on each Lease or contract to be assumed so that the court and any party to a particular Lease or contract can decide whether assumption is proper and desirable.

69. List all executory contracts and unexpired Leases to be rejected in sufficient detail to enable a reader to quickly ascertain whether any particular Lease or contract will be rejected.
70. Deadline for filing proof of claim based on claim arising from rejection of contract or lease.  
(Note: Typically, this date will be 30 days from Effective Date.)

71. Select one:  
(a) is  
(b) is not

- 71a. See 11 U.S.C. § 1129(a)(6). This section is only applicable if Debtor's business is regulated by a governmental regulatory commission. Examples include certain transportation companies and public utility companies. If Debtor is not regulated by a governmental commission, insert an affirmative statement to that effect in the Disclosure Statement. If debtor is regulated, state this and Plan must comply with 11 U.S.C. § 1129(a)(6).

- 71b. Do not change the language in this section unless the judge to whom your case is assigned has different or additional language that judge wishes to use in this section and directs you to insert that judge's specific language.

72. State the expected tax consequences of the Plan. For example, tax ramifications may include such issues as capital gains on the sale of real property and operating loss-carry forwards.

**Note:** If the Proponent has no idea of what such consequences might be, then the document must disclose that fact and why it is so.

Few situations exist where the tax liability should not be considered because any tax liability would affect distribution to creditors. Tax considerations might affect the likelihood of continued successful post-confirmation operation of the Debtor and may also affect the feasibility analysis. For these reasons, the Proponent should know the tax consequences of the Plan.

73. Bar date for filing a proof of claim.

**Note:** In most bankruptcy cases it is necessary that a bar date for filing proof of claims and interests has passed before creditors and interest holders may vote on the plan. Knowing which claims and interests have been allowed will allow the Plan Proponent to easily determine who is entitled to vote. Also, without knowing the amount and nature of the claims against the estate, it is impossible to complete a precise liquidation analysis and difficult to determine whether the Plan is feasible.

If the claims bar date has not yet passed, the motion for order approving the disclosure statement should explain why the disclosure statement and plan are proposed now instead of after the claim bar date.

74. Classes that are impaired.

75. Classes that are unimpaired. (For cases filed after October 22, 1994 please note that the Bankruptcy Reform Act of 1994 deleted § 1124(3). Therefore, creditors who receive cash in full equal to their allowed claim by the effective date would be considered impaired under the Bankruptcy Reform Act of 1994).

76. Denominated as 507(a)(7) for bankruptcy cases filed before October 22, 1994.

77. Select one:  
(a) will  
(b) will not

77a. List class number of each impaired class which Plan Proponent will seek to cram Plan down on if class does not accept Plan.

78. List classes that are clearly not receiving the type of treatment provided for in section 1129(b)(1).

Also, in the "SUMMARY OF THE PLAN OF REORGANIZATION" section (section III.C. of the Disclosure Statement), after each class that is not receiving the type of treatment provided for in Code section 1129(b)(1), insert the following statement: "If this class does not vote to accept the Plan, the Proponent will not be allowed to cram the Plan down on this class and the Plan will not be confirmed".

79. Delete the preceding two sentences if (1) no unimpaired classes exist, or (2) the Plan does not discriminate unfairly and will give fair and equitable treatment to all impaired classes.

80. Insert the following reasons, if applicable:

a. The liquidation value of the "x" is less than its fair market value because \_\_\_\_\_ . (Note: Be



specific when justifying the difference between liquidation value and fair market value. State the basis for your justification.)

- b. In a chapter 7 case, a trustee is appointed and entitled to compensation from the bankruptcy estate in an amount not to exceed 25% of the first \$5,000 of all moneys disbursed, 10% on any amount over \$5,000 but less than \$50,000, 5% on any amount over \$50,000 but not in excess of \$1 million, and 3% on all amounts over \$1 million. In this case, the trustee's compensation is estimated to equal "x".
- c. A chapter 7 recovery is less because the Debtor is permitted to exempt a certain amount of the sales proceeds before unsecured creditors are paid anything. **(Note: Be specific when relying on Debtor's claimed exemptions. List each exempt property, the code section which entitles the Debtor to the claimed exemption, and the amount of each exemption.)**

**Note** If Debtor is a partnership then § 723(a) provides that the general partners of the partnership are liable for any deficiency of property of the estate to pay in full all allowed claims. Therefore, the Proponent must disclose the financial condition of the individual general partners from whom chapter 7 trustee could seek to collect if this was a Chapter 7 case.

- 81. In appropriate cases, this format may be supplemented, but not reduced.
- 82. If Debtor owns more than one piece of real property, list each real property and its value separately.
- 83. Divide "Balance for unsecured claims" by "Total amt of unsecured claims". Insert the result.
- 84. Divide the total amount proposed to be paid to unsecured claimants under the Plan by the "Total amt of unsecured claims". Insert the result.
- 85. Add or delete the rows to the table when necessary to provide a row for each class of claims or interest.
- 86. Description of claims in Class 1.
- 87. Description of claims in Class 2. -
- 88. Description of claims in Class 3.
- 89. Description of claims in Class 4. **(Note: Insert more rows in the table if the Plan contains more than 4 classes.)**
- 90. Explain sources of cash Debtor will have on Effective Date if Debtor does not currently have sufficient cash on hand to pay all claims that must be paid on Effective Date.
- 91. Total must match figure shown above as "Cash debtor will have on hand by Effective Date".
- 92. Put person or entity funds are being borrowed from.
- 93. Put how loan will be paid back (example, lender has agreed it will not be paid until all Plan payments are completed and then will be paid at \$\_\_\_\_ per month at \_\_\_\_% until paid

in full). If gift instead of borrowing, change "Borrowing" to "Gift" and state amount will never be paid back.

94. If the Plan is a liquidating plan or a plan that proposes to pay all claims on Effective Date, this section may not be applicable and may be deleted upon stating why this aspect of feasibility is not applicable to the Plan.
95. Total amount of Plan Payments to be made each payment interval.
96. Plan payment interval (e.g., monthly, yearly, quarterly).
97. Average cash flow per Plan payment interval, after paying operating expenses and post-confirmation taxes.
98. Plan payment interval.
99. The last Plan payment date.
100. Payment interval (e.g., monthly, yearly, quarterly).
101. Amount of actual average cash flow per Plan payment interval, after paying operating expenses and post-confirmation taxes, for the three years preceding the filing of this bankruptcy case.
102. Plan payment interval (e.g., monthly, yearly, quarterly).
103. Debtor's average cash flow per Plan payment interval, after paying operating expenses and post-confirmation taxes, during the bankruptcy case.
104. Select one:
  - (a) decrease costs
  - (b) increase costs
  - (c) decrease costs and increase income

105.

NOTE: If the Debtor is not entitled to a discharge pursuant to 11 U.S.C. 1141(d), change this heading to "NO DISCHARGE" and follow instruction #106

106. Choose one of the following:
  - (a) confirmation of the Plan
  - (b) payment in full of proposed plan payments to the unsecured creditors
  - (c) upon substantial confirmation of plan
  - (d) other. You must state what the other condition for or date of discharge is.

Alternatively, if debtor does not meet the test of 11 U.S.C. 1141(d)(3) for getting a discharge, then the debtor is not entitled to any discharge, and the whole paragraph under "Discharge" must be omitted and replaced with:

- (e) Debtor will not receive any discharge in this bankruptcy case because debtor does not meet the test

for receiving a discharge specified under  
11 U.S.C. § 1141(d)(3).

**Note** More evidence regarding feasibility of the Plan may be required if the Plan  
Proponent seeks discharge upon Plan confirmation

107. Proponent should provide a declaration from someone who has personal knowledge of Debtor's operations and assisted in preparing the Disclosure Statement. The declarant should attest to the truthfulness and accuracy of everything stated in the Disclosure Statement.
108. The exhibit should include the following information for all assets:
1. description of property (e.g., commercial/residential real property)
  2. fair market value
  3. basis for opinion of value (e.g. income/sales approach)
  4. qualifications of person rendering opinion
  5. any significant differences between an asset's value as listed in this exhibit and its value as stated in the Debtor's schedules should be explained in a footnote to this exhibit.

TOTAL ASSETS = \_\_\_\_\_

Proponent must describe each item of property with particularity and give a value for each item separately. If possible, Proponent should also provide a going concern value for the business as a whole so long as the foundation for that opinion is explained. For accounts receivable, the Proponent must explain the likelihood of collecting the accounts and for what amount. In addition, the debtor's status as a plaintiff in a lawsuit represents potential value to the estate. Although it may be difficult to estimate the exact value of a lawsuit, an effort must be made to present a low and high range of value and the foundation for such belief. The amount of cash on hand must also be disclosed, including, for any real property, any prepaid rent or security deposits paid by tenants and held by the Debtor.

109. List and attach actual financial statements for the three years preceding bankruptcy (e.g. balance sheets, cash flow statements, income and expense statements).

List and attach projected financial statements for the life of the Plan.

(Note: Income and expense statements should be organized at the payment interval rate. In other words, if the Plan proposes to make payments on a monthly interval, the historical and projected income and expense statements should be organized on a monthly basis unless the Judge directs otherwise.)

- 109a. Note that the Court can only confirm a plan which provides for assumption of executory contracts or unexpired leases if the plan proponent proves, as part of plan confirmation, that all elements of 11 U.S.C. § 365 governing assumption of executory contracts and unexpired leases are met -- including curing all defaults, paying all damages caused by defaults and providing that the party assuming the contract

has capacity to perform the remainder of the contract/lease. Each of these elements necessary for assumption must be proved by declarations or other

admissible evidence presented to the court by plan proponent as part of the plan confirmation process.

110. Description of leased property or asset, including address of real property, if applicable.
111. Actual pecuniary loss consists of damages other than lease payment default amount, if any.
112. Describe how the Debtor is assuring performance on the remaining obligation under the lease, e.g., addition of guarantor.
113. List cash in all accounts in the manner shown in Exhibit E.
114. Assets in inventory should be valued at the amount they can be sold for in an orderly liquidation.

If someone other than a qualified appraiser provides this value, then the basis for the non-appraiser's knowledge must be disclosed. If an appraiser, auctioneer, or other financial advisor is hired to determine this value, a report from the appraiser should be attached as an exhibit. The appraiser, auctioneer, or other financial advisor should be independent of the Debtor and should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset.

115. Office furniture, equipment and machinery should be valued at the amount they can be sold for in an orderly liquidation. Disclose whether the total liquidation value assumes sales items individually or by lot.

If someone other than a qualified appraiser, auctioneer, or other financial advisor provides this value, the basis for the non-appraiser's knowledge must be disclosed. If an appraiser, auctioneer, or other financial advisor is hired to determine this value, a report should be attached as an exhibit. The appraiser, auctioneer, or other financial advisor should be independent of the Debtor and should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset.

116. Provide an itemized list of assets and the corresponding value for each asset.

Automobiles should be valued at wholesale value as reported by the most recent "Kelley Blue Book." Unlisted transportation equipment should be valued by an independent appraiser. The appraisal report should be attached as an exhibit and the appraiser should submit a declaration attesting to his/her independence and qualifications as an expert for valuing this type of asset. If someone other than a qualified appraiser provides this value, the basis for the non-appraiser's knowledge must be disclosed.

117. Real property assets should be valued at the amount they can be sold for in an orderly liquidation. Provide an itemized list of real properties and the corresponding liquidation value for each property.

An appraiser or a real estate broker should be utilized to determine this value. A report from the appraiser should be attached as an exhibit. The appraiser should be independent of the Debtor and the appraiser should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset. If someone other than a qualified appraiser provides this value, the basis for the non-appraiser's knowledge must be disclosed.

118. Other assets should be valued at the amount they can be sold for in an orderly liquidation.

Other assets

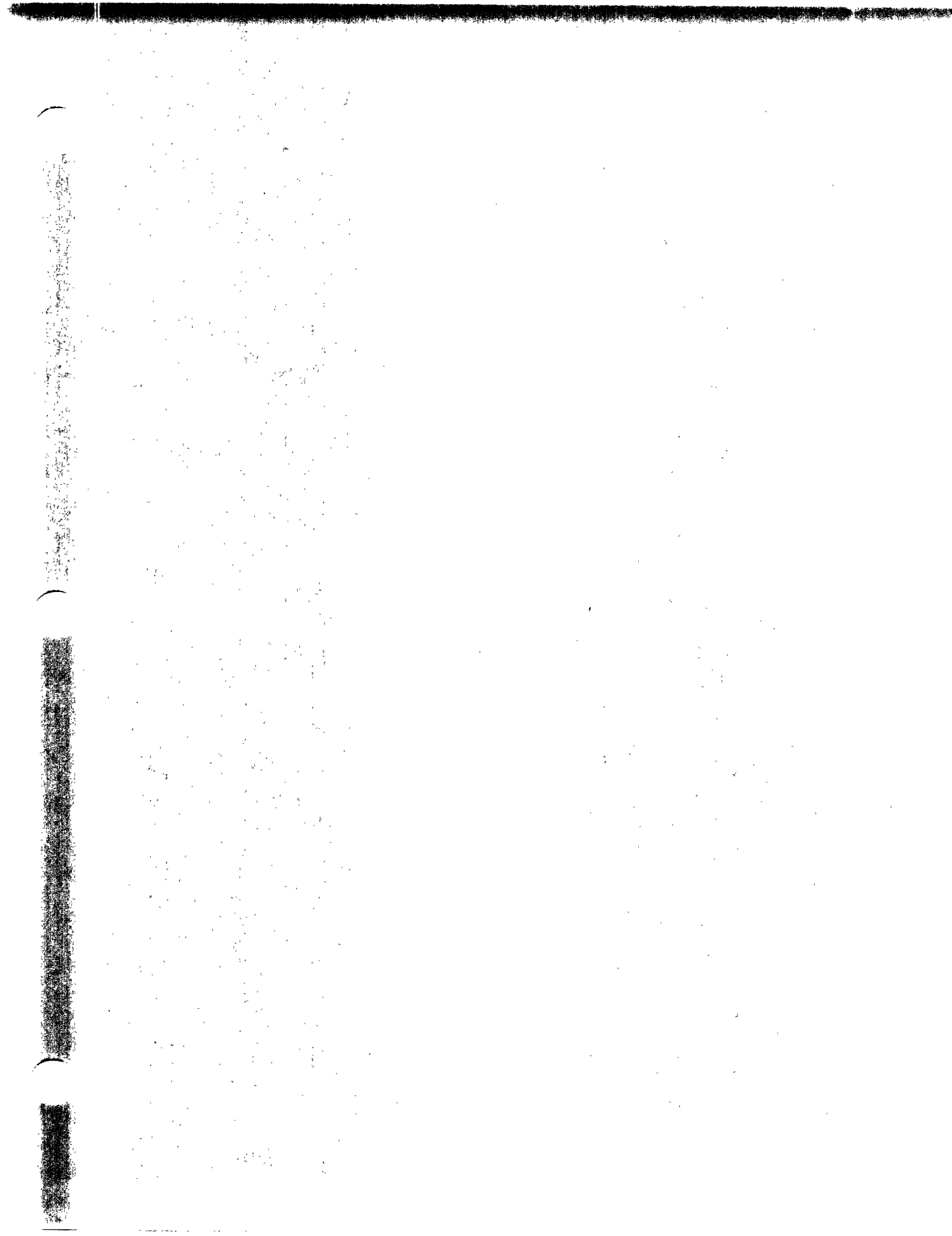
Provide an itemized list of assets and the corresponding liquidation value for each.

may include, but are not limited to, assets to which exemptions apply, antiques and collectibles, trademarks, stock, liquor licenses and other assets listed on the Debtor's Schedule B.

An appraiser, auctioneer, or other financial advisor should be hired to determine the liquidation value. A report from the appraiser, auctioneer, or other financial advisor should be attached as an exhibit. The appraiser, auctioneer, or other financial advisor should be independent of the Debtor and should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset. If someone other than a qualified appraiser provides this value, the basis for the non-appraiser's knowledge must be disclosed.

If a Chapter 7 Trustee could realize value from any of the avoidance actions, preference actions or other lawsuits which are assets of the Debtor, the value of such actions likely to be realized by the Chapter 7 Trustee must also be disclosed, as well as the assumptions underlying the value.

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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**



***CENTRAL DISTRICT OF CALIFORNIA  
APPROVED FORM FOR PRODUCING A  
CHAPTER 11 PLAN***

**WordPerfect 6.1 (Windows) Format**



1 NAME OF ATTORNEY - State Bar No. \_\_\_\_\_  
2 NAME OF ATTORNEY - State Bar No. \_\_\_\_\_  
3 NAME OF LAW FIRM  
4 Address  
5 City, State Zip Code  
6 Telephone ( ) -  
7 Attorneys for \_\_\_\_\_

7 UNITED STATES BANKRUPTCY COURT  
8 CENTRAL DISTRICT OF CALIFORNIA

9 In re  
10 NAME OF DEBTOR,  
11 Debtor

Bk. No. \_\_\_\_-\_\_\_\_-\_\_\_\_  
In a Case Under Chapter  
11 of the Bankruptcy Code  
(11 U.S.C. § 1101 et seq.)  
1 CHAPTER 11 2 PLAN

**Disclosure Statement Hearing<sup>3</sup>**

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Ctrm: {Insert Courtroom #} \_\_\_\_\_  
{Insert Full \_\_\_\_\_  
Court Address \_\_\_\_\_  
Here} \_\_\_\_\_

**Plan Confirmation Hearing**  
**See Disclosure Statement for**  
**Voting and Objecting**  
**Procedures**

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Ctrm: {Insert Courtroom #} \_\_\_\_\_  
{Insert Full \_\_\_\_\_  
Court Address \_\_\_\_\_  
Here} \_\_\_\_\_

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I.

INTRODUCTION

\_\_\_\_\_ <sup>4</sup> is the Debtor in a Chapter 11 bankruptcy case. On \_\_\_\_\_ <sup>5</sup>, \_\_\_\_\_ <sup>6</sup> commenced a bankruptcy case by filing \_\_\_\_\_ <sup>7</sup> Chapter 11 petition under the United States Bankruptcy Code ("Bankruptcy Code"), 11 U.S.C. § 101 et seq. This document is the Chapter 11 Plan ("Plan") proposed by \_\_\_\_\_ <sup>8</sup> ("Plan Proponent"). Sent to you in the same envelope as this document is the Disclosure Statement which has been approved by the Court, and which is provided to help you understand the Plan.

This is a \_\_\_\_\_ <sup>9</sup> plan. In other words, the Proponent seeks to accomplish payments under the Plan by \_\_\_\_\_ <sup>10</sup>. The Effective Date of the proposed Plan is \_\_\_\_\_ <sup>11</sup>.

II.

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. General Overview

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes according to their right to priority of payments as provided in the Bankruptcy Code. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive under the Plan.

B. Unclassified Claims

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired

1 and they do not vote on the Plan because they are automatically  
2 entitled to specific treatment provided for them in the  
3 Bankruptcy Code. As such, the Proponent has not placed the  
4 following claims in a class. The treatment of these claims is  
5 provided below.

6 **1. Administrative Expenses**

7 Administrative expenses are claims for costs or expenses of  
8 administering the Debtor's Chapter 11 case which are allowed  
9 under Code Section 507(a)(1). The Code requires that all  
10 administrative claims be paid on the Effective Date of the Plan,  
11 unless a particular claimant agrees to a different treatment.<sup>12</sup>

12 The following chart lists all of the Debtor's § 507(a)(1)  
13 administrative claims and their treatment under this Plan.<sup>13</sup>

14

Name	Amount Owed	Treatment
Clerk's Office Fees		Paid in full on Effective Date
Office of the U.S. Trustee Fees		Paid in full on Effective Date
TOTAL		

15  
16  
17  
18

19 Court Approval of Fees Required:

20 The Court must approve all professional fees listed in this  
21 chart. For all fees except Clerk's Office fees and U.S. Trustee's  
22 fees, the professional in question must file and serve a properly  
23 noticed fee application and the Court must rule on the  
24 application. Only the amount of fees allowed by the Court will  
25 be required to be paid under this Plan.

26 **2. Priority Tax Claims**

27 Priority tax claims are certain unsecured income, employment  
28 and other taxes described by Code Section 507(a)(8)<sup>14</sup>. The Code

1 requires that each holder of such a 507(a)(8) priority tax claim  
 2 receive the present value of such claim in deferred cash  
 3 payments, over a period not exceeding six years form the date of  
 4 the assessment of such tax.

5 The following chart lists all of the Debtor's Section  
 6 507(a)(8)<sup>15</sup> priority tax claims and their treatment under this  
 7 Plan.

Description	Amount Owed	Treatment <sup>16</sup>
● Name = ● Type of tax = ● Date tax assessed =		● Pymt interval <sup>17</sup> = ● Pymt amt/interval <sup>18</sup> = ● Begin date <sup>19</sup> = ● End date <sup>20</sup> = ● Interest Rate % <sup>21</sup> = = \$ ● Total Payout Amount <sup>22</sup> __ %
● Name = ● Type of tax = ● Date tax assessed =		● Pymt interval = ● Pymt amt/interval = ● Begin date = ● End date = ● Interest Rate % = ● Total Payout Amount % = \$

17 **C. Classified Claims and Interests**

18 **1. Classes of Secured Claims**

19 Secured claims are claims secured by liens on property of  
 20 the estate. The following chart lists all classes containing  
 21 Debtor's secured pre-petition claims and their treatment under  
 22 this Plan<sup>23</sup>:

CLASS#	DESCRIPTION	INSIDERS (Y/N)	IMPAIRED (Y/N)	TREATMENT
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =		23a.	● Pymt interval = ● Pymt amt/interval = ● Balloon pymt <sup>24</sup> = ● Begin date = ● End date = ● Interest rate % = ● Total payout <sup>24a</sup> ___ % = \$ ● Treatment of Lien =
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =			● Pymt interval = ● Pymt amt/interval = ● Balloon pymt = ● Begin date = ● End date = ● Interest rate % = ● Total payout % = \$ ● Treatment of Lien =

## 2. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Code Sections 507(a)(3), (4), (5), (6), and (7)<sup>25</sup> are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of

1 such claims.

2 The following chart lists all classes containing Debtor's  
3 507(a) (3), (4), (5), (6), and (7)<sup>26</sup> priority unsecured claims  
4 and their treatment under this Plan<sup>27</sup> :

CLASS#	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	Priority unsecured claim pursuant to _____ ● Total amt of claims = _____		● Paid in full in cash on Effective Date <sup>30</sup>
	Priority unsecured claim pursuant to _____ ● Total amt of claims = _____		● Paid in full in cash on Effective Date

### 11 3. Class of General Unsecured Claims

12 General unsecured claims are unsecured claims not entitled  
13 to priority under Code Section 507(a). The following chart  
14 identifies this Plan's treatment of the class containing all of  
15 Debtor's general unsecured claims:

CLASS#	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	General unsecured claims ● Total amt of claims =	33	● Pymt interval = ● Pymt amt/interval = ● Begin date = ● End date = ● Interest rate % = ● Total payout <sup>33a</sup> ___% = \$

21 33b.

22 33c.

### 23 4. Class(es) of Interest Holders

24 Interest holders are the parties who hold ownership interest  
25 (i.e., equity interest) in the Debtor. If the Debtor is a  
26 corporation, entities holding preferred or common stock in the  
27 Debtor are interest holders. If the Debtor is a partnership, the  
28 interest holders include both general and limited partners. If



1 the Debtor is an individual, the Debtor is the interest holder.  
2 The following chart identifies this Plan's treatment of the  
3 class<sup>34</sup> of interest holders:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
	Interest holders	35	

7 **D. Means of Performing the Plan**

8 **1. Funding for the Plan**

9 The Plan will be funded by the following: 36.

10 **2. Post-confirmation Management**

11 37

12 **3. Disbursing Agent**

13 38 shall act as the disbursing agent for the  
14 purpose of making all distributions provided for under the Plan.

15 The Disbursing Agent shall serve 39 bond and shall

16 receive 40 for distribution services rendered and

17 expenses incurred pursuant to the Plan.<sup>41</sup>

18  
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21 **III.**

22 **TREATMENT OF MISCELLANEOUS ITEMS**

23 **A. Executory Contracts and Unexpired Leases**

24 **1. Assumptions**

25 The following are the unexpired leases and executory  
26 contracts to be assumed as obligations of the reorganized Debtor  
27 under this Plan (see Exhibit A for more detailed information on  
28 unexpired leases to be assumed and Exhibit B for more detailed

1 information on executory contracts to be assumed):

2 42

3 On the Effective Date, each of the unexpired leases and  
4 executory contracts listed above shall be assumed as obligations  
5 of the reorganized Debtor. The Order of the Court confirming the  
6 Plan shall constitute an Order approving the assumption of each  
7 lease and contract listed above. If you are a party to a lease  
8 or contract to be assumed and you object to the assumption of  
9 your lease or contract, you must file and serve your objection to  
10 the Plan within the deadline for objecting to the confirmation of  
11 the Plan. See Section {I.B.3.} of the Disclosure Statement  
12 describing this Plan for the specific date.

13 **2. Rejections**

14 On the Effective Date, the following executory contracts and  
15 unexpired leases will be rejected:

16 43

17 The order confirming the Plan shall constitute an order  
18 approving the rejection of the lease or contract. If you are a  
19 party to a contract or lease to be rejected and you object to the  
20 rejection of your contract or lease, you must file and serve your  
21 objection to the Plan within the deadline for objecting to the  
22 confirmation of the Plan. See Disclosure Statement for the  
23 specific date.

24 THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM  
25 ARISING FROM THE REJECTION OF A LEASE OR CONTRACT IS 44.

26 Any claim based on the rejection of an executory contract or  
27 unexpired lease will be barred if the proof of claim is not  
28 timely filed, unless the Court later orders otherwise.

1 **B. Changes in Rates Subject to Regulatory Commission Approval**

2 This Debtor <sup>45</sup> subject to governmental regulatory  
3 commission approval of its rates<sup>45a</sup>.

4 **C. Retention of Jurisdiction.**

5 The Court will retain jurisdiction to the extent provided  
6 by law.<sup>46</sup>

7 **IV.**

8 **EFFECT OF CONFIRMATION OF PLAN**

9 **A. Discharge<sup>47</sup>**

10 This Plan provides that upon <sup>48</sup>, Debtor shall be  
11 discharged of liability for payment of debts incurred before  
12 confirmation of the Plan, to the extent specified in 11 U.S.C.S  
13 1141. However, any liability imposed by the Plan will not be  
14 discharged.  
15

16 **B. Revesting of Property in the Debtor**

17 Except as provided in Section {IV.E.}, and except as  
18 provided elsewhere in the Plan, the confirmation of the Plan  
19 revests all of the property of the estate in the Debtor.  
20

21 **C. Modification of Plan**

22 The Proponent of the Plan may modify the Plan at any time  
23 before confirmation. However, the Court may require a new  
24 disclosure statement and/or revoting on the Plan if proponent  
25 modifies the plan before confirmation.

26 The Proponent of the Plan may also seek to modify the Plan  
27 at any time after confirmation so long as (1) the Plan has not  
28 been substantially consummated and (2) if the Court authorizes

1 the proposed modifications after notice and a hearing.

2 **D. Post-Confirmation Status Report**

3 Within 120 days of the entry of the order confirming the  
4 Plan, Plan Proponent shall file a status report with the Court  
5 explaining what progress has been made toward consummation of the  
6 confirmed Plan. The status report shall be served on the United  
7 States Trustee, the twenty largest unsecured creditors, and those  
8 parties who have requested special notice. Further status  
9 reports shall be filed every 120 days and served on the same  
10 entities.

11 **E. Post-Confirmation Conversion/Dismissal**

12 A creditor or party in interest may bring a motion to  
13 convert or dismiss the case under § 1112(b), after the Plan is  
14 confirmed, if there is a default in performing the Plan. If the  
15 Court orders the case converted to Chapter 7 after the Plan is  
16 confirmed, then all property that had been property of the  
17 Chapter 11 estate, and that has not been disbursed pursuant to  
18 the Plan, will revert in the Chapter 7 estate, and the automatic  
19 stay will be reimposed upon the reverted property only to the  
20 extent that relief from stay was not previously granted by the  
21 Court during this case.

22 **F. Final Decree**

23 Once the estate has been fully administered as referred to  
24 in Bankruptcy Rule 3022, the Plan Proponent, or other party as  
25 the Court shall designate in the Plan Confirmation Order, shall  
26 file a motion with the Court to obtain a final decree to close  
27 the case.

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Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Party (optional unless party is pro se)

\_\_\_\_\_  
Name of Plan Proponent

\_\_\_\_\_  
Signature of Attorney for Plan Proponent

\_\_\_\_\_  
Name of Attorney for Plan Proponent

\_\_\_\_\_  
Name of Law Firm for Plan Proponent

**EXHIBIT A - UNEXPIRED LEASES TO BE ASSUMED**

<u>LEASES</u>	<u>ARREARS/DMGS</u>	<u>METHODS OF CURE</u>
<ul style="list-style-type: none"> <li>● Description = <sup>1</sup></li> <li>● Lessor's name =</li> <li>● Lessee's name =</li> <li>● Expiration date =</li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss<sup>2</sup> =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring future performance<sup>3</sup> =</li> </ul>
<ul style="list-style-type: none"> <li>● Description =</li> <li>● Lessor's name =</li> <li>● Lessee's name =</li> <li>● Expiration date =</li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring future performance =</li> </ul>
<ul style="list-style-type: none"> <li>● Description =</li> <li>● Lessor's name =</li> <li>● Lessee's name =</li> <li>● Expiration date =</li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring future performance =</li> </ul>

**EXHIBIT B - EXECUTORY CONTRACTS TO BE ASSUMED**

<b><u>CONTRACT</u></b>	<b><u>DEFAULT/DMGS</u></b>	<b><u>METHODS OF CURE</u></b>
<ul style="list-style-type: none"> <li>● Contract description =</li> <li>● Contracting parties =               <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring performance =</li> </ul>
<ul style="list-style-type: none"> <li>● Contract description =</li> <li>● Contracting parties =               <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring performance =</li> </ul>
<ul style="list-style-type: none"> <li>● Contract description =</li> <li>● Contracting parties =               <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>● Default amt =</li> <li>● Actual pecuniary loss =</li> </ul>	<ul style="list-style-type: none"> <li>● Method of curing default &amp; loss =</li> <li>● Means of assuring performance =</li> </ul>

## CROSS REFERENCE KEY

### I. Overview to Cross Reference Key

This Chapter 11 Plan is a "fill in the blank form."

The user only fills in the blanks. DO NOT CHANGE THE LANGUAGE IN THE REST OF THE FORM, EXCEPT IN THE FEW PLACES WHERE THE INSTRUCTIONS EXPRESSLY TELL YOU THAT YOU MAY OMIT A SENTENCE OR CLASS IF IT IS NOT NEEDED FOR YOUR CASE.

As you read this Form, you will notice blanks with numbers in them, and also numbers at the end of certain sentences or phrases.

- \* Here is an example of a blank with a number:

1  
\_\_\_\_\_

- \* Here is an example of a sentence with a number:

This is an example.<sup>2</sup>

These numbers refer to the numbered instructions in this "Cross Reference Key." When you encounter one of these numbers, in the form itself, you need to refer to the "Cross Reference Key," and read the applicable numbered instruction. In our examples above, instructions number 1 and 2 would be applicable instructions. Follow the instructions to fill in the needed information.

#### **a. Why the Instructions in this Cross Reference Key are in Two Different Types of Print**

When you read the numbered instructions in the "Cross Reference Key" you will see that these instructions are printed in two different types of print, Courier New 12 pt. and Helvetica 10 pt.

Instructions in Courier New 12 pt. font (the font you are currently reading), mean that you are to simply provide the information requested in the endnote and insert it in the corresponding blank. For example, if instruction number 1 states "Debtor's name", then you should insert the Debtor's name in blank number 1.

Instructions in Helvetica 10 pt. font may contain explanations on how to use the disclosure statement form, explanations of the law, or examples of what should be inserted in a



particular blank. Read and follow these instructions also.

**II. Key Notes 1 through 48**

1. Name of party proposing the Plan (e.g. Debtor's, Creditor Committee's, etc.)
2. Put which version of the Plan this is, i.e., Original, First Amended, Second Amended, etc. Do not use the term "modified" when describing Plans subsequent to the Original Plan unless the Court directs you to do so.
3. Delete Disclosure Statement Hearing information when the Disclosure Statement has been approved and the upcoming hearing is the Plan Confirmation hearing.
4. Debtor's name.
5. Petition date.
6. Insert the applicable information, depending on who filed the petition:
  - (a) Debtor's name
  - (b) Names of the petitioning creditors
7. Insert one of the following:
  - (a) a voluntary
  - (b) an involuntary
8. Plan proponent's name.
9. Insert the applicable phrases:
  - (a) liquidating
  - (b) reorganizing
  - (c) combined liquidating and reorganizing
10. Provide a brief summary of how Proponent proposes to fund the Plan.
11. Effective date of the Plan.
12. Holders of administrative expenses under § 507(b) are paid before other administrative expenses. If any such expenses must be paid, so state.
13. For each chart, add more rows to the tables as necessary.
14. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.
15. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.
16. Section 507(a)(7) priority tax claims must be fully paid within 6 years from the date of assessment.
17. Identify the proposed payment interval (e.g., monthly, quarterly, yearly).
18. Amount of payments per payment interval.

19. The date Plan payments will commence.
  20. The date Plan payments will end.
  21. The interest rate paid to a Section 507 (a)(7) priority tax claimant should be consistent with the rate provided by 26 U.S.C. § 6621.
  22. Total percentage of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to the claimant over life of the plan.
  23. Each secured claim should be placed in a separate class, unless the secured claims have identical collateral, priority, and terms of indebtedness. Begin numbering the classes with the number "1". The subsequent class should be numbered with the number "2". Do use subclass, e.g., 1.1, 1.2, etc.
- not
- 23a. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."  
  
If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."
  24. Balloon payment amount, if any.
  - 24a. Total percentage of claim proposed to be paid to claimant over the life of the plan plus total dollar amount to be paid to claimant over life of plan.
  25. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.
  26. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.
  27. Each of the four categories of priority unsecured claims should be placed in a separate class. A separate class is not necessary for a particular category of priority unsecured claims if no claim exist in that category.
  28. Insert one of the following:
    - (a) 11 U.S.C. § 507(a)(3)
    - (b) 11 U.S.C. § 507(a)(4)
    - (c) 11 U.S.C. § 507(a)(5)
    - (d) 11 U.S.C. § 507(a)(6)
  29. Total amount of claims in this class.
  30. If the Plan does not provide for cash payment in full on Effective Date, Plan Proponent must be able to prove that this class has accepted deferred payments pursuant to 11

U.S.C § 1129(a)(9) before the Plan can be confirmed.

31. Insert one of the following:
- (a) 11 U.S.C. § 507(a)(3)
  - (b) 11 U.S.C. § 507(a)(4)
  - (c) 11 U.S.C. § 507(a)(5)
  - (d) 11 U.S.C. § 507(a)(6)
32. Total amount of claims in this class.
33. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."
- If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."
- 33a. Total percentage of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over life of the plan.
- 33b. If you have a convenience class allowed under 1122(b), then add as an additional unsecured class here, and at page 5, line 17 of the Plan form: ", except general unsecured claims placed in the convenience class described hereafter."
- 33c. If you have an additional general unsecured class(es), add each here, with a separate class number. The norm is to have a single general unsecured class, or where appropriate, to have a general unsecured class plus a convenience general unsecured class (as described in footnote 33a). However, there are a few limited circumstances where it is permissible to have additional general unsecured classes, primarily where one or more general unsecured creditors are agreeing to receive worse treatment than is being given to the rest of the general unsecured creditors, then the creditors agreeing to be treated worse can be placed in a separate general unsecured class. Do not use more than one general unsecured class unless you can justify doing so under applicable law.
34. If there is more than one class of equity holders (e.g. preferred stock and common stock), put each in a separate class and change "class" to "classes."

35. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

36. Describe the source of funding for this Plan. Be specific.

37. For each entity who will be involved in post-confirmation management, state or explain the following:

- (a) Identity
- (b) Post-confirmation managerial duties
- (c) Amount of compensation paid pre-petition and to be paid post-confirmation
- (d) Description of expertise

38. Name and identity of disbursing agent.

39. Select one:

- (a) with
- (b) without

40. Explain whether Disbursing Agent will be compensated or reimbursed for services and expenses rendered and incurred in connection with making distributions under the

Plan.

If Disbursing Agent will compensated or reimbursed, specify the exact amount and the interval of payment.

**NOTE: If disbursing agent will be compensated or reimbursed, be sure to account for these additional costs when evaluating feasibility of the Plan.**

41. If the Disbursing Agent will be making distributions from a fund created under the Plan, the and Disclosure Statement should provide that the fund will be maintained in a segregated interest bearing account.

42. List the unexpired leases and executory contracts in sufficient detail to enable the reader to determine which Leases and contracts will be assumed. This list will enable a party to a lease or contract to quickly ascertain whether he or she needs to refer to Exhibit C or D.

Exhibits C and D are intended to provide detailed information on each Lease or contract to be assumed so that the court and any party to a particular Lease or contract can decide whether assumption is proper and desirable.

43. List all executory contracts and unexpired Leases to be rejected in sufficient detail to enable a reader to quickly ascertain whether any particular Lease or contract will be rejected.

44. Deadline for filing proof of claim based on claim arising from rejection of contract or lease.  
(Note: Typically, this date will be 30 days from Effective Date.)
45. Select one:  
(a) is  
(b) is not
- 45a. See 11 U.S.C. § 1129(a)(6). This section is only applicable if Debtor's business is regulated by a governmental regulatory commission. Examples include certain transportation companies and public utility companies. If Debtor is not regulated by a governmental commission, insert an affirmative statement to that effect in the Disclosure Statement. If debtor is regulated, state this and Plan must comply with 11 U.S.C. § 1129(a)(6).
46. Do not change the language in this section unless the judge to whom your case is assigned has different or additional language that judge wishes to use in this section and directs you to insert that judge's specific language.
47. **NOTE: If the Debtor is not entitled to a discharge pursuant to 11 U.S.C. 1141(d), change this heading to "NO DISCHARGE." Read and follow instruction #48.**
48. Choose one of the following:  
(a) confirmation of the Plan  
(b) payment in full of proposed plan payments to the unsecured creditors  
(c) substantial consummation of plan  
(d) other. You must state what the other condition for or date of discharge is.

Alternatively, if debtor does not meet the test of 11 U.S.C. 1141(d)(3) for getting a discharge, then the debtor is not entitled to any discharge, and the whole paragraph under "Discharge" must be omitted and replaced with:

- (e) Debtor will not receive any discharge in this case because debtor does not meet the test for receiving a discharge specified under 11 U.S.C. § 1141(d)(3).

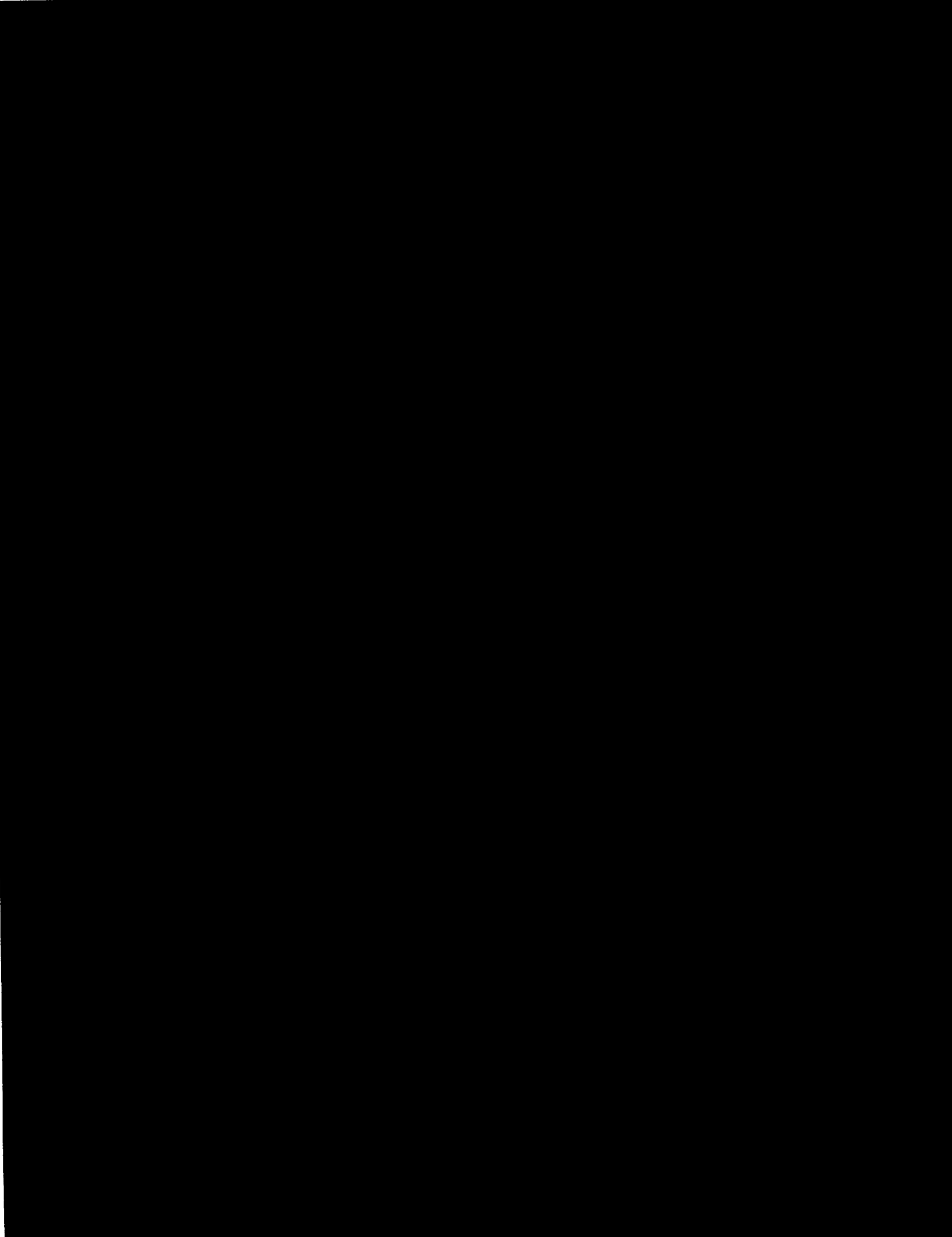
**NOTE: More evidence regarding feasibility of the Plan may be required if the Plan Proponent seeks discharge upon Plan confirmation.**

**Instructions Relating to Exhibits A & B**

1. Description of leased property or asset, including address of real property, if applicable.
2. Actual pecuniary loss consists of damages other than lease payment default, if any.
3. Describe how the Debtor is assuring performance on the remaining obligation under the lease, e.g., addition of guarantor.

REVISION DATE OF WordPerfect 6.1 (Windows) Version:  
December 24, 1996.







**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

In re

Case No.:

Debtor(s).

**MONTHLY REPORT OF  
OPERATIONS (Local Rule No. 215)**

MONTH OF \_\_\_\_\_, 19\_\_

Debtor-in-possession hereby submits its Monthly Report on the **Cash Basis** of accounting.

**CASH BASIS**

Attached hereto are the following schedules:

- A. Cash Receipts and Cash Disbursements
- B. Summary of Receipts and Disbursements to Date
- C. Balance in Debtor-in-Possession Account
- D. Balance in Tax Account
- E. Balance in \_\_\_\_\_ Account
- F. Post Petition Debts
- G. Accounts Receivable Balance
- H. Inventory Balance
- I. Federal and State Taxes
- J. Monthly Operating Statement Questionnaire
- K. Other Appropriate Schedules

**Note: Schedules A, B, C, F, I & J MUST be filed.**

Attach Schedules D, E, G, H & K if the are maintained in the ordinary course of business.

EDC 3-462 (Cash) (Rev. 3/95)

**SCHEDULE A  
CASH RECEIPTS AND DISBURSEMENTS**

**RECEIPTS**

Cash Sales	\$ _____
Rents Collected	_____
Accounts Receivable collected	_____
Other Receipts (describe):	_____
	_____
<b>TOTAL RECEIPTS</b>	<b>\$ _____</b>

**DISBURSEMENTS**

Payments to vendors for merchandise	\$ _____
Net payroll paid	_____
Payroll taxes paid/deposited to tax account:	
Employee withholdings	_____
Employer portion	_____
Sales taxes paid/deposited to tax account	_____
Other Disbursements (describe):	
a.	_____
b.	_____
c.	_____
d.	_____
f.	_____
g.	_____
h.	_____
i.	_____
j.	_____
k.	_____
Miscellaneous (attach listing)	_____
Living allowance or draw	_____
2.	TOTAL DISBURSEMENTS \$ _____
3.	Receipts OVER or (UNDER) Disbursements \$ _____

EDC 3-462 (Rev. 3/95)

**SCHEDULE B**  
**SUMMARY OF CASH TRANSACTIONS**  
**SINCE FILING PETITION**

- |    |  |          |
|----|--|----------|
| 4. | Total receipts to date<br>(prior month Schedule B line 4 plus<br>current month Schedule A line 1)      | \$ _____ |
| 5. | Total disbursements to date<br>(prior month Schedule B line 5 plus<br>current month Schedule A line 2) | _____    |
| 6. | Net receipts OVER (UNDER) disbursements  | \$ _____ |

**SCHEDULE C**  
**BALANCE IN DEBTOR-IN-POSSESSION ACCOUNT**

Balance at end of last month	\$ _____
Net transactions for this month (Line 3 - Schedule A)	_____
Balance at end of this month	\$ _____

**SCHEDULE D  
BALANCE IN TAX ACCOUNT**

Balance at end of last month	\$ _____
Add deposits from general account	_____
Subtotal	_____
Deduct payments to taxing agencies	_____
Balance at end of this month	\$ _____

**SCHEDULE E  
BALANCE IN \_\_\_\_\_ ACCOUNT**

Balance at end of last month	\$ _____
Add deposits from general account	_____
Subtotal	_____
Deduct disbursements	_____
Balance at end of this month	\$ _____

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**SCHEDULE F  
POST PETITION DEBTS**

Balance at end of last month	\$ _____
Add debts incurred this month	_____
Subtotal	_____
Deduct payments made this month on this balance	_____
Subtotal	_____
Adjustments (Explain on separate sheet)	_____
Balance at end of this month (Attach listing)	<u>\$ _____</u>

**SCHEDULE G  
ACCOUNTS RECEIVABLE BALANCE**

Balance of receivables at end of last month	\$ _____
Add new receivables for this month	_____
Subtotal	_____
Deduct accounts collected (from Schedule A)	_____
Subtotal	_____
Adjustments (Explain on separate sheet)	_____
Balance at end of this month	<u>\$ _____</u>

**SCHEDULE H  
INVENTORY AND COST OF GOODS SOLD**

Inventory balance at end of last month	\$ _____
Add merchandise purchases	_____
Total inventory available	_____
Adjustments (Explain on separate sheet)	_____
Less inventory balance at end of month	_____
Total cost of goods sold	<u>\$ _____</u>

**SCHEDULE I  
FEDERAL AND STATE TAXES**

1. Tax balance at end of last month \$ \_\_\_\_\_

**PAYROLL TAX LIABILITY THIS MONTH:**

Period: ( ) Weekly ( ) Biweekly  
( ) Semimonthly ( ) Monthly

Federal Employer ID # \_\_\_\_\_

EDD ID # \_\_\_\_\_

**Withholdings:**

Federal Income Tax	\$ _____
FICA Withheld	_____
State Income Tax	_____
State Disability	_____

**Employer tax liability:**

FICA	_____
Federal unemployment	_____
State unemployment	_____

2. Total payroll taxes due \_\_\_\_\_

**SALES AND OTHER TAX LIABILITY THIS MONTH:**

SBE ID # \_\_\_\_\_

Sales tax liability	\$ _____
Other (excise, city, business, etc.)	_____
	_____

3. Total sales and other taxes due \_\_\_\_\_

**SUMMARY OF TAX PAYMENTS MADE THIS MONTH:**

Payee	Date	Bank acct. #	Ck. #	
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

4. Total tax payments made \_\_\_\_\_

5. Tax balance at end of this month \$ \_\_\_\_\_  
(add lines 1-3 less line 4)

**SCHEDULE J  
MONTHLY OPERATING STATEMENT QUESTIONNAIRE**

- |   | YES                      | NO                       | N/A                      |
|---|--------------------------|--------------------------|--------------------------|
| 1. Copies of checkbooks or receipts and disbursements listing attached:   |                          |                          |                          |
| Debtor-in-possession account  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Tax account   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other account   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Listing of unpaid postpetition debts (include unpaid professional fees & interest owed)  |                          | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have any payments been made to secured creditors or lessors? (If yes, attach listing of payments made)   | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| 4. (a) Have any payments been made to officers, shareholders, insiders, relatives or professionals? (If yes, attach listing of payments made)   | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| (b) Were these payments approved by the court?  |                          | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. (a) Have any payments been made on prepetition debts? (If yes - attach listing of payments made)   |                          | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Were these payments approved by the court?  |                          | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Do you carry insurance coverage of any kind? (attach copies of declaration pages)<br><b>NOTE:</b> If you have previously submitted copies of declaration pages & there have been no changes in coverage, initial here. _____<br>(no copies needed) |                          | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have U.S. Trustee quarterly fees been paid (If yes - attach listing of payments made) (If no - attach explanation)   | <input type="checkbox"/> | <input type="checkbox"/> |                          |

**DECLARATION OF DEBTOR**

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON \_\_\_\_\_ (Date) \_\_\_\_\_ (Signature) DEBTOR-IN-POSSESSION

I have reviewed the Monthly Report of Operations and, after making reasonable inquiry, believe that the information is true and correct.

\_\_\_\_\_  
(Signature of Preparer)  
(Attorney or Accountant)

\_\_\_\_\_  
(Date)



**MONTHLY OPERATING REPORT  
INSTRUCTION SHEET**

1. **Cover Sheet**

- a. Enter the case name, case number, month of report on the appropriate cover sheet (cash basis or accrual basis).
- b. Place a check mark in each box for which a schedule is filed.

2. **Schedule A**

- a. Complete this schedule for all receipts and cash disbursements for the month.
- b. If additional lines are needed for listing receipts or disbursements attach additional pages.

3. **Schedule B**

- a. This schedule must reflect all receipts and disbursements since filing the petition (cumulative).
- b. Total receipts = this line from last month + Schedule A, total receipts.
- c. Total disbursements = this line from last month + Schedule A, total disbursements.

4. **Schedule C**

This schedule must reflect the balance in the debtor-in-possession account (or general account). This balance must equal the balance on Schedule B, Line 6, plus any beginning bank balance at the time the bankruptcy was filed.

5. **Schedule D**

This schedule must reflect the balance in the tax account, if you are required to have one.

6. **Schedule E**

This schedule must reflect the balance in any other account you maintain. The number of cash accounts held should be kept to a minimum, mainly the debtor-in-possession account and tax and/or cash collateral accounts, if required. Any account required by court order should also be included.

7. **Schedule F**

This schedule must reflect all debts incurred and not paid since the date of filing the petition. Do not include any debts owed prior to filing the petition.

8. **Schedule I**

- a. This schedule must reflect all transactions occurring for the month for payroll and sales taxes.
- b. The first section of the form lists amounts owed for both employee payroll tax withholdings and the employer's portion for payroll taxes.
- c. The second section of the form lists all amounts owed for sales and other business taxes.
- d. The third section of the form lists all payments made during the month for both payroll and sales taxes.
- e. To compute the tax balance at the end of the month, add the balance from last month (line 1) plus payroll taxes due (line 2) plus sales taxes due (line 3) and subtract all payments made (line 4)

9. **Schedule J**

- a. This schedule is a checklist of items that must be included with the basic monthly report of operations.
- b. Copies of checkbooks (or cash receipts & disbursements listings) must be attached for all bank accounts. All copies attached should be legible.

- c. A listing of unpaid post petition debts must be attached, if applicable. The listing must be in the following form and the total of the listing must agree with the ending balance for Schedule F.

Date Incurred	Vendor	Description	Amount
---------------	--------	-------------	--------

- d. If payments have been made to secured creditors or lessors during the month, attach a listing which includes the following information:

Payee name/address  
Payment amount  
Payment period (weekly, month, annual)  
Date of last payment

- e. If post petition payments to secured creditors are in arrears, list the number of payment missed and the total amount in arrears.

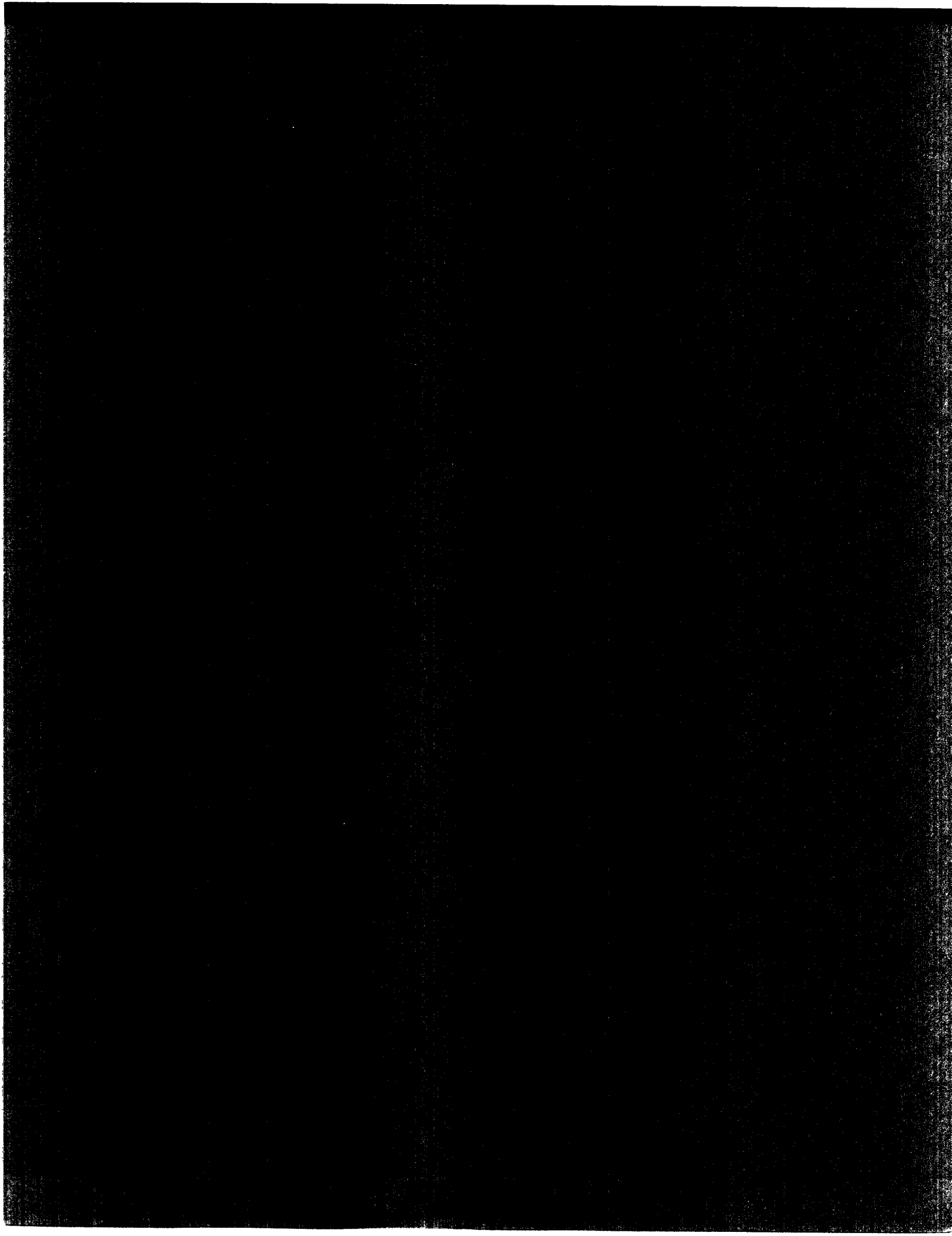
- f. If payments have been made to officers, insiders, shareholders, relatives or professionals during the month, attach a listing which includes the following information:

Payee name  
Date of payment  
Payment amount  
Basis of payment (reason)

- g. If payments have been made on prepetition debts during the month, attach a listing which includes the following information:

Payee name  
Date of payment  
Payment amount  
Basis of payment (reason)

- h. If the U.S. Trustee quarterly fees were paid during the month of this report, include a listing of the date, amount and method of payment.



**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

In re

)  
)  
)  
)  
)  
)  
)

Case No.

Debtor(s).  
\_\_\_\_\_ )

**MONTHLY REPORT OF  
OPERATIONS (Local Rule No. 215)**

**MONTH ENDING \_\_\_\_\_, 19\_\_**

Debtor-in-possession hereby submits its Monthly Report on the **Accrual Basis** of accounting.

**ACCRUAL BASIS**

Attached hereto are the following schedules:

- |    |  |                          |                          |
|----|--|--------------------------|--------------------------|
| A. | Cash Receipts and Cash Disbursements               | <input type="checkbox"/> |                          |
| I. | Federal and State Taxes                            |                          | <input type="checkbox"/> |
| J. | Monthly Operating Statement Questionnaire          | <input type="checkbox"/> |                          |
| K. | Other Appropriate Schedules                        | <input type="checkbox"/> |                          |
|    | Balance Sheet                                      | <input type="checkbox"/> |                          |
|    | Income Statement                                   | <input type="checkbox"/> |                          |
|    | Schedules of Account Receivable/Post-Petition Debt | <input type="checkbox"/> |                          |

**Note: The Balance Sheet, Income Statement and Schedules I and J MUST be filed.**

**Schedule A MUST be filed.**

A Statement of Cash Flows may be substituted for Schedule A.

Schedule K as appropriate

**SCHEDULE A  
CASH RECEIPTS AND DISBURSEMENTS**

**RECEIPTS**

Cash Sales		\$ _____
Rents Collected		_____
Accounts Receivable collected		_____
Other Receipts (describe):		_____
		_____
		_____
<b>TOTAL RECEIPTS</b>		<b>\$ _____</b>

**DISBURSEMENTS**

Payments to vendors for merchandise		\$ _____
Net payroll paid		_____
Payroll taxes paid/deposited to tax account:		
Employee withholdings		_____
Employer portion		_____
Sales taxes paid/deposited to tax account		_____
Other Disbursements (describe):		
a.		_____
b.		_____
c.		_____
d.		_____
f.		_____
g.		_____
h.		_____
i.		_____
j.		_____
k.		_____
Miscellaneous (attach listing)		_____
Living allowance or draw		_____
2.	<b>TOTAL DISBURSEMENTS</b>	<b>\$ _____</b>
3.	Receipts OVER or (UNDER) Disbursements	<b>\$ _____</b>

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**SCHEDULE B**  
**SUMMARY OF CASH TRANSACTIONS**  
**SINCE FILING PETITION**

4.	Total receipts to date (prior month Schedule B line 4 plus current month Schedule A line 1)	\$ _____
5.	Total disbursements to date (prior month Schedule B line 5 plus current month Schedule A line 2)	_____
6.	Net receipts OVER (UNDER) disbursements	\$ <u>_____</u>

**SCHEDULE C**  
**BALANCE IN DEBTOR-IN-POSSESSION ACCOUNT**

Balance at end of last month	\$ _____
Net transactions for this month (Line 3 - Schedule A)	_____
Balance at end of this month	\$ <u>_____</u>

**SCHEDULE D**  
**BALANCE IN TAX ACCOUNT**

Balance at end of last month	\$ _____
Add deposits from general account	_____
Subtotal	_____
Deduct payments to taxing agencies	_____
Balance at end of this month	\$ <u>_____</u>

**SCHEDULE E**  
**BALANCE IN \_\_\_\_\_ ACCOUNT**

Balance at end of last month	\$ _____
Add deposits from general account	_____
Subtotal	_____
Deduct disbursements	_____
Balance at end of this month	\$ <u>_____</u>

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**SCHEDULE F  
POST PETITION DEBTS**

Balance at end of last month	\$ _____
Add debts incurred this month	_____
Subtotal	_____
Deduct payments made this month on this balance	_____
Subtotal	_____
Adjustments (Explain on separate sheet)	_____
Balance at end of this month (Attach listing)	\$ <u>_____</u>

**SCHEDULE G  
ACCOUNTS RECEIVABLE BALANCE**

Balance of receivables at end of last month	\$ _____
Add new receivables for this month	_____
Subtotal	_____
Deduct accounts collected (from Schedule A)	_____
Subtotal	_____
Adjustments (Explain on separate sheet)	_____
Balance at end of this month	\$ <u>_____</u>

**SCHEDULE H  
INVENTORY AND COST OF GOODS SOLD**

Inventory balance at end of last month	\$ _____
Add merchandise purchases	_____
Total inventory available	_____
Adjustments (Explain on separate sheet)	_____
Less inventory balance at end of month	_____
Total cost of goods sold	\$ <u>_____</u>

**SCHEDULE I  
FEDERAL AND STATE TAXES**

1. Tax balance at end of last month \$ \_\_\_\_\_

**PAYROLL TAX LIABILITY THIS MONTH:**

Period: ( ) Weekly ( ) Biweekly  
( ) Semimonthly ( ) Monthly

Federal Employer ID # \_\_\_\_\_

EDD ID # \_\_\_\_\_

**Withholdings:**

Federal Income Tax \$ \_\_\_\_\_  
FICA Withheld \_\_\_\_\_  
State Income Tax \_\_\_\_\_  
State Disability \_\_\_\_\_

**Employer tax liability:**

FICA \_\_\_\_\_  
Federal unemployment \_\_\_\_\_  
State unemployment \_\_\_\_\_

2. Total payroll taxes due \_\_\_\_\_

**SALES AND OTHER TAX LIABILITY THIS MONTH:**

SBE ID # \_\_\_\_\_  
Sales tax liability \$ \_\_\_\_\_  
Other (excise, city, business, etc.) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Total sales and other taxes due \_\_\_\_\_

**SUMMARY OF TAX PAYMENTS MADE THIS MONTH:**

Payee	Date	Bank acct. #	Ck. #	
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

4. Total tax payments made \_\_\_\_\_

5. Tax balance at end of this month \$ \_\_\_\_\_  
(add lines 1-3 less line 4)



**SCHEDULE J  
MONTHLY OPERATING STATEMENT QUESTIONNAIRE**

- |   | YES                      | NO                       | N/A                      |                          |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| 1. Copies of checkbooks or receipts and disbursements listing attached:   |                          |                          |                          |                          |
| Debtor-in-possession account  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| Tax account   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| Other account   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| 2. Listing of unpaid postpetition debts (include unpaid professional fees & interest owed)  |                          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have any payments been made to secured creditors or lessors? (If yes, attach listing of payments made)   | <input type="checkbox"/> | <input type="checkbox"/> |                          |                          |
| 4. (a) Have any payments been made to officers, shareholders, insiders, relatives or professionals? (If yes, attach listing of payments made)   | <input type="checkbox"/> | <input type="checkbox"/> |                          |                          |
| (b) Were these payments approved by the court?  |                          | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| 5. (a) Have any payments been made on prepetition debts? (If yes - attach listing of payments made)   |                          | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| (b) Were these payments approved by the court?  |                          | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| 6. Do you carry insurance coverage of any kind? (attach copies of declaration pages)<br><b>NOTE:</b> If you have previously submitted copies of declaration pages & there have been no changes in coverage, initial here: _____<br>(no copies needed) |                          | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| 7. Have U.S. Trustee quarterly fees been paid (If yes - attach listing of payments made) (If no - attach explanation)   | <input type="checkbox"/> | <input type="checkbox"/> |                          |                          |

**DECLARATION OF DEBTOR**

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON \_\_\_\_\_ (Date) \_\_\_\_\_ (Signature) DEBTOR-IN-POSSESSION

I have reviewed the Monthly Report of Operations and, after making reasonable inquiry, believe that the information is true and correct.

\_\_\_\_\_  
(Signature of Preparer)  
(Attorney or Accountant)

\_\_\_\_\_  
(Date)

**MONTHLY OPERATING REPORT  
INSTRUCTION SHEET**

1. **Cover Sheet**

- a. Enter the case name, case number, month of report on the appropriate cover sheet (cash basis or accrual basis).
- b. Place a check mark in each box for which a schedule is filed.

2. **Schedule A**

- a. Complete this schedule for all receipts and cash disbursements for the month
- b. If additional lines are needed for listing receipts or disbursements attach additional pages.

3. **Schedule B**

- a. This schedule must reflect all receipts and disbursements since filing the petition (cumulative).
- b. Total receipts = this line from last month + Schedule A, total receipts.
- c. Total disbursements = this line from last month + Schedule A, total disbursements.

4. **Schedule C**

This schedule must reflect the balance in the debtor-in-possession account (or general account). This balance must equal the balance on Schedule B, Line 6, plus any beginning bank balance at the time the bankruptcy was filed.

5. **Schedule D**

This schedule must reflect the balance in the tax account, if you are required to have one.

6. **Schedule E**

This schedule must reflect the balance in any other account you maintain. The number of cash accounts held should be kept to a minimum, mainly the debtor-in-possession account and tax and/or cash collateral accounts, if required. Any account required by court order should also be included.

7. **Schedule F**

This schedule must reflect all debts incurred and not paid since the date of filing the petition. Do not include any debts owed prior to filing the petition.

8. **Schedule I**

- a. This schedule must reflect all transactions occurring for the month for payroll and sales taxes.
- b. The first section of the form lists amounts owed for both employee payroll tax withholdings and the employer's portion for payroll taxes.
- c. The second section of the form lists all amounts owed for sales and other business taxes.
- d. The third section of the form lists all payments made during the month for both payroll and sales taxes.
- e. To compute the tax balance at the end of the month, add the balance from last month (line 1) plus payroll taxes due (line 2) plus sales taxes due (line 3) and subtract all payments made (line 4).

9. **Schedule J**

- a. This schedule is a checklist of items that must be included with the basic monthly report of operations.
- b. Copies of checkbooks (or cash receipts & disbursements listings) must be attached for all bank accounts. All copies attached should be legible.

- c. A listing of unpaid post petition debts must be attached, if applicable. The listing must be in the following form and the total of the listing must agree with the ending balance for Schedule F.

Date Incurred	Vendor	Description	Amount
---------------	--------	-------------	--------

- d. If payments have been made to secured creditors or lessors during the month, attach a listing which includes the following information:

Payee name/address  
Payment amount  
Payment period (weekly, month, annual)  
Date of last payment

- e. If post petition payments to secured creditors are in arrears, list the number of payment missed and the total amount in arrears.

- f. If payments have been made to officers, insiders, shareholders, relatives or professionals during the month, attach a listing which includes the following information:

Payee name  
Date of payment  
Payment amount  
Basis of payment (reason)

- g. If payments have been made on prepetition debts during the month, attach a listing which includes the following information:

Payee name  
Date of payment  
Payment amount  
Basis of payment (reason)

- h. If the U.S. Trustee quarterly fees were paid during the month of this report, include a listing of the date, amount and method of payment.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: RULE 9011  
DATE: AUGUST 22, 2001

Section 319 of both the House and Senate versions of the bankruptcy reform legislation provide that it is the sense of Congress that Rule 9011 “should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to a court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor’s attorney has made reasonable inquiry to verify that the information contained in such document is – (1) well grounded in fact, and (2) warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” The legislation also provides in § 707(b)(4) that debtor’s counsel must reimburse the trustee for costs and attorney fees incurred in proceeding under § 707(b) if counsel’s action violated Rule 9011. The debtor’s attorney is also liable in that instance for civil penalties under § 707(b)(4)(B). The section further provides that for a petition, pleading, or written motion, the attorney’s signature constitutes a certification of reasonable investigation and that the arguments are supportable under the law and facts. Furthermore, the section also provides that an attorney’s signature on a petition “constitute[s] a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.” Finally, parties in interest that pursue the debtor in ways that violate Rule 9011 may be liable to the

debtor. In this instance, the statute provides only that the court “may” award these costs.

The current version of Rule 9011(a) excludes lists, schedules, and statements from the items that a debtor’s attorney must sign. Since the debtor’s attorney need not sign those documents, the court cannot sanction the attorney based on those documents under Rule 9011(a). See, e.g., *In re Rookery Bay, Ltd.*, 195 B.R. 811 (Bankr. M.D. Fla. 1996); *In re 72<sup>nd</sup> Street Realty Assocs.*, 185 B.R. 460 (Bankr. S.D.N.Y.1995). If, however, an attorney signs schedules that contain inaccuracies, the attorney can be sanctioned under this part of the Rule. *Hansen, Jones & Leta, P.C. v. Segal*, 220 B.R. 434, 474 (D. Utah 1998) (gross undervaluing of assets).

Rule 9011(b) extends the reach of the Rule beyond those documents signed by the attorney to any paper that an attorney *presents* to the court. Presentation may be by “signing, filing, submitting, or later advocating” the paper, and by making the presentation, the attorney makes the familiar Rule 9011 certification. Arguably, a debtor’s attorney “files” the debtor’s schedules and could be subject to sanctions under Rule 9011(b) if the information in those schedules include inaccurate information for which there is no evidentiary support. I have found no reported decisions taking this position. Rather, sanctions against a debtor’s attorney for improprieties in the schedules are imposed only when the debtor’s attorney has signed the schedules.

The language of § 319 of the Bills and the expansion of a debtor’s attorney’s obligations in the proposed § 707(b)(4) strongly suggest that Congress considers the current reach of Rule 9011 insufficient particularly as to the schedules of assets and liabilities. In particular, proposed § 707(b)(4)(D) provides that the attorney’s signature on a petition “shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules *filed*

*with such petition* is inaccurate.” (Emphasis added). However, since the statute cannot provide that the attorney’s signature on the petition is a certification of the accuracy of the schedules which may not even exist at the time of the filing of the petition, it would not apply to schedules filed separately from the petition. In most instances, the schedules and petition are filed together, and the section would create the certification. It would be odd to hold a debtor’s attorney to a higher standard for information often provided under greater time constraints than for the same information provided in schedules filed two weeks after the commencement of the case. Unless Rule 9011 is amended, however, the two standards would exist. This would encourage separate filing of the petitions and schedules for no good reason other than to permit the debtor’s attorney to operate under a less stringent regime for the submission of information.

If, however, Rule 9011(b) were to be amended to include a provision establishing an obligation for a debtor’s attorney to certify the accuracy of the schedules, it perhaps should be consistent with the obligation placed on that attorney under proposed § 704(b)(4)(D). That section requires the debtor’s attorney to conduct “an inquiry” to determine that the information in the schedules is correct. Rule 9011 and § 319 of the Bills setting out the Sense of the Congress require the inquiry to be “reasonable” (§ 319) or “reasonable under the circumstances” (Rule 9011(b)). While it is likely that the courts would require that “an inquiry” under proposed § 707(b)(4)(B) be “reasonable”, the possibility exists that the courts could construe the statute as simply requiring the debtor’s attorney to ask the debtor directly whether the information provided on the schedules is accurate. If that interpretation were adopted, there would be a different standard between the Rule and the statute, and the Rule could be construed as enlarging or modifying a substantive right in contravention of 28 U.S.C. § 2075.

Another issue presented by the Sense of Congress provision and the inclusion of similar language in proposed § 707(b)(4) is the reach of the provisions. Section 707(b) applies only in chapter 7 cases, and only in connection with a motion to dismiss the case. Rule 9011, however, applies in all cases, from the smallest consumer debtor case, to the chapter 11 cases of multinational debtors. The Committee in the past has considered the impact of amending Rule 9011 to include a certification regarding the debtor's schedules, and the difficulty of making such a certification when the debtor's assets are literally spread across the globe has led the Committee to reject such proposals. These decisions, however, were not made in the shadows of legislation such as that now present. The statutory obligation of the consumer debtor's attorney under § 707(b) to certify the accuracy of the debtor's schedule would apply even without amendment to Rule 9011. Thus, the question raised is, should attorneys for business debtors be held to the same or a different standard? The Rule contains the limiting provision that the inquiry be "reasonable under the circumstances," and that limitation may be sufficient to make it feasible for all attorneys for debtors to meet the test.

If the Committee believes that it is necessary or appropriate in any event to expand the reach of Rule 9011 to the schedules filed in a bankruptcy case, the following small change in the language of the Rule along with a corresponding change to Official Form 6 should accomplish the task. The Form would be amended to include a signature space for the debtor's attorney. It is preferable to require the signature on the Form rather than to identify the schedules as a category of documents that carry the certification because the signature line can remind the attorney of the new and greater significance attached to the schedules for Rule 9011 purposes.



**Rule 9011. SIGNING OF PAPERS; REPRESENTATIONS TO THE COURT; SANTIONS; VERIFICATION AND COPIES OF PAPERS**

1 (a) SIGNATURE. Every petition, pleading, written motion,  
2 [schedule] and other paper, except a list, ~~schedule~~, or statement, or  
3 amendments thereto, shall be signed by at least one attorney of  
4 record in the attorney's individual name. A party who is not  
5 represented by an attorney shall sign all papers. Each paper shall  
6 state the signer's address and telephone number, if any. An  
7 unsigned paper shall be stricken unless omission of the signature is  
8 corrected promptly after being called to the attention of the  
9 attorney or party.

10 \* \* \* \* \*

COMMITTEE NOTE

The rule is amended to provide that the debtor's attorney must sign the debtor's schedules and thereby makes the certification to the court set out in subdivision (b) as to the accuracy of the debtor's schedules. The rule leaves to the courts the extent of the attorney's obligation to investigate the information provided in the schedules, leaving it to the courts to determine what amount of investigation is reasonable under the circumstances presented.

Another option available to the Committee would be to submit Rule 9011 to a Subcommittee (for example, the Subcommittee on Attorney Conduct, for further review. Section 319 of the Bills states that it is the sense of Congress that the Rule should be modified, but it does not directly mandate any change to the Rule. Therefore, taking additional time to

study the issue prior to making any specific recommendation may be prudent.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: RULES GOVERNING APPEALS UNDER THE REFORM LEGISLATION  
DATE: AUGUST 26, 2001

The bankruptcy reform legislation amends the statute governing appeals from the bankruptcy courts (28 U.S.C. § 158) by adding a new subsection (d). Both the House and Senate versions of the Bill provide that the “judgment, decision, order, or decree of the bankruptcy judge shall be deemed a judgment, decision, order or decree of the district court” to which an appeal is made unless the district court either files a decision on the appeal within 30 days of the notice of appeal or the court enters an appropriate order extending that time. Subsection (d)(1)(B) of the proposed section provides that the parties to the appeal can prevent the order being deemed an order of the district court if they all file a written consent that the district retain and decide the appeal.

There is no need to amend the rules to implement the provision in the statute that authorizes the court to extend the time for deciding the appeal either on its own motion or upon motion of a party in interest. Motions by parties in interest are adequately governed by existing Rule 8011, including subdivision (d) of the Rule governing emergency motions. (Emergency motions may be necessary because it appears from the statute that the district court must enter an order extending the time prior to the expiration of the 30 day period even if a motion is made prior to the expiration of the period..) There may be a need, however, to amend Rule 8001 by adding a new subdivision to implement § 158(d)(1)(B).

**Rule 8001. MANNER OF TAKING APPEAL; VOLUNTARY  
DISMISSAL**

\* \* \* \* \*

1  
2 (f) CONSENT TO RETENTION OF APPEAL BY DISTRICT  
3 COURT. On or before 30 days after the filing of a notice of appeal  
4 with the district court or a statement of election under subdivision  
5 (e), whichever is later, each party to the appeal, either individually  
6 or jointly, may file with the clerk of the district court a consent to  
7 have the district court retain the appeal until it renders a decision.

COMMITTEE NOTE

The bankruptcy reform legislation introduced the concept that a bankruptcy court decision appealed to the district court is deemed to be a decision of the district court thirty days after the filing of an appeal unless the district court either decides the matter or extends the time for deciding the matter on its own motion or on the motion of a party in interest. The rule clarifies that the thirty days runs from later of the date of the filing of the notice of appeal or the date on which a party to the appeal files a statement of election to remove the appeal from the bankruptcy appellate panel to the district court. The rule also authorizes the parties to file, either individually or jointly, written consents to permit the district court to retain the case until it issues its decision in the matter.

The House and Senate versions of the provision differ. The House version specifically provides that the 30 day time period begins to run from the date of the filing of the notice of appeal or the date on which an election is made under 28 U.S.C. § 158(c)(1) to have the matter heard by the district court rather than the bankruptcy appellate panel. The Senate version simply provides that the 30 days runs from the time the “appeal is filed with the district court.” If the

House version of the provision is adopted, then the only purpose for the rule would be to provide that the parties can file their written consents to the retention of the case by the district court either jointly or individually. I do not believe it would be necessary to have such a rule, and I have included it here only because the it does seem necessary to provide additional direction on matters of timing that are potentially unsettled in the Senate Bill.

The Senate version of the Bill also provides for direct appeal to the court of appeals of an otherwise unappealable order if the lower court, or the parties acting jointly certify that the order being appealed involves either a substantial question of law, a question of law that requires the resolution of conflicting decisions, or is a matter of public importance. The court of appeals can accept these cases if the “immediate appeal from the order or decree may materially advance the progress of the case or proceeding.” The House version of the Bill contains no comparable provision for appeals in this manner. Prior versions of bankruptcy reform legislation have included provisions for direct appeals to the court of appeals, but they have not been included in the final iterations of the bills. Until it appears more likely that this method of direct appeal will be included in the final version of the reform legislation, it seems premature to propose a rule to govern the process.







**Rule 9014. CONTESTED MATTERS\***

\* \* \* \* \*

1  
2 (c) APPLICATION OF PART VII RULES. Except as  
3 otherwise provided in this rule, and unless ~~Unless~~ the court directs  
4 otherwise, the following rules shall apply: 7009, 7017, 7021,7025,  
5 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071.  
6 Unless the court directs otherwise, the following subdivisions of  
7 Fed. R. Civ. P. 26: 26(a)(1) (mandatory disclosure), 26(f)  
8 (mandatory meeting before scheduling conference/discovery plan),  
9 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3)  
10 (additional pre-trial disclosure) as incorporated by Rule 7026, shall  
11 not apply in contested matters. An entity that desires to  
12 perpetuate testimony may proceed in the same manner as provided  
13 in Rule 7027 for the taking of a deposition before an adversary  
14 proceeding. The court may at any stage in a particular matter direct  
15 that one or more of the other rules in Part VII shall apply. The  
16 court shall give the parties notice of any order issued under this  
17 paragraph to afford them a reasonable opportunity to comply with  
18 the procedures prescribed by the order.

COMMITTEE NOTE

The rule is amended to provide that the mandatory disclosure requirements of Fed. R. Civ. P. 26, as incorporated by Rule 7026, do not apply in contested matters. The typically short time

between the commencement and resolution of most contested matters makes the mandatory disclosure provisions of Rule 26 ineffective. Nevertheless, the court may by local rule or by order in a particular case provide that these provisions of the rule apply in a contested matter.

\* This version of Rule 9014 is currently pending before the Supreme Court for promulgation to become effective on December 1, 2002.



**United States Bankruptcy Court**  
**Office Of The Clerk**  
**Eastern District Of New York**

**Joseph P. Hurley**  
Clerk of Court

75 Clinton Street  
Brooklyn, New York 11201

(718) 330-2899

February 4, 2002

Mr. Peter G. McCabe  
Secretary of the Committee on Rules  
of Practice and Procedure  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, DC 20544

Dear Peter:

The Judiciary's Bankruptcy Noticing Working Group provides advice to the Director of the Administrative Office in the development of noticing policy recommendations and guidelines, as well as in the implementation of automated noticing and related systems in the Bankruptcy Courts. I am writing on behalf of the Working Group to request that the committee consider amending the Bankruptcy Rules to permit an entity that is entitled to a bankruptcy notice to register at one place the address or addresses they wish to be used for all cases and in any district throughout the bankruptcy system. We believe that this will result in both more accurate delivery of bankruptcy notices and much more timely delivery of these notices. Also, such a process will reduce significant administrative burdens and costs in many clerks' offices which must process returned mail when an inaccurate address is used.

Adoption of the recommended change would require an amendment to Federal Rule of Bankruptcy Procedure 2002 (g), and other related rules deemed applicable, which currently requires that notices "to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case." This requirement limits the creditor because it must file an address in each case in which it is a party. We recommend that the language be modified to allow an entity to file a notice with any court stating its address for the purpose of receiving notices in all cases filed in any or all of the bankruptcy courts.

The Working Group has found that the creditor industry has changed its business processes in a very significant way over the past four or five years. This has been driven by technology but also by the desire to become more efficient in billing and collection processes. Many creditors

involved in bankruptcies are large companies with a national presence. This change would improve the noticing process by permitting these entities to establish a single address, or multiple addresses (for those entities that maintain regional offices), and ensure that notices are received at the proper location. Many debtors provide the courts with incomplete or inaccurate addresses that result in inefficient noticing practices. For instance, a debtor might list a local retail outlet where he purchased merchandise using a credit card branded with the store's name, but the proper owner of the debt is a completely different entity, such as a bank.

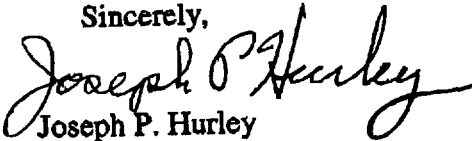
Through the judiciary's Bankruptcy Noticing Center (BNC) program, this modification to the bankruptcy rules could be accommodated through the technology developed for the program's Electronic Bankruptcy Noticing component. The software has been used successfully by the BNC contractor for several years. The software evaluates the incoming address stream for each court notice, and matches name spelling variations with a set of approved addresses, as identified by the requestor. When a "match" is made for a notice recipient, the notice is pulled from the print stream and diverted to the recipient's electronic mailbox. Under the proposed modification to the bankruptcy rules, the software would be modified to provide the capability to print and mail notices to a specified address for non-electronic requestors.

The modification is expected to provide the following benefits:

- 1) Addresses listed in the debtor's matrix that do not meet United States Postal Service addressing requirements would be identified and redirected to the address identified by the intended recipient.
- 2) Improved efficiencies would be realized by large entities by eliminating internal routing of mail.
- 3) Entities would only need to make a single request for any or all bankruptcy courts to register a change of address or to request that all bankruptcy notices be redirected to a national or regional office.
- 4) Multiple pieces addressed to a single recipient would be batched in a single package, resulting in substantially lower postage costs and simplifying the recipient's mail handling procedures.
- 5) Participation in the judiciary's Electronic Bankruptcy Noticing program would increase significantly. This free service provides notice recipients many benefits, such as same-day service of court notices, efficient routing of all an entity's notices to a single electronic mailbox, and, for large creditors, an opportunity to adopt computer-to-computer processing. This results in savings of approximately 27 cents for each notice sent electronically. If 10% of the annual volume of notices were sent electronically, the judiciary would realize savings of approximately \$2.3M in postage.

Should you have any questions or require additional information, please do not hesitate to contact me at (718) 330-2899, or you may contact Gary McCaffrey, Electronic Bankruptcy Noticing Project Manager, at the Administrative Office's Bankruptcy Court Administration Division at (202) 502-1540.

Sincerely,

  
Joseph P. Hurley







# **Model Local Bankruptcy Court Rules for Electronic Case Filing**

**Judicial Conference Committee on  
Court Administration and Case Management**

**June 29, 2001**

## **NOTICE**

This document has been reviewed by the Committees on Court Administration and Case Management, Automation and Technology, and Rules of Practice and Procedure, and submitted to the Judicial Conference for approval at its September 2001 meeting.

## Introduction

Because most existing court rules and procedures have been designed with paper court documents in mind, some modifications are needed to address issues arising when court documents are filed in electronic form. This set of model local rules has been developed for federal district and bankruptcy courts implementing the electronic case filing capabilities of the federal judiciary's Case Management/Electronic Case Files (CM/ECF) Project, and can be adapted by courts that offer some other method of electronic filing of court documents.

The model was compiled by a subcommittee of the Court Administration and Case Management Committee that included as members representatives from the Committee on Automation and Technology and the Committee on Rules of Practice and Procedure. The subcommittee reviewed the rules and procedures for electronic filing developed in the CM/ECF prototype district and bankruptcy courts. It also undertook an informal survey of those courts to find out how well those procedures operated. The information indicated general satisfaction with courts' existing procedures. There was also general agreement that it was essential to include the bar in the process of developing and modifying the local procedures governing electronic filing.

This set of model local rules for electronic case filing is based to a significant extent on the procedures used in courts that served as prototype courts for the federal judiciary's CM/ECF Project. There are separate sets of model local rules for district courts and bankruptcy courts. They use the same terminology and are identical to the extent possible and appropriate. Courts are free to adapt the provisions of these model local rules as they choose. (Please note that "Interim Bankruptcy Rules" will be promulgated and recommended for adoption as local rules to implement pending comprehensive bankruptcy reform legislation upon enactment. Unlike model local rules, including these model local rules governing electronic case filing, courts will be urged to adopt the "interim bankruptcy rules" as local rules without change.)

The Federal Rules of Procedure (Civil Rule 5(e), Bankruptcy Rules 5005, 7005 and 8008) provide that a court may "by local rule" permit filing, signing and verification of documents by electronic means. Thus, each court that intends to allow electronic filing should have at least a general authorizing provision in its local rules.<sup>1</sup> The model rules developed here may be used either as a set of local rules, or as the contents for a general order or other administrative procedures. The use of local rules promotes the requirements of the Rules Enabling Act, provides better public notice of applicable procedures, and allows for input from the bar. On the other hand, use of general orders gives courts more flexibility to modify requirements and rules

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<sup>1</sup>An example of a local rule authorizing electronic filing is as follows:

The court will accept for filing documents submitted, signed or verified by electronic means that comply with procedures established by the court.

in response to changing circumstances. If local rules are used, it should be noted that Fed.R.Civ.P. 83, Fed.R.Bankr.P. 9029 and related Judicial Conference policy require that rule numbering conform to the numbering system of the Federal Rules. The model rules could be added as a group to local rules corresponding to Fed.R.Bankr.P. 5005 or 9029.

Note: These model procedures use the term “Electronic Filing System” to refer to the court’s system that receives documents filed in electronic form. The term “Filing User” is used to refer to those who have a court-issued log-in and password to file documents electronically.

## **Rule 1– Scope of Electronic Filing**

The court will designate which cases will be assigned to the Electronic Filing System. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a case assigned to the Electronic Filing System must be electronically filed.

In a case assigned to the Electronic Filing System after it has been opened, parties must promptly provide the clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these rules or as ordered by the court.

Notwithstanding the foregoing, attorneys and others who are not Filing Users in the Electronic Filing System are not required to electronically file pleadings and other papers in a case assigned to the System. Once registered, a Filing User may withdraw from participation in the Electronic Filing System by providing the clerk's office with written notice of the withdrawal.

### **Derivation**

The first and third paragraphs of the Model Rule are derived from the Southern District of California Bankruptcy procedures, with the exception of the last sentence of the third paragraph, which is derived from the Eastern District of Virginia Bankruptcy procedures. The second paragraph is adapted from the Northern District of Ohio procedures.

### **Commentary**

1. The Model Rule provides that the court will designate which cases will be assigned to the electronic filing system. It also establishes a presumption that all documents filed in cases assigned to the electronic filing system should be electronically filed. Some courts have designated certain types of cases for electronic filing, while some have determined that all cases are appropriate for electronic filing. However, the Rule does not make electronic filing mandatory. Mandatory electronic filing appears to be inconsistent with Fed.R.Bankr.P. 5005, which states that a court “may permit” papers to be filed electronically, and provides that the clerk “shall not refuse to accept for filing any paper presented . . . solely because it is not presented in proper form.” However, the Federal Rules clearly permit a court to strongly encourage lawyers to participate in electronic case filing, and the Model Rule is written to provide such encouragement.

2. For cases assigned to the electronic filing system after documents have already been filed conventionally, the Model Rule states that the parties must provide electronic copies of all previously filed documents. In cases removed to the federal court, parties in cases assigned to the electronic filing system are required to provide electronic copies of all previous filings in the state court. Where documents filed in paper form were previously scanned by the court, electronic filing would not be necessary.

3. Some courts offering electronic filing require fees to be paid in the traditional manner, while others permit or require electronic payment of fees. Nothing in the rule would constrain the court in providing for a desired method of payment of fees.

4. Electronic case filing raises privacy concerns. Electronic case files can be more easily accessible than traditional paper case files, so there is a greater risk of public dissemination of sensitive information found in case files. See Model Rule 12. The Judicial Conference is investigating and evaluating the privacy concerns attendant to electronic case files, and is working to develop a policy.

## **Rule 2– Eligibility, Registration, Passwords**

Attorneys admitted to the bar of this court (including those admitted pro hac vice), United States trustees and their assistants, bankruptcy administrators and their assistants, private trustees, and others as the court deems appropriate, may register as Filing Users of the court’s Electronic Filing System. Registration is in a form prescribed by the clerk and requires the Filing User’s name, address, telephone number, Internet e-mail address, and, in the case of an attorney, a declaration that the attorney is admitted to the bar of this court.

If the court permits, a party to a pending action who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. Registration is in a form prescribed by the clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

Provided that a Filing User has an Internet e-mail address, registration as a Filing User constitutes: (1) waiver of the right to receive notice by first class mail and consent to receive notice electronically; and (2) waiver of the right to service by personal service or first class mail and consent to electronic service, except with regard to service of a summons and complaint under Fed.R.Bankr.P. 7004. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment under Fed.R.Bankr.P. 9022.

Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

### **Derivation**

The first two paragraphs of Model Rule 2 are adapted from the Eastern District of New York procedures. The last paragraph is derived from the Northern District of Ohio procedures.

### **Commentary**

1. The Model Rule specifically provides that attorneys admitted pro hac vice, U.S.

trustees and their assistants, bankruptcy administrators and their assistants, and private trustees can be Filing Users in electronic filing systems. It also recognizes that the court may wish to permit others, e.g., claims filers, to participate. These additional filers could at the court's option be provided with limited filing privileges. The Model Rule also recognizes that a court may wish under certain circumstances to permit pro se filers to take part in electronic case filing. Such participation is left to the discretion of the court.

2. The Model Rule provides that a person who registers with the System (a Filing User) thereby consents to electronic service and notice of documents subject to the electronic case filing system. Pending amendments to Fed.R.Civ.P. 5, which is incorporated by reference into Fed.R.Bankr.P. 7005, permit electronic service on a person who consents "in writing." The Committee Notes indicate that the consent may be provided by electronic means. A court may "establish a registry or other facility that allows advance consent to service by specified means for future action." Thus, a court might use CM/ECF registration as a means to have parties consent to receive service electronically.

3. The consent to receive electronic notice and service is intended to cover the full range of notice and service except those documents to which the service requirements of Fed.R.Bankr.P. 7004 apply. These provisions operate independently from the notices sent by the Bankruptcy Noticing Center under Fed.R.Bankr.P. 9036.

4. Several districts currently have provisions addressing the possibility of compromised passwords. Such a provision may be useful in a User Manual for the electronic filing system. The provision might read as follows:

Attorneys may find it desirable to change their court assigned passwords periodically. In the event that a Filing User believes that the security of an existing password has been compromised and that a threat to the System exists, the Filing User must give immediate notice by telephone to the clerk, chief deputy clerk or systems department manager and confirm by facsimile in order to prevent access to the System by use of that password.

## **Rule 3—Consequences of Electronic Filing**

Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Bankr.P. 5003.

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

### **Derivation**

The first two paragraphs of Model Rule 3 are adapted from the Eastern District of New York procedures. The third paragraph is adapted from the Northern District of Ohio procedures.

### **Commentary**

1. The Model Rule provides a “time of filing” rule that is analogous to the traditional system of file stamping by the Clerk’s office. A filing is deemed made when it is acknowledged by the Clerk’s office through the CM/ECF system’s automatically generated Notice of Electronic Filing.

2. The Model Rule makes clear that the electronically filed documents are considered to be entries on the official docket.



## **Rule 4– Entry of Court Orders**

All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Fed.R.Bankr.P. 5003 and 9021. All signed orders will be filed electronically by the court or court personnel. Any order filed electronically without the original signature of a judge has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires.

### **Derivation**

The first two sentences of the first paragraph of the Model Rule are adapted from the Eastern District of New York procedures. The last sentence is derived from the Northern District of Georgia Bankruptcy Court. The second paragraph is adapted from Eastern District of New York procedures.

### **Commentary**

1. Not all courts have a provision in their electronic filing procedures addressing the electronic entry of court orders. In at least one court without such a provision, a question arose about the validity of electronically filed court orders. The Model Rule specifically states that an electronically filed court order has the same force and effect as an order conventionally filed.

2. The Model Rule contemplates that a judge can authorize personnel, such as a law clerk or judicial assistant, to electronically enter an order on the judge's behalf.

3. The Model Rule leaves the method for submitting proposed orders to the discretion of the court.

## **Rule 5– Attachments and Exhibits**

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane.

### **Derivation**

The Model Rule is adapted from the Southern District of New York Bankruptcy procedures.

### **Commentary**

1. One issue that has arisen in most courts using electronic filing relates to attachments or exhibits not originally available to the filer in electronic form, and that must be scanned (or imaged) into Portable Document Format before filing. Examples include leases, contracts, proxy statements, charts and graphs. A scanned document creates a much larger electronic file than one prepared directly on the computer (*e.g.*, through word processing). The large documents can take considerable time to file and retrieve. The Model Rule provides that if the case is assigned to the electronic filing system, the party must file this type of material electronically, unless the court specifically permits conventional filing.

2. It is often the case that only a small portion of a much larger document is relevant to the matter before the court. In such cases, scanning the entire document imposes an inappropriate burden on both the litigants and the courts. To alleviate some of this inconvenience, the Model Rule provides that a Filing User must submit as the exhibit only the relevant excerpts of a larger document. The responding party then has a right to submit other excerpts of the same document under the principle of completeness.

3. This rule is not intended to alter traditional rules with respect to materials that are before the court for decision. Thus, any material on which the court is asked to rely must be specifically provided to the court.

4. For courts permitting claims to be filed electronically, this rule also governs proofs of claim. Official Form 10, the Proof of Claim, already permits creditors to file a summary if the documentation for the claim is voluminous.

## **Rule 6—Sealed Documents**

Documents ordered to be placed under seal must be filed conventionally, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents under seal and be delivered to the clerk.

### **Derivation**

The Model Rule is adapted from the Western District of Missouri procedures.

### **Commentary**

1. The Model Rule recognizes that other laws may affect whether a motion to file documents under seal, or an order authorizing the filing of such documents, can or should be electronically filed. It is possible that electronic access to the motion or order may raise the same privacy concerns that gave rise to the need to file a document conventionally in the first place. For similar reasons, the actual documents to be filed under seal should ordinarily be filed conventionally.

2. See Model Rule 12 for another provision addressing privacy concerns arising from electronic filing.

## Rule 7– Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until [number] years after all time periods for appeals expire. On request of the court, the Filing User must provide original documents for review.

### Derivation

Model Rule 7 is adapted from the Eastern District of Virginia Bankruptcy procedures.

### Commentary

1. Because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future. The Model Rule requires retention only of those documents containing original signatures of persons other than the person who files the document electronically. The filer's use of a log-in and password to file the document is itself a signature under the terms of Model Rule 8.

2. The Model Rule places the retention requirement on the person who files the document. Another possible solution is to require the filer to submit the signed original to the court, so that the court can retain it. Some government officials have expressed a preference to have such documents retained by the court, in order to make it easier to retrieve the documents for purposes such as a subsequent prosecution for fraud. Some have suggested that a debtor's original signature be filed with the court because the signature is so important on bankruptcy petitions and schedules.

3. Courts have varied considerably on the required retention period. Some have limited it to the end of the litigation (plus the time for appeals). Others have required longer retention periods (four or five years). Assuming that the purpose of document retention is to preserve relevant evidence for a subsequent proceeding, the appropriate retention period might relate to relevant statutes of limitations.

4. Some districts require the filer to retain a paper copy of *all* electronically filed documents. Such a requirement seems unnecessary, and it tends to defeat one of the purposes of using electronic filing. Other courts have required retention of "verified documents," i.e., documents required to be verified under Fed.R.Bankr.P. 1008 or documents in which a person verifies, certifies, affirms, or swears under oath or penalty of perjury. See, e.g., 28 U.S.C. § 1746 (unsworn declarations under penalty of perjury).

## **Rule 8– Signatures**

The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User’s signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed.R.Bankr. P. 9011, the Federal Rules of Bankruptcy Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block [in compliance with local rule number [ ] if applicable] and must set forth the name, address, telephone number and the attorney’s [name of state] bar registration number, if applicable. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an “s/” and typed in the space where the signature would otherwise appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User’s password to be used by anyone other than an authorized agent of the Filing User.

Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the court.

### **Derivation**

The first and third paragraphs of the Model Rule are adapted from the Northern District of Ohio procedures. The second paragraph is derived from the Southern District of New York Bankruptcy procedures.

### **Commentary**

1. Signature issues are a subject of considerable interest and concern. The CM/ECF system is designed to require a log-in and password to file a document. The Model Rule provides that use of the log-in and password constitutes a signature, and assures that such a signature has the same force and effect as a written signature for purposes of the Federal Rules of Bankruptcy Procedure, including Fed.R.Bankr. P. 9011, and any other purpose for which a signature is required on a document in connection with proceedings before the court.

2. At the present time, other forms of digital or other electronic signature have received only limited acceptance. It is possible that over time and with further technological development, a system of digital signatures may replace the current password system.

3. Some users of electronic filing systems have questioned whether an s-slash requirement is worth retaining. The better view is that an s-slash is necessary; otherwise there is no indication that documents printed out from the website were ever signed. The s-slash provides some indication when the filed document is viewed or printed that the original was in fact signed.

4. The second paragraph of the Model Rule does not require an attorney or other Filing User to personally file his or her own documents. The task of electronic filing can be delegated to an authorized agent, who may use the log-in and password to make the filing. However, use of the log-in and password to make the filing constitutes a signature by the Filing User under the Rule, even though the Filing User does not do the physical act of filing.

5. Issues arise when documents being electronically filed have been signed by persons other than the filer, *e.g.*, stipulations and affidavits. The Model Rule provides for a substantial amount of flexibility in the filing of these documents. Courts may wish to modify or narrow the options if, for example, they believe that administering the three-day period for endorsements would be burdensome.

6. Courts may wish to underscore the fact that a Filing User's log-in and password constitutes the Filing User's signature, by including a statement to that effect on the registration form.

## **Rule 9– Service of Documents by Electronic Means**

Each entity electronically filing a pleading or other document must transmit a “Notice of Electronic Filing” to parties entitled to service or notice under the Federal Rules of Bankruptcy Procedure and the local rules. The “Notice of Electronic Filing” must be transmitted by e-mail, hand, facsimile, or by first-class mail postage prepaid. Electronic transmission of the “Notice of Electronic Filing” constitutes service or notice of the filed document. Parties not deemed to have consented to electronic notice or service are entitled to receive a paper copy of any electronically filed pleading or other document. Service or notice must be made according to the Federal Rules of Bankruptcy Procedure and the local rules.

### **Derivation**

Model Rule 9 is adapted from the Western District of Missouri procedures.

### **Commentary**

1. The pending amendments to the Federal Rules (Fed.R.Bankr.P. 7005, Fed.R.Civ.P. 5(b)) authorizing service of documents by electronic means do not permit electronic service of process for purposes of obtaining personal jurisdiction (i.e., Rule 7004 service).

2. The CM/ECF system automatically generates a Notice of Electronic Filing at the time a document is filed with the system. The Notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice by e-mail to retrieve the document automatically. The CM/ECF system automatically sends this Notice to all case participants registered to use the electronic filing system. If the court is willing to have this Notice itself constitute service, it may, under pending amendments to the Federal Rules, do so through a local rule. The pending amendments require a local rule if a court wants to authorize parties to use its transmission facilities to make electronic service. The Model Rule does not include such a provision, but could be easily modified to provide that the court’s automatically generated notice of electronic filing constitutes service.

3. A pending amendment to Fed.R.Bankr. P. 9006(f) provides that the three additional days to respond to service by mail will apply to electronic service as well. The Committee Note on the parallel amendment to Fed.R.Civ.P. 6(e) states:

Electronic transmission is not always instantaneous, and may fail for any number of reasons. It may take three days to arrange for transmission in readable form. Providing



added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that make electronic service ever more attractive.

The Model Rule does not specifically provide for the added three days, but such a provision would not be necessary if the proposed amendment to Fed.R.Bankr. P. 9006(f) takes effect.

4. The CM/ECF system is designed so that a person may request electronic notice of all filings in a matter even though that person has not obtained a password and registered as a Filing User. Such electronic notice would not constitute service under the Model Rule, because the effectiveness of electronic service is dependent on registration with the system. The court should be aware of this possibility and should encourage all those who request electronic notice to register for a system password.

## **Rule 10– Notice of Court Orders and Judgments**

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Bankr.P. 9022. The clerk must give notice to a person who has not consented to electronic service in paper form in accordance with the Federal Rules of Bankruptcy Procedure.

### **Derivation**

The Model Rule is adapted from the Eastern District of New York procedures.

### **Commentary**

1. Pending amendments to Fed.R.Bankr.P 9022 authorize electronic notice of court orders where the parties consent. The Model Rule provides that for all Filing Users in the electronic filing system, electronic notice of the entry of an order or judgment has the same force and effect as traditional notice. The CM/ECF system automatically generates and sends a Notice of Electronic Filing upon entry of the order or judgment. The Notice contains a hyperlink to the document.

## **Rule 11– Technical Failures**

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

### **Derivation**

The Model Rule is adapted from the Eastern District of New York procedures.

### **Commentary**

1. CM/ECF is designed so that filers access the court through its Internet website. The Model Rule addresses the possibility that a party may not meet a filing deadline because the court's website is not accessible for some reason. Cf. Fed.R.Bankr.P. 9006(a) (permitting extension of time when "weather or other conditions have made the clerk's office inaccessible"). The Model Rule also addresses the possibility that the filer's own unanticipated system failure might make the filer unable to meet a filing deadline.

2. The Model Rule does not require the court to excuse the filing deadline allegedly caused by a system failure. The court has discretion to grant or deny relief in light of the circumstances.

## **Rule 12– Public Access**

Any person or organization, other than one registered as a Filing User under Rule 2 of these rules, may access the Electronic Filing System at the court’s Internet site [Internet address] by obtaining a PACER log-in and password. Those who have PACER access but who are not Filing Users may retrieve docket sheets and documents, but they may not file documents.

In connection with the filing of any material in an action assigned to the Electronic Filing System, any person may apply by motion for an order limiting electronic access to or prohibiting the electronic filing of certain specifically-identified materials on the grounds that such material is subject to privacy interests and that electronic access or electronic filing in the action is likely to prejudice those privacy interests.

Information posted on the System must not be downloaded for uses inconsistent with the privacy concerns of any person.

### **Derivation**

The first paragraph of the Model Rule is adapted from the District of Arizona Bankruptcy procedures. The second paragraph is adapted from the Eastern District of New York procedures. The third paragraph is adapted from the Southern District of New York Bankruptcy procedures.

### **Commentary**

1. A subcommittee of the Judicial Conference Committee on Court Administration and Case Management is currently assessing the privacy concerns arising from electronic case filing. The Judicial Conference may at some point develop policies to address these concerns. The rule can be adapted to reflect any future specific policies or suggestions adopted by the Judicial Conference.

2. The Model Rule is consistent with Judicial Conference policy to limit remote public access to electronic case files to those who have obtained a PACER password.

3. The second paragraph of the Model Rule is not intended to create substantive rights. It simply highlights the fact that a person may apply for a protective order when Internet access to a case file or document is likely to result in the loss of that person’s legitimate interest in privacy.



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Re: ABA Business Bankruptcy Committee  
– Subcommittee on Claims

Dear Pat:

I enclose a handout which was distributed at the subcommittee meeting in Orlando. It will give you an idea of some of the issues the subcommittee is concerned about. I hope that Susan Brandt and Professor Gebbia-Pinetti have been able to talk to you or at least contact you by this time.

As always,

  
Gerald K. Smith

GKS/pg  
Enc.

## POTENTIAL AMENDMENTS TO THE BANKRUPTCY RULES?

### I. Claims in Jointly Administered Bankruptcy Cases

Perceived Problem: In these days of mega-cases, it is not usual for the debtor to ask the Bankruptcy Court to jointly administer anywhere from five to five hundred debtors on the first day. At present, claimants are required to file proofs of claim against each and every debtor against which it may have a claim. In some instances, a creditor may have a contract in which a parent and all of its subsidiaries are liable. It is burdensome to require that claimant to file numerous, virtually identical claims with appropriate documents.

Perceived Problem: Many debtors use the technical defect of having filing the proof of claim in the main jointly administered case, rather than an individual case as a weapon to disallow claims.

Practical Solution Used in Some Districts: The Debtor files an omnibus objection to claims filed in the wrong case and the claims are "moved" to the correct case. However, other districts simply grant the omnibus objection disallowing the perfectly valid claims, which may have been filed in the main case due to confusion or mis-noticing.

### II. "Not Found in the Debtor's Books and Records" Objections to Claims

Perceived Problem: Despite the receipt of a timely-filed, fully documented proof of claim, many debtors file an omnibus objection to many claims generically asserting "Not found in the Debtor's Books and Records." The Debtor (or a trustee) may assert that the Debtor's records were in disarray or destroyed.

### III. Objections to Small Claims

Perceived Problem: The Debtor files its objection to a small-dollar claim setting a hearing in Bankruptcy Court. The problem is two-fold. First, the claim may be perfectly valid, but the claimant does not have the financial wherewithal to retain counsel to file a response and/or attend a hearing. Second, the Bankruptcy Court may be located in a state thousands of miles from the Debtor's and the claimant's place of business.

Practical Solution: One solution may be a streamlining of the objection process whereby the trustee has discretion to resolve small claims through some informal, less expensive mechanism. Obviously, Due Process must always be heeded.

### IV Omnibus Objections to Claims

Omnibus claim objections may be the most controversial area of discussion, because some

debtors liberally use this tactic to "clean up the claims docket."

Perceived Problem: The Debtor files one or more massive pleading objecting to hundreds of claims in one document. Often, the claims to which objections are being filed are not listed in alphabetical order. To ascertain which claims are subject to objection, the claimant or attorney for claimant must read through hundreds of pages of documents to find objection hidden in one-sentence objection at paragraph 109. Without incredible diligence, the objection could be overlooked.

From at least the perspective of some U.S. Trustee's offices, omnibus claims objections are a good thing, but, once filed, they are very difficult to track the resolution of each disputed claim. Additionally, objections based on books and records are essential for Chapter 7 trustees, who frequently have no information other than, perhaps, an A/P schedule, and the schedule of liabilities, to determine whether any particular claim is valid

Practical Solutions: Should there be rule changes to assist in the administration and follow-up on individual disputed claims? Should a specific number, for example, be assigned to each discrete claim that is disputed - most likely tied to the original claim number assigned by the court - to streamline the tracking of resolution?

Some Districts are requiring Debtors who filed omnibus objections to serve a short (two page) notice of the objection on the claimant. In these Districts, the Debtor is not required to serve the omnibus objection on every claimant--only the two-page notice. Possibly, this practice could be made into a rule which would require a specific notice be sent. Alternatively, there could be a cover sheet directing the claimant to a particular page or paragraph at which the objection to his claim is found.

Should the rules require any omnibus claims objection to list the creditors alphabetically, to make it easier for creditors to determine whether their claims are being challenged?

Should the rules limit the number of claims that can be addressed in any omnibus objection - say 100 - to make it easier for creditors to review?

Should the rules limit a debtor/trustee from addressing claims in an omnibus objection only once? If additional grounds are discovered later to reduce or eliminate a claim, should the debtor/trustee be required to do a discrete objection, so a creditor does not face the burdens of reviewing omnibus objection after omnibus objection to make sure that his claim has not been challenged yet again?

v. Claims in Converted Cases.

Perceived Problem: The rules require the Debtor to file a schedule of all unpaid administrative debts in a case converted from chapter 11 to 7, but this is frequently not done,



or is done incompletely. In addition, the U.S. Trustee's office is not confident that names on this list are added to the matrix. Thus, there is a concern that Due Process is not being served - many administrative creditors may never receive notice that the debtor has gone out of business, or of their opportunity to file a claim.

In addition, administrative creditors are currently required to file motions for allowance and payment of claims in converted cases. Many just file proofs of claim, instead. Chapter 7 trustees treat these claims differently - some will deem them to be motions for allowance and payment; some object to the administrative status of the claims because procedures weren't followed; and some object and seek total disallowance.

Practical Solutions: Can we amend the rules to allow Chapter 11 administrative creditors just to file proofs of claim in a converted case? Should there be a special Chapter 11 administrative form, or should there be a box added to the existing claim form to indicate administrative priority, rather than pre-petition priority?

## VI. Claims Settlements

Perceived problem: The procedure for settling claims is too expensive, time-consuming and burdensome, particularly for smaller claims which can be easily resolved. There must be a way to streamline the process or give the trustee authority to resolve claims without the intervention of the Court. Also, Bankruptcy Rule 9019 motions should not be necessary to resolve all claims. There is also inconsistent application of the Bankruptcy Rules involving settled claims. The Bankruptcy Court are sometimes willing to accept agreed judgments or agreed orders at the hearing on the Objection and sometimes require formal noticing of a B.R. 9019 motion.

However, from the perspective of one of the U.S. Trustee's offices, allowing trustees/debtors to settle claims through some informal proceeding is a procedural nightmare. The U.S. Trustee's office asserted that it is a nightmare, because they will have no way of knowing whether the trustee's supplemental schedule or report to the court is accurate.

In some districts, the attorneys resort to practical solutions. For example, many trustees try to resolve disputed claims by sending the creditor an amended claim form, to be signed and sent back, indicating the agreed amount of the claim, which the trustee then files with the court, without ever filing a formal objection. This only works with cooperative creditors, of course, and presumably does not require a rule change to implement. Alternatively, some debtors in Delaware have filed motions seeking settlement authority to address certain claims without court intervention and within certain parameters.

Practical Solutions: At a minimum, the Rule ought to make the procedures consistent. The best case would be, however, to revamp the Rules to streamline the process. Some areas for consideration are:

\* a process separate from 9014 and the adversary rules, probably in part 3 of the rules

\*simplify rules and claims filing and objection process to reduce costs

reconsider whether a significant portion of claims can be resolved without notice or judicial involvement, including by stipulation and order or simply by notation on the trustee's docket, without the need for compliance with the settlement and compromise rules

\*use the approach in Boston Chicken and Einstein Noah Bagel for guidance

\*the key may be rules or orders that establish a protocol and define standards - e.g., that define which types, amounts, etc of claims can be resolved by a simpler process with limited or no notice

\*revamp discovery rules vis a vis claims

## VII. Scheduling of Claims as Disputed, Contingent, or Unliquidated

Perceived Problem: There are many cases where all claims, or virtually all claims, are scheduled as D, C, or U. One U.S. Trustee's office has also noted a pattern whereby the schedules in chapter 11 cases are amended shortly before the voting deadline on a plan, to dispute most claims, in order to render them ineligible for voting, often without notice, or adequate notice, to the affected creditors.

Presumably the filing under oath requirements should impose some sanctions if the claims are disputed in bad faith. Should there be some specific rule providing some higher form of sanction where the debtor challenges virtually every claim, or makes a late schedule amendment doing so?

## VIII. Estimating Claims.

Perceived Problem: Neither the Code nor the Rules provide any guidance as to how a court should go about estimating a claim. Courts have stated that claim estimation proceeding is a core proceeding and, apparently, a contested matter under Rule 9014. However, the courts note that no specific procedure is required. See, In re Baldwin-United Corp., 55 B.R. 885 (Bankr. S.D. Ohio 1985), cited in Queenan, et. al, Chapter 11 Theory and Practice: A Guide to Reorganization, §21.57 at 21:155 n.805 (1994). The cases baldly state that the court should use "whatever method is best suited to the particular contingencies at issue." Id., quoting Bittner v. Borne Chemical Co., 691 F.2d 134, 135 (3d Cir. 1982). The Courts are not bound to defer to arbitration provisions in contracts in lieu of estimating a claim summarily. See, Interco, Inc. v. ILGWU National Retirement Fund (In re Interco, Inc.), 137

B.R. 993 (Bankr. E.D. Mo. 1992) (neither ERISA nor case law requires arbitration rather than claim estimation process).

The Courts, therefore, have tremendous flexibility to estimate a claim that may create situations of unintended abuse. Under §502(c), a claim is estimated for purposes of allowance. Thus, an estimated claim is allowed for all purposes in the bankruptcy case. Collier on Bankruptcy, ¶502.04[3] (15<sup>th</sup> Rev. Ed. 2001). Further, the order allowing or disallowing a claim against a bankruptcy estate has the same effect as any other order of a court of competent jurisdiction (*i.e.*, principles of judicial finality apply, including the principles of *res judicata* and collateral estoppel). *Id.*, citing Beatrice Co. v Rusty Jones, Inc. (In re Rusty Jones, Inc.), 153 B.R. 535 (N.D. Ill. 1993).

In the white hot atmosphere of plan confirmation, for example, a summary estimation of a claim could have far reaching and unintended consequences. Postpetition, and perhaps postconfirmation, property rights could be affected inadvertently because of a claim estimation proceeding to facilitate confirmation. See, e.g., Pizza of Hawaii, Inc. v Shakey's Inc. (In re Pizza of Hawaii, Inc.), 761 F.2d 1374 (9<sup>th</sup> Cir. 1985) (postpetition administrative claims for breach of contract and trademark infringement must be estimated to determine chapter 11 plan feasibility).

The issue of claim estimation arises frequently in "mass tort" bankruptcy cases, such as cases filed by asbestos manufacturers. The working paper of the National Bankruptcy Review Commission specifically addressed the issue, and has been the subject of significant debate and commentary. See generally, Collier's, ¶502.04[3] at 502-54 n.11 and 12.

## IX. Bankruptcy Rule 3004

Perceived problem: Problems occur from time to time under Rule 3004, which allows debtors or trustees to file claims on behalf of creditors. The intent of the rule seems to be to allow a debtor to file a claim for a priority creditor, such as a taxing authority or former spouse, to assure that the claim, which is otherwise non-dischargeable, will be paid by the estate. Yet, there are cases where a trustee ends up with a chapter 7 estate that may end up being solvent, and files proofs of claim on behalf of every creditor who failed to file a claim, in order to prevent a distribution back to the debtor and (possibly) to enhance the trustee's compensation.

Is this abusive by the trustee, or is this an appropriate act to insure everyone gets paid? Should the rules be amended to eliminate the ability of a trustee to file claims at all, leaving that power only to debtors, who presumably are the intended beneficiaries of the rule anyway? Should the rules be amended to lessen a trustee's ability to file claims? Should the rules bring back the surplus claims notice, which used to exist, which would provide notice to creditors who failed to file claims that there's still money in the estate, and to give them another chance to file? If that rule is reinstated, should the ability of the debtor/trustee to file

claims be eliminated entirely?

Although issue in this area arises in Chapter 13 cases in which the debtor is under pressure to begin making payments to the trustee and obtain confirmation before the bar date. In some districts, the debtor is allowed to file proofs of claim before the expiration of the bar date for creditors and file objections to those very claims before the bar date. Is that a bootstrap to jurisdiction over a claimant who might not otherwise have filed a claim?

X. Section 726

Perceived problem: Section 726(a)(1) of the Bankruptcy Code was amended to clarify that priority claims are entitled to priority repayment, even if tardily filed, so long as they are filed "before the date on which the trustee commences distribution under this section." Apparently, this creates nightmares for Chapter 7 trustees, who have to keep checking the docket to make sure no additional priority claims have been filed up until they start cutting checks. It's even more problematic for trustees who make interim distributions before filing a final report, which does not happen very often.

Should there be a rule amendment that defines "when the trustee commences distribution?" Suggested date would be the earlier of entry of a court order authorizing interim distributions or deadline for objection to the trustee's final report.





Effective Dates of Proposed Bankruptcy Rules Amendments

December 1, 2002

1004  
1004.1  
2004  
\*  
2015(a)(5)  
4004  
9014  
9027

December 1, 2003

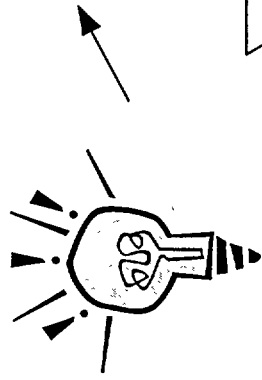
1007  
2003  
2009  
\*  
2016  
7007.1

December 1, 2004

1005  
\*  
4003  
4008  
9014

\* Rule 2014 was withdrawn before it reached the Judicial Conference. It may join the class or 2003, of the committee recommends that it proceed without republication. It may join the class of 2004 if the committee recommends republication.

# THE GESTATION OF AN AMENDMENT



1. Advisory Committee considers proposals for amendments. If approved, prepares draft amendments.
2. This period is of indeterminate length.
3. Proposals come from Committee members, the Reporter, judges, clerks, or the public, or result from statutory changes, case law developments, or experience.

*Proposed amendments may be at different stages of the process at the same time, i.e., amendments can be at the Supreme Court while others are in the public comment stage or still being discussed by the Advisory Committee.*

**YEAR 1**

Advisory Committee approves draft of proposed amendments. (January-May)

Presents "preliminary draft" to Standing Committee, usually at the summer meeting, with request to publish. (June)

If approved, preliminary draft amendments are published and comments invited. (August)

**YEAR 2**

Advisory Committee reviews written comments and holds hearing(s). Public comment period closes. (January - March)

Advisory Committee completes review of comments, final draft of amendments, draft memorandum to Standing Committee re: comments, also memorandum re: controversies, minority views of Advisory Committee members, etc., (if appropriate). (March -April)

Standing Committee reviews final draft; may 1) approve 2) approve with changes, or 3) send back to Advisory Committee. (June)

Judicial Conference considers amendments submitted by Standing Committee and if approved, forwards to Supreme Court. (September)

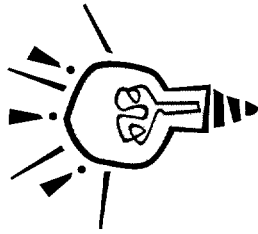
**YEAR 3**

Supreme Court decides whether to prescribe amendments and, if so, forwards them to Congress. (March or April) (must be by May 1)

Congress can alter or reject during the next seven months. If Congress does not act, amendments take effect December 1.



# THE GESTATION OF AN AMENDMENT



2002, 2014, 3015,  
3017, 4003, 4008,  
Official Form 6-G

**YEAR 1**

9014

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1005  
Official Forms  
1, 3, 5, 6, 7, 8,  
9, 10, 16A,  
16C, and 19

**YEAR 2**

1007, 2003, 2009,  
2016, and new  
7007.1  
Official Forms 1, 5,  
and 17

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**YEAR 3**

1004, 1004.1,  
2004, 2015(a)(5),  
4004, 9014, 9027.

[Empty box]





*Next Meeting Reminder: October 10 - 11, 2002*  
Hyannis, Massachusetts



The committee will discuss dates and locations for the  
March 2003 meeting.



COMMITTEE NOTE

The declaration and certification by a non-attorney bankruptcy petition preparer in the form are amended to include material mandated by the Bankruptcy Reform Act of 2001, Pub. L. No. 107 - , Stat. , ( , 2001).

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# EXPLANATIONS

FORM B9A (DRAFT)

**Filing of Chapter 7 Bankruptcy Case** A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.

**Creditors Generally May Not Take Certain Actions** Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. Consult a lawyer to determine your rights in this case.

**Meeting of Creditors** A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

**Do Not File a Proof of Claim at This Time** There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.

**Discharge of Debts** The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

**Exempt Property** The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

**Bankruptcy Clerk's Office** Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

**Legal Advice** The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—