

**INDIVIDUAL AND SMALL BUSINESS CHAPTER 11 CASES AND
UNITED STATES TRUSTEE OVERSIGHT**

**SIX PRINCIPAL BAPCPA AMENDMENTS AFFECTING INDIVIDUAL
CHAPTER 11 CASES**

| <u>BAPCPA</u> | <u>C/f Chapter 13</u> |
|---|--|
| 11 U.S.C. § 1115 – added (1) post-petition property of “of the kind specified in section 541” and (2) post-petition wages | 11 U.S.C. § 1306(a) |
| 11 U.S.C. § 1123(a)(8) – permitting, but not requiring, a debtor to use post-petition earnings “or other future income of the debtor as is necessary for the execution of the plan.” | 11 U.S.C. § 1322(a)(1) |
| 11 U.S.C. § 1129(a)(15) – requiring, if an unsecured creditor objects to the confirmation, that “the value of the property to be distributed under the plan” ≥ projected disposable income 1325 (b)(2)” over five years or plan term, “whichever is longer....” | 11 U.S.C. § 1325(b)(1) (“best efforts” test) |
| 11 U.S.C. § 1129(b)(2)(B)(ii) – excepting from the APR “property included in the estate under section 1115, subject to the requirements of [11 U.S.C. § 1129(a)(14) post-petition domestic support obligations]....” | N/A |
| 11 U.S.C. § 1141(d)(5) – delaying discharge “until the court grants a discharge on completion of all payments under the plan,” unless the court, after notice and hearing the court “orders otherwise for cause....” | 11 U.S.C. § 1328(a) |
| 11 U.S.C. § 1127(e) – permitting the debtor, trustee, unsecured creditor or United States Trustee to request modification of a confirmed plan after confirmation | 11 U.S.C. § 1329(a) |

BAPCP AMENDMENTS AFFECTING SMALL BUSINESS DEBTORS

A. What is a small business debtor? Defined by 11 U.S.C. § 101(51D) as “a person engaged in...business activities...excluding a person whose primary activity is...owning or operating real property...that has aggregate noncontingent liquidated secured and unsecured debts...in an amount not more than \$2,566,050 (excluding [debts to affiliates and insiders]...”¹

(1) The debt limit is periodically adjusted

(2) An individual debtor can also be a “small business” debtor

B. Reporting and Disclosure Requirements – 11 U.S.C. § 1116 establishes additional reporting and disclosure requirements.

C. Exclusivity Period – 11 U.S.C. § 1121(e) establishes 180 day exclusivity period and absolute deadline of 300 days to file plan and disclosure statement.

D. Expedited Consideration of Disclosure Statement

1. 11 U.S.C. 1125(f) provides for waiver or expedited consideration of disclosure statement.

2. Local Rule 3017-2 provides as follows:

a. Preliminary Review by the United States Trustee: If a Small Business Debtor as defined in 11U.S.C. § 101(51D) (“the Debtor”) wishes to obtain conditional approval of a disclosure statement, the Debtor shall submit the proposed plan and disclosure statement to the Office of the U.S. Trustee for the Western District of Virginia no fewer than seven

¹ Currently, the Small Business Reorganization Act of 2018 (S. 3869, H.R. 7190) is working its way through Congress and, if enacted, would create a new subchapter of title 11 of the United States Code. The proposed legislation is designed to make small business bankruptcies quicker and less expensive.

<http://www.mondaq.com/unitedstates/x/763318/Insolvency+Bankruptcy/Bill+Could+Make+Ch+11+A+Viable+Option+For+Small+Businesses>

<https://news.bloomberglaw.com/bankruptcy-law/bankruptcy-bill-aims-to-keep-more-small-businesses-open>

(7) days before the proposed plan and disclosure statement are filed with the Court. The U.S. Trustee shall then provide comments to the Debtor within seven (7) days thereafter.

- b. Filing with the Court: The Debtor shall file with the Court the proposed plan and disclosure statement together with a motion for conditional approval of the proposed disclosure statement certifying compliance with this Rule and containing a statement as to whether the disclosure statement as filed addresses any concerns expressed by the U. S. Trustee. In addition, the Debtor shall attach to the Motion an affidavit attesting to the truthfulness of the contents of said disclosure statement and that all known material facts germane to the financial condition of the Debtor have been disclosed. The affidavit shall be signed by the Debtor(s), or if the Debtor is a legal entity, by such entity's chief officer. Such motion and proposed plan and disclosure statement shall be served upon the Office of the U. S. Trustee, counsel for any appointed creditors' committee, upon any attorney who has filed a notice of appearance or otherwise appeared in the case, and upon any party that has either actually appeared in the case or has filed a request to receive notice.
- c. Response by United States Trustee: Within seven (7) days after the filing of the plan, disclosure statement and motion for conditional approval, the U.S. Trustee shall file a statement with the Court indicating either that the filed disclosure statement is satisfactory to the Office of the United States Trustee, or if not, in what respects it is considered to be deficient. Any other party in interest may file a similar statement within such period. The Court will consider any such statements filed before ruling on the motion.
- d. Action by the Court: The Court may either grant or deny the motion for conditional approval without a hearing or may schedule the same for an expedited hearing.

E. Additional Considerations:

1. The procedure for conditional approval described herein shall not extend any deadline for filing a plan and disclosure statement previously set by the Court.

2. The Debtor shall bear the burden of obtaining final approval of the disclosure statement in accord with the requirements of 11 U.S.C. § 1125.
3. Conditional approval of the disclosure statement shall not prohibit any party from making timely objection to final approval of such disclosure statement.

F. Small Business Designation

1. Rule 1020(a) requires the debtor to state whether it is a small business debtor on the voluntary petition. The case will continue as a small business debtor except as provided in Rule 1020(c) or unless and until the court enters an order finding that the debtor's statement is incorrect.
2. Pursuant to 1020(b), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the § 341 meeting, or within 30 days after any amendment, whichever is later.
3. If a committee is appointed under 11 U.S.C. § 1102(a)(1), the case can only proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all of the other requirements for being a small business debtor.

*Court may, on the request of a party in interest, order that a committee of creditors not be appointed.

AVOIDING PROBLEMS BY UNDERSTANDING ROLES

A. *Role of the United States Trustee* – chapter 7 trustees have the duties set forth in 11 U.S.C. § 704(a) and chapter 13 trustees have the duties set forth in 11 U.S.C. § 1302(b). In comparison, the United States Trustee's "mission is to promote the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws; . . . and ensuring that those involved in the process . . . fulfill their legal obligations." *United States Trustee Program Policy And Practices Manual* Vol. 1, § 1-4 at pg. 17 (available at:

<https://www.justice.gov/ust/united-states-trustee-program-policy-and-practices-manual>) (hereinafter referred to as the “*Manual*”).

1. Volume 3 of the *Manual* describes in general terms the involvement of the United States Trustee in chapter 11 cases. Section 3-12 of the *Manual* relates specifically to chapter 11 cases filed by individuals.
 2. The United States Trustee will solicit and attempt to form a creditors’ committee in every chapter 11 case.
 - a. The involvement of the United States Trustee in a chapter 11 case depends, in part, on the level of creditor participation in the case. *Manual* Vol. 3, § 3-1 at pg. 2.
 3. In appropriate cases, the United States Trustee seeks the appointment of a chapter 11 trustee. See 11 U.S.C. § 1104.
 - a. A chapter 11 trustee’s duties are set out in 11 U.S.C. § 1106(a).
- B. *Role of the debtor* – a debtor in possession is a fiduciary for the estate and creditors and must act accordingly. A debtor in possession is required to “perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of [title 11 of the United States Code], of a trustee serving in a case under [chapter 11 of the Bankruptcy Code].”

PREPARE BEFORE THE CASE IS FILED

A. Initial Debtor Interview – gather and prepare documents.

1. *What is an initial debtor interview* – it is a meeting, generally held within 10 days of the petition date, that is conducted in the bankruptcy meeting room located in Roanoke, Virginia for the purposes of: (1) providing the United States Trustee with information “so that an early assessment can be made of the accuracy of the debtor’s schedules and the statements of the debtor’s financial ability to confirm a plan;” and (2) ensuring “that the debtor is aware of its new fiduciary obligations and of the United States Trustee’s role in administration of chapter 11 cases.” *Manual* Vol. 3, § 3-3.1 at pg. 34.

2. *Who conducts it* – generally, the United States Trustee’s bankruptcy analyst conducts the initial debtor interview.
3. *What documentation is required* – after the petition is filed, the United States Trustee will send an email containing the *U.S. Trustee Guidelines*, an IRS notice to individual chapter 11 debtors, a blank Acord, a check conversion statement, a blank, sample 6 month operating projection, blank, sample operating report forms, and a list of banks approved to hold the debtor in possession’s accounts. The documents are provided in the Appendix to the materials. The *U.S. Trustee Guidelines* set forth the documents that must be provided at least 36 hours before the initial debtor interview, and the documents include, among other things,: bank statements for the year prior to the petition date; last 3 years of tax returns; financial statements; proof of closure of prepetition accounts and opening of debtor in possession/tax accounts; proof of insurance; and cash flow projection.
4. Copies of the local United States Trustee guidelines are attached.

B. Scheduling Hearings – make phone calls to the Court and U.S. Trustee’s office.

C. Review Debtor-in-Possession (“DIP”) Order

1. Debtor shall not pay any pre-petition debt; may employ, discharge and fix salaries of all employees; but officers' and directors' salaries shall be reported by the debtor in possession in writing within ten (10) days of entry of this order to the office of the U.S. Trustee and to the creditors' committee designated in this case and absent any written objection and request for hearing by the U. S. Trustee or the creditors' committee within fourteen (14) days after the convening of the Section 341 meeting of creditors, said salaries shall be fixed; shall not, without, court approval, use "cash collateral" as defined in 11 U.S.C. Section 363 (a) unless the secured party consents; shall not sell property of the estate other than in the ordinary course of business except with court approval; may obtain unsecured credit in the ordinary course of business; may not obtain secured, priority or senior lien credit without court approval under

11 U.S.C. Section 364; and shall maintain adequate insurance on the property of the estate and make timely payment of any and all premiums thereon.

(Unpacking first paragraph)

- a. Cannot pay pre-petition debt;
 - b. Report officers' and directors' salaries in writing within ten (10) days;
 - c. Prohibits, absent court approval or agreement of secured party, use of cash collateral;
 - d. Prohibits sale of estate property outside of ordinary course, absent court approval;
 - e. Prohibits, absent court approval, obtaining unsecured credit; and
 - f. Maintaining insurance.
2. Debtor shall close its current books and open new books of account showing all earnings, expenses, receipts and disbursements commencing with the date of the petition; shall segregate on its books all taxes collected or withheld whether federal, state, or local; shall close all bank accounts currently maintained and open two new bank accounts, a Debtor in Possession "Operating Account" and a Debtor in Possession "Tax Account". Debtor shall deposit in the tax account all funds required to be escrowed under state or federal law, to be disbursed only for the purpose for which they are set aside. All federal payroll taxes (e.g. FICA, FUTA) shall be deposited each time a payroll is made; and Debtor shall notify: Chief, Technical Section, Internal Revenue Service, P. O. Box 10025, Richmond, Virginia 23240 of the date, place, amount of each deposit and whether it is the entire amount due and promptly prepare and file all tax returns required by law. Debtor shall follow all guidelines, regulations and directives of the Office of the United States Trustee pertaining to Chapter 11 cases including, but not limited to, payment of the required quarterly fees.

(Unpacking second paragraph)

- a. Close pre-petition books and open new books;
 - b. Segregate on books all taxes collected or withheld;
 - c. Close pre-petition bank accounts and open new bank accounts;
 - d. Make tax deposits when due;
 - e. File all required tax returns;
 - f. Follow all guidelines, regulations and directives of the Office of the United States Trustee including, but not limited to, payments of the required quarterly fees.
3. Failure by debtor to comply with the terms, conditions and provisions of this order may require debtor to appear before this court for a hearing relative to the further administration of debtor's case, or for debtor to show cause why a trustee should not be appointed, or the debtor's case should not be converted to Chapter 7 or dismissed

(no unpacking required)

4. That within fourteen (14) days after the entry of this order, counsel shall file with this court a report disclosing counsel's fee arrangement with debtor, the amount of the retainer received, if any, the disposition of the same, and comply with the provisions of 11 U.S.C. Section 327, et seq. and Bankruptcy Rule 2014. Failure of counsel to comply with the foregoing may result in disallowance of attorney's fees. Upon review by this court of counsel's filings and barring any written objection to counsel's employment and a request for hearing thereon, counsel of record shall continue, until further order of court, as counsel for the debtor in possession.

(unpacking fourth paragraph)

- a. File employment applications, and
- b. See below.

“FIRST DAY” MOTIONS

A. Cash Collateral – 11 U.S.C. § 363(a) and (c)

1. Defined as “cash...or cash equivalents...,” including “proceeds, products offspring, rents, or profits of property...subject to a [creditor’s pre-petition] security interest...”
2. Debtor must request authorization to use in writing. Rules 4001(b) and 9014.
3. Court may authorize use under 11 U.S.C. § 363(c)(2) subject to “adequate protection.”
4. Budget
 - a. Period covered
 - b. Contents
 - c. Periodic reconciliation of budgeted to actual
5. Absent Court order, debtor must “segregate and account” for cash collateral. 11 U.S.C. § 363(c)(4).
6. Rents – separate accounts by mortgagee or property?
7. Cash management – transparency and accountability

B. Borrowing (or DIP Financing)

1. Section 11 U.S.C. § 364(b), (c) and (d).
2. Request must be in writing
3. Rule 4001(c)
4. Escalating inducements under § 364(b)-(d)

- a. Administrative priority
- b. Super-administrative priority
- c. Secured by unencumbered property
- d. Junior lien
- e. Equal or senior lien

C. Other “First Day” Motions

1. Wages – 11 U.S.C. § 507(a)(4) and (5)(employee wages and benefits)
2. Cash Management
3. “Critical vendor” *See In re Kmart Corp.*, 359 F.2d 866 (7th Cir. 2004)

D. Limitation on “First Day” Motions – Rule 6003

1. Except to avoid “immediate and irreparable harm” Court “shall not” within 21 days grant motions:
 - a. To employ a professional under Rule 2014
 - b. To use, sell, lease or incur obligations as to estate property, other than under Rule 4001
 - c. To assume or assign executory contract or lease

“SECOND DAY” MOTIONS

- A. Employment – critically analyze your relationship with the debtor and get employed.
 1. *Retention must be approved* – a debtor in possession must obtain court approval to employ all professionals including counsel for the debtor.

2. *Applications to employ counsel* – must be filed within 14 days of the petition date to comply with the *Debtor In Possession Order*, but generally may not be approved until after 21 days after the petition date. Fed. R. Bankr. P. 6003.
 - a. The United States Trustee reviews the application and counsel’s verified statement in support of the application to ensure that counsel is disinterested. See 11 U.S.C. §§ 327(a) and 328(c); Fed. R. Bank. P. 2014 To that end, the *Manual* states:

The retention process is designed to ensure public confidence in the bankruptcy system, prevent abuses, and achieve some degree of economy in the administration of the case by limiting the retention of professionals to only those instances where it can be demonstrated that the services are necessary. Furthermore, the requirements of section 327 “serve the important policy of ensuring that all professionals appointed pursuant to [the section] tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities.” *Rome v. Braunstein*, 19 F.3d 54, 58 (1st Cir. 1994). 28 U.S.C. § 586(a)(3)(I) specifically requires the United States Trustee to monitor employment applications and, when appropriate, to file with the court comments with respect to the approval of such applications.

Court approval of a professional person’s employment is contingent upon a finding that the applicant has met a two-pronged test:

1. the professional must be disinterested, pursuant to section 327(a); and
2. the professional must not hold or represent an interest adverse to the estate.

The question of whether a professional meets the standards of the law is one for the court to adjudicate after a full disclosure of the facts. A failure to disclose constitutes an independent basis for disqualification.

The United States Trustee should promptly examine the application for employment and its accompanying verified statement not only to determine if the proposed professional service is necessary, but also to ascertain if any disclosures suggest questionable relationships, divided loyalties, or disqualifying adverse interests. Issues that may warrant closer scrutiny include multiple debtor representation, simultaneous representation of a limited partnership and a general partner, representation of a corporation and an affiliate or shareholder, receipt of a preference or unpaid fees, security interests taken to secure the payment of fees or other unusual arrangements for compensation, and prior or concurrent representation of a major creditor. Where appropriate, the United States Trustee should require further disclosure or comment on any unusual aspects of the application. The United States Trustee should object to the employment when the services are unnecessary or duplicative, the applicant is not disinterested, or representation of adverse interests warrants disqualification.

Manual Vol. 3, § 3-7.1 at pg. 104.

- b. With respect to the content of an application to employ, the *Manual* states:

The contents of an employment application are dictated by Fed. R. Bankr. P. 2014. It must contain all of the following elements:

1. specific facts showing the necessity of the employment;
2. the name of the person to be employed;
3. the reasons for the selection;
4. the professional services to be rendered;
5. any proposed arrangement for compensation; and
6. all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee.

Id. at pg. 105.

B. Potential Red Flag Conflicts

1. Owners of the debtors
 - a. Who owns the debtor
 - b. who represents them?
2. Corporate affiliates of the debtor – filing and non-filing, who represents them?
3. Co-debtor stay issues?

Prepare Contemporaneous, Itemized Time Records

- A. Compensation – keep contemporaneous, itemized time records pre-petition and post-petition.
 1. *Compensation must be reasonable* – 11 U.S.C. § 330(a)(3) sets forth a non-exclusive list of factors a court must take into account. See *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974) for the often cited 12 factor test.

- a. Contemporaneous time records should be maintained in tenth of an hour increments to enable parties in interest to assess the services rendered to the debtor. If separate, discrete tasks are performed and the total time exceeds .5, then the separable tasks should be broken out.
 - b. Rates should be comparable to the professional's non-bankruptcy rates.
2. *Fee guidelines* – the United States Trustee reviews fee applications in accordance with the “procedural guidelines adopted by the Executive Office of the United States trustee,” *Manual* Vol. 3, § 3-8.1.1 at pg. 117, and the guidelines are available at: <https://www.justice.gov/ust/fee-guidelines>.
 3. *Avoid common mistakes* – the *Manual* sets forth the following 11 common mistakes made in connection with seeking compensation:
 1. failure to obtain prior court approval of the employment;
 2. inadequate disclosure of relationships or possible conflicts;
 3. non-compliance with timing or format requirements;
 4. inadequate descriptions of services rendered;
 5. services performed outside the scope of employment;
 6. inappropriate rounding or lumping of time;
 7. duplication of effort, inefficient delegation, or excess time spent in performance of a given task;
 8. services not reasonably likely to benefit the estate or not necessary to the administration of the case;
 9. overhead items inappropriately billed or expensed;
 10. inadequate documentation of expenses; and
 11. excessive charges for preparing the fee application.

Manual Vol 3, § 3-8.1.1 at pg. 118

4. *Interim and final compensation* – interim compensation may be sought every 120 days “or more often if the court permits.” 11 U.S.C. § 331. If you seek to be compensated on an hourly basis, be aware that you will need to obtain advance permission (e.g. in the employment application and order or pursuant to a separate motion and order) to seek compensation

more frequently than every 120 days. In appropriate circumstances, the United States Trustee does not oppose shortening the frequency to every 60 days. After the plan is confirmed, professionals should seek final approval of all fees for the period of time between the petition date and confirmation of the plan.

- a. Flat fees – approval of compensation may possibly be tied to completion of stages (e.g. attendance at the initial debtor interview and meeting of creditors, approval of the disclosure statement, etc.).

PROGRESS THE CASE TOWARDS CONFIRMATION

A. Monitoring – chapter 11 is not a parking lot.

1. *What is progress* – the *Manual* provides:

The United States Trustee is charged by statute with the responsibility of supervising the administration of chapter 11 cases. 28 U.S.C. § 586(a)(3). The administrative process should be designed to ensure that cases move through the system in an expeditious manner. Cases that lack a realistic prospect of reorganization within a reasonable period of time must be identified and appropriate action taken to seek the dismissal or conversion of such cases.

Manual Vol. 3, § 3-10.1 at pg. 142.

Proper progress of a case entails, among other things, timely filing of schedules, provision of required documents, attendance at the Initial Debtor Interview, attendance at the meeting of creditors, management of issues related to executory contracts and unexpired leases, proposal of a disclosure statement and plan, and confirmation of a plan. 1121

2. Code Driven Deadlines

- a. Exclusivity Period is 180 days from the date of filing. 11 U.S.C. § 1121(e)(1).
- b. The plan and disclosure statement shall be filed not later than 300 days after the petition date. 11 U.S.C. § 1121(e)(2).

- c. The Court must confirm a plan within 45 day after the filing o the plan. 11U.S.C. § 1129(e).
 - d. NOTE: These time periods may be extended if, before the expiration of time, the debtor can demonstrate by a preponderance of the evidence that it is *more likely than not that the Court will confirm a plan within a reasonable period of time*. The extension order must be signed before the existing deadline expires.
3. *Review of disclosure statements* – debtors may craft their own disclosure statements and in such cases, the “United States Trustee’s review . . . focuses on the adequacy of disclosure.” What is adequate information is case dependent. *Manual* Vol. 3, § 3-11.1 at pg. 159. While the United States Trustee does not advocate a “checklist” approach to a review of disclosure statements:

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; care must be taken, however, to ensure that significant material is not deleted.

Manual Vol. 3, § 3-11.2.3 at pg. 161. A disclosure statement should, among other things, address the following matters: who can vote; standards for confirmation; description of the debtor’s business; reasons for the debtor’s financial problems; financial information and projections; a liquidation analysis; information on cram down if confirmation may be

sought in that fashion, material post-petition events; a summary of the plan; and a description of the means for effectuating the plan. *See Manual* Vol. 3, § 3-11.3.1 at pgs. 161-175 for a more detailed discussion.

- a. **Drafting a disclosure statement or plan from scratch is not required.** A form small business case disclosure statement is available at <http://www.uscourts.gov/forms/bankruptcy-forms>. A form small business plan is available there as well.

Plans – “Plans should subject debtors to clear, enforceable payment obligations. . . . Creditors should not have to guess whether a debtor has defaulted under a confirmed plan.” *Manual* Vol. 3, § 3-12.3 at pg. 188.

- b. Having clear obligations also benefits debtors. Individual debtors, unlike corporate debtors, generally do not receive a discharge upon confirmation. 11 U.S.C. § 1141(d)(5). Therefore, individual debtors have an incentive, as discussed below, to close their cases subject to reopening for purposes of receiving a discharge. However, closure of the case terminates the stay and, because the debtor has not received a discharge, there is no discharge injunction. All parties in interest, however, are bound by the terms of the plan so that protects the reorganized debtor provided the reorganized debtor is not in default of the plan. Thus, it is critical that the plan be clear. *Id.*

Achieving confirmation – after approval of the disclosure statement, solicitation of acceptance of the plan may begin. The standards for confirmation are set forth in 11 U.S.C. § 1129.

- c. Confirmation hearings – the debtor should be ready and able to provide evidence of all the factors. The United States Trustee will object to confirmation if the factors are not met, and the *Manual* sets forth a number of other issues that may lead the United States Trustee to object to confirmation. *Manual* Vol. 3, § 3-11.5 at pg. 176.

POST-CONFIRMATION ISSUES

- A. Substantial Consummation And Case Closure – confirmation is not the end of the case.

1. Reporting – monthly operating reports are no longer required. Instead, reorganized debtors are required to file quarterly reports.
2. Quarterly fees continue to accrue.
3. Cases may be closed and reopened for the granting of a discharge after the completion of all payments under the plan. This allows reorganized debtors to avoid incurring quarterly fees.
 - a. The *Manual* sets out the 7 non-exclusive factors that are considered with respect to a request to close a case subject to reopening. See *Manual* Vol. 3, § 3-12.3 at pgs. 187-88.

FACT PATTERN

Joe's Cabinets Inc. is a subchapter S corporation that manufactures high-end residential cabinets for sale to distributors and wholesalers. It operates out of a manufacturing facility in Roanoke, Virginia, which it leases. In November 2018, it was mired in a sales and cash flow slump resulting from a slight economic downturn, poor performance by its top two sales people and the natural seasonal low point of its year.

Joe's has a \$1 million asset based line of credit with XYZ Lender, Inc., by which it can borrow 90% percent of eligible accounts receivable and 40% percent of finished inventory. Its accounts receivable are paid directly to XYZ which credits it to the line of credit, creating availability for additional borrowing by Joe's. The line of credit is secured by a first lien on all accounts receivable and inventory.

Joe's also has a secured equipment loan for \$300,000.00 with Equipment Finance Inc., pursuant to which it is obligated to make monthly payments. The Equipment Finance loan is secured by a first lien on Joe's manufacturing equipment.

Because of its recent sales and cash flow difficulties, Joe's accounts payable with its vendors and suppliers has ballooned to \$500,000.00; much of that is over ninety (90) days past due. The suppliers are calling constantly, threatening lawsuits and most have put Joe's on COD. As a last ditch effort to get product in the door in order to fulfill current orders, Joe's borrowed \$200,000.00 at a very high rate of interest from Ankle Breakers Lending, Inc., which repays itself by drafting principal and interest payments on a daily basis from Joe's checking account. The \$200,000.00 got quickly absorbed into the cost of operations, and the daily withdrawal from the checking account is hampering cash flow even further.

Joe's is behind two (2) months to its landlord for the rent of its manufacturing facility; the landlord has started to make noise about evicting the company.

So far, Joe's has managed to pay its employees on a weekly basis, sometimes by convincing XYZ to over advance on the line of credit; that just makes the situation worse as more receivables that come in go to covering the over advance. In January 2019, when cash flow was at its most bleak, although Joe's was able to pay its employees, it did not make the IRS deposit for 941 employee related taxes; it now owes this to the IRS, and the principals of Joe's are concerned about personal liability.

On the bright side, Joe's has recently hired away two (2) of the top sales people from its competitors. Further, Joe's product enjoys much popularity in the industry. They report that if Joe's can just make it until the middle of March, sales should increase dramatically. Joe's knows that at the sales levels that are projected it can operate very profitably, more than sufficient to pay its labor, operating, lease and secured debt obligations.

In the present, however, the daily ACH withdrawals from Ankle Breakers, the equipment loan payments, the unpaid payroll taxes, and the ongoing daily pressure from the accounts payables to the vendors and suppliers are making it seem impossible to survive. The company simply does not have the money to satisfy those obligations. The owners are frustrated because they know if they can just make it to early spring they should have sales and accounts receivable sufficient to fund their current operations and even be profitable.

What are their options?

**UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF UNITED STATES TRUSTEE**

First Campbell Square Building
210 First St., Suite 505
Roanoke, VA 24011-1620
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Form 10
Rev. 4/19

To: Chapter 11 Debtors, Counsel, and Appointed Chapter 11 Trustees

From: Margaret K. Garber
Assistant U.S. Trustee

Subject: Chapter 11 Debtor Instructions and Requirements

INITIAL DEBTOR CONFERENCE:

The U.S. Trustee is required by law to monitor the financial performance of Chapter 11 debtors and to insure that debtors otherwise comply with applicable provisions of the Bankruptcy Code. This is done primarily through ongoing financial review of the debtors' business activities with particular emphasis on whether the debtor is remaining current with its post-petition (after filing) obligations and whether the reorganization of the debtor's business is feasible. In order to facilitate the debtor's compliance with its reporting obligations, all Chapter 11 debtors are required to meet with the Office of the U.S. Trustee at the commencement of their case to discuss the operation of the business and the ongoing reporting requirements. Failure to attend the conference or to provide the required documentation in a timely manner may result in an immediate motion to dismiss the case.

It is the responsibility of counsel for the debtor to provide the debtor with this Guideline Package and all forms.

At the conclusion of the conference, the debtor will be required to sign a certification that the instructional package has been received and reviewed and that all guidelines, general requirements and reporting requirements are understood.

The CEO and the financial officer of the debtor are required to personally attend the conference at our offices located at First Campbell Square Building, 210 First Street, SW, Suite 120, Roanoke, Virginia. The debtor's counsel must personally attend the conference, however, if counsel is located outside of the Roanoke area, such personal appearance may be waived by the U.S. Trustee, in which event counsel **must** participate by phone on the date and time scheduled by calling our office. The U.S. Trustee will not proceed with the meeting without the participation of counsel.

Materials the Debtor must provide not less than 36 hours before the conference:

1. Copies of bank statements for all pre-petition bank accounts for the preceding one (1) year;
2. Copies of tax returns for the preceding three (3) years or copies of currently valid filed requests for extension;

3. Financial Statements

The books and records of the debtor must be closed out as of the date of filing of the petition and a new set of books and records should be opened thereafter for the Debtor-in-Possession. Copies of all general financial reports for the period of one year preceding the bankruptcy must be provided by the debtor at the conference. Backup documentation such as ledgers and cancelled checks is not required unless specifically requested by the U.S. Trustee. In the event that reproduction of any of the referenced materials is voluminous, the U.S. Trustee should be contacted prior to the conference.

4. Bank Accounts

The Debtor in Possession Order requires that new post-petition bank accounts be opened. The debtor must furnish the Court and the Office of the United States Trustee with evidence that all existing accounts have been closed and that it has opened new accounts. The debtor must establish a separate general operating account for the purpose of paying bills incurred during the administration of the case, a separate tax trust account into which escrow funds are to be deposited for the payment of post-petition taxes and, if necessary, a payroll account.

The U.S. Trustee must be notified in advance of Debtor in Possession accounts being moved to another depository.

The Bankruptcy Code requires that all accounts must be in an account authorized by the U.S. Trustee, regardless of where they were pre-petition. See the attachment for a list of authorized depositories.

On the face of the checks for each new account, the words "Debtor-in-Possession" and the bankruptcy case number must appear. The debtor must submit a copy or sample blank check marked "VOID" for each new account that shows compliance with this requirement. (The abbreviation "DIP" is not acceptable.)

The U.S. Trustee's Office cannot waive this requirement. Appropriate pleadings must be filed with the Court to waive this requirement.

You should ensure that the account is set up on a calendar month; that is, the first day of the month through the last day of the month.

5. Proof of Insurance

The debtor must file with the United States Trustee's Office evidence that the debtor is insured by workers' compensation, liability, auto, fire and theft, and any other insurance customarily maintained in the business in which the debtor is engaged. The fair market value of the estate's property must be insured against loss. Said evidence will consist of a copy of the insurance binder or certificate of insurance. It must show the type and amount of insurance, the property insured, effective date and policy period, and that the debtor is an insured party. The debtor must instruct insurance companies and agents to provide the United States Trustee with prior notification regarding any change, cancellation or expiration of a debtor's insurance policy. **The Office of the United States Trustee must be added as Certificate Holder.**

In the event of termination or lapse of insurance, the debtor must immediately report the termination to the United States Trustee and immediately obtain replacement coverage.

Failure to provide correct and adequate proof of full insurance coverage will result in a Motion to dismiss the case.

6. Employee Information

The debtor must provide the Office of United States Trustee with a statement detailing the number of employees, total amount of the gross payroll per month, salary of officers, director and principals of the debtor, and a statement that the post-petition payroll is current, or if not current, the reason.

7. Cash Flow Projection

The debtor must provide a six-month cash flow projection beginning with the first full month after filing and containing projected receipts, disbursements, and cash balance for each month. For individuals, the Schedule of Current Income and Expenses (bankruptcy schedules I and J) will suffice unless it differs materially from month to month.

I. **GENERAL REQUIREMENTS FOR ALL CHAPTER 11 DEBTORS**

- A. Compliance with the law -- the debtor must comply with the Bankruptcy Code, the Bankruptcy Rules, Local Rules and any court order.
- B. Debts -- the debtor must pay all post-petition debts on a current basis.
- C. The debtor must serve the United States Trustee with a copy of any motion, application, request or adversary proceeding filed by the debtor with the Bankruptcy Court.
- D. It is the debtor's responsibility to notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within ten (10) days after the change occurs.
- E. Employment and compensation of all Professionals (including attorneys, accountants, appraisers, auctioneers, real estate agents and other professionals) must have prior approval of the Court. No professional fees can be paid until the Court has approved the requested compensation by written Court Order.

II. **MONTHLY REPORTING INSTRUCTIONS**

The Office of the U. S. Trustee is unable to assist Chapter 11 debtors in the preparation of the Chapter 11 monthly reports other than to provide general instructions at the Initial Debtor Conference or to answer occasional general questions that may arise. The U.S. Trustee's Office cannot provide specific advice in the preparation of these reports.

If the debtor is unable to fully and completely prepare the monthly reports, the debtor must contact counsel or other competent professionals for assistance.

An electronic copy of the monthly operating report must be sent to the Office of the United States Trustee and the Chair of any creditors' committee appointed to serve in the case as well as be **electronically** filed with the Clerk's Office of the United States Bankruptcy Court, by the 15th day of the following month.

The contents of the monthly report depend upon the debtor's business status and accounting basis, whether cash or accrual. At the initial debtor conference a determination will be made by the U.S. Trustee regarding the form of the monthly operating report. **No exception to the reporting requirements shall be made except in writing signed by the U.S. Trustee.** In any event, copies of all bank statements are to be attached to each monthly report. Form 9-DS detailing disbursements on or on behalf of the debtor must be included in every monthly report, whatever the format.

The debtor is responsible for reporting to our office the accrual of professional compensation and expenses every month. If the debtor does not receive a bill each month from your professionals, the debtor must contact the professionals to obtain this amount (or a good faith estimate) so that it can be reported in the monthly report. Professionals are required to keep track of the time spent in the debtor's case, so this should not present a problem. Both the Large Business Debtor Monthly Report (accrual form series 9) and the Small Business Debtor Report have exhibits that address this. See page 3 of the Small Business Debtor Report and Exhibit 9-AB-6 for the Large Business Debtor Report.

Upon written authorization from the Roanoke office, computer or otherwise prepared Balance Sheets, Income Statements, Disbursements Ledgers, and Cash Reconciliation Reports may be substituted. In the event that use of the debtor's in house balance sheet has been authorized, post-petition liabilities and earnings (losses) must be broken out separately.

The debtor must provide a schedule of all post-petition obligations. Post-petition debts must be paid on a current basis.

Trust fund withholdings are those monies which the employer (debtor) does not own, but, the debtor as a fiduciary must withhold, collect and deposit for the benefit of the Internal Revenue Service or State Taxing Authority. They include employees' federal income taxes, employees' portion of FICA, sales taxes, etc. **It is not permissible to take any amounts from those funds to be used as a source of ready cash.** Trust fund and withholding taxes must be paid or deposited on the same day as paying any portion of compensation to the employee. Evidence of payment or deposit of these taxes must be provided with each monthly operating report. The tax liability must be paid by the end of each month. Such evidence must be a receipted copy of IRS Form 6123 (enclosed), or a bank receipted copy of the invoice coupon and check. The evidence of deposit **must** show the gross salaries, deductions, net pay, amount of deposit, and pay period.

Additional reports may be required in supervising the administration of the estate.

All disbursements must be made by check and disbursements by cash (currency) are prohibited. The payee name must appear on the face of the check. The check cannot be made payable to cash.

Failure to comply with United States Trustee requirements or failure to file timely and complete reports may result in a motion for conversion or dismissal of the bankruptcy case.

III. FIRST MEETING OF CREDITORS

The Chief Executive Officer and the person(s) who signed the schedules and the other employees generally responsible the debtor's financial affairs are all required to personally appear at the scheduled Section 341 meeting of creditors.

IV. U.S. TRUSTEE QUARTERLY FEE

Section 1930(a)(6) of Title 28 of the United States Code requires that all debtors in Chapter 11 Bankruptcy proceedings pay a quarterly fee for each quarter or fraction thereof until the case is closed by court order¹, or otherwise dismissed or converted to another Chapter. In accordance with the Bankruptcy Judgeship Act of 2017, Pub.L. No. 115-72, the following amended Chapter 11 quarterly fee schedule will apply for the calendar quarters beginning October 1, 2018 through September 30, 2019.

The amount of the fee varies depending upon the amount of money disbursed by or on behalf of the debtor during the calendar quarter. A minimum fee of \$325.00 is due each quarter even if no disbursements are made. The fee schedule can be found at: <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

The fee is due on the last day of the month following the calendar quarter. **If the fee is not received in the payment center by that date, a motion to convert the case to a liquidating case under chapter 7, or to dismiss the case, may be filed.**

A preprinted filing report will be mailed to the debtor from the U.S. Trustee's Office by the 15th of the month following the quarter end. This form is to accompany the payment for each quarter. If payment is made for multiple quarters by one check, prepare and mail the Report for each quarter along with your check. If you fail to receive the preprinted report in the mail, you are still responsible for paying the fee. Report forms can be obtained from the United States Trustee's Office.

A Plan of Reorganization must provide for payment of all unpaid quarterly fees as of the effective date of the Plan or it cannot be confirmed by the Court. In addition, all unpaid

¹/

NOTICE

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING 1. 1. DELINQUENT QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. §1930(a)(6). Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the United States Trustee intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting any delinquent debt, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the debtor; (4) engage private collection agencies to collect the debt; and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt. If the United States is unable to collect the full amount of any debt owed on a debtor's quarterly fee obligation, an I.R.S. Form 1099-C (Cancellation of Debt) will be filed with the Internal Revenue Service as required by law.

quarterly fees must be paid prior to entry of any order dismissing a case. Failure to pay the quarterly fee is cause for conversion or dismissal of the case.

The mailing address for quarterly fee payments is:

U.S. Trustee Payment Center
P.O. Box 6200-19
Portland, OR 97228-6200

V. TAX RETURNS

The debtor must file, on time, all required tax returns, including but not limited to income, withholding and sales tax.

VI. U.S. TRUSTEE CONTACT PERSON

The monthly reports and any general questions relating to them should be addressed to:

Everette Mann, Bankruptcy Analyst
Office of the U.S. Trustee
210 First Street, Suite 505
Roanoke, VA 24011
Telephone number: 540-857-2806
E-mail address: Everette.Mann@usdoj.gov

Legal questions must be addressed to debtor's attorney.

JOHN P. FITZGERALD, III
Acting United States Trustee for Region 4

Fill in this information to identify the case:

Debtor Name _____

United States Bankruptcy Court for the: _____ District of _____

Case number: _____

Check if this is an amended filing

Official Form 425C

Monthly Operating Report for Small Business Under Chapter 11

12/17

Month: _____

Date report filed: _____
MM / DD / YYYY

Line of business: _____

NAISC code: _____

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following small business monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Responsible party: _____

Original signature of responsible party _____

Printed name of responsible party _____

1. Questionnaire

Answer all questions on behalf of the debtor for the period covered by this report, unless otherwise indicated.

Yes No N/A

If you answer No to any of the questions in lines 1-9, attach an explanation and label it Exhibit A.

- | | | | |
|--|--------------------------|--------------------------|--------------------------|
| 1. Did the business operate during the entire reporting period? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you plan to continue to operate the business next month? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have you paid all of your bills on time? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Did you pay your employees on time? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have you deposited all the receipts for your business into debtor in possession (DIP) accounts? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have you timely filed your tax returns and paid all of your taxes? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you timely filed all other required government filings? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Are you current on your quarterly fee payments to the U.S. Trustee or Bankruptcy Administrator? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Have you timely paid all of your insurance premiums? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

If you answer Yes to any of the questions in lines 10-18, attach an explanation and label it Exhibit B.

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 10. Do you have any bank accounts open other than the DIP accounts? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Have you sold any assets other than inventory? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Have you sold or transferred any assets or provided services to anyone related to the DIP in any way? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Did any insurance company cancel your policy? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Did you have any unusual or significant unanticipated expenses? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Have you borrowed money from anyone or has anyone made any payments on your behalf? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Has anyone made an investment in your business? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

17. Have you paid any bills you owed before you filed bankruptcy?
18. Have you allowed any checks to clear the bank that were issued before you filed bankruptcy?

2. Summary of Cash Activity for All Accounts

19. Total opening balance of all accounts

This amount must equal what you reported as the cash on hand at the end of the month in the previous month. If this is your first report, report the total cash on hand as of the date of the filing of this case.

\$ _____

20. Total cash receipts

Attach a listing of all cash received for the month and label it *Exhibit C*. Include all cash received even if you have not deposited it at the bank, collections on receivables, credit card deposits, cash received from other parties, or loans, gifts, or payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit C*.

Report the total from *Exhibit C* here.

\$ _____

21. Total cash disbursements

Attach a listing of all payments you made in the month and label it *Exhibit D*. List the date paid, payee, purpose, and amount. Include all cash payments, debit card transactions, checks issued even if they have not cleared the bank, outstanding checks issued before the bankruptcy was filed that were allowed to clear this month, and payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit D*.

Report the total from *Exhibit D* here.

- \$ _____

22. Net cash flow

Subtract line 21 from line 20 and report the result here.
This amount may be different from what you may have calculated as *net profit*.

+ \$ _____

23. Cash on hand at the end of the month

Add line 22 + line 19. Report the result here.

Report this figure as the *cash on hand at the beginning of the month* on your next operating report.

This amount may not match your bank account balance because you may have outstanding checks that have not cleared the bank or deposits in transit.

= \$ _____

3. Unpaid Bills

Attach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.

24. Total payables

(*Exhibit E*)

\$ _____

4. Money Owed to You

Attach a list of all amounts owed to you by your customers for work you have done or merchandise you have sold. Include amounts owed to you both before, and after you filed bankruptcy. Label it *Exhibit F*. Identify who owes you money, how much is owed, and when payment is due. Report the total from *Exhibit F* here.

25. **Total receivables** \$ _____
(Exhibit F)

5. Employees

26. What was the number of employees when the case was filed? _____
 27. What is the number of employees as of the date of this monthly report? _____

6. Professional Fees

28. How much have you paid this month in professional fees related to this bankruptcy case? \$ _____
 29. How much have you paid in professional fees related to this bankruptcy case since the case was filed? \$ _____
 30. How much have you paid this month in other professional fees? \$ _____
 31. How much have you paid in total other professional fees since filing the case? \$ _____

7. Projections

Compare your actual cash receipts and disbursements to what you projected in the previous month. Projected figures in the first month should match those provided at the initial debtor interview, if any.

| | <i>Column A</i> | - | <i>Column B</i> | = | <i>Column C</i> |
|--|--|---|----------------------------------|---|----------------------------------|
| | Projected | | Actual | | Difference |
| | Copy lines 35-37 from the previous month's report. | | Copy lines 20-22 of this report. | | Subtract Column B from Column A. |
| 32. Cash receipts | \$ _____ | | \$ _____ | | \$ _____ |
| 33. Cash disbursements | \$ _____ | | \$ _____ | | \$ _____ |
| 34. Net cash flow | \$ _____ | | \$ _____ | | \$ _____ |
| 35. Total projected cash receipts for the next month: | | | | | \$ _____ |
| 36. Total projected cash disbursements for the next month: | | | | | - \$ _____ |
| 37. Total projected net cash flow for the next month: | | | | | = \$ _____ |

8. Additional Information

If available, check the box to the left and attach copies of the following documents.

- 38. Bank statements for each open account (redact all but the last 4 digits of account numbers).
- 39. Bank reconciliation reports for each account.
- 40. Financial reports such as an income statement (profit & loss) and/or balance sheet.
- 41. Budget, projection, or forecast reports.
- 42. Project, job costing, or work-in-progress reports.



SIGNED THIS [REDACTED] day of [REDACTED], 2018

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

[REDACTED]
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

| | |
|------------------------------------|---|
| In re: [REDACTED] Debtor(s) | [REDACTED] [REDACTED] CHAPTER 11 |
|------------------------------------|---|

DEBTOR-IN-POSSESSION ORDER

Pursuant to debtor's petition filed under Chapter 11, it is

ORDERED:

That pending further order of this Court, debtor shall operate its business as debtor in possession with powers, rights and duties of a trustee under 11 U.S.C. Section 1107, conditioned as follows:

1. Debtor shall not pay any pre-petition debt; may employ, discharge and fix salaries of all employees; but officers' and directors' salaries shall be reported by the debtor in possession in writing within ten (10) days of entry of this order to the office of the U.S. Trustee and to the creditors' committee designated in this case and absent any written objection and request for hearing by the U. S. Trustee or the creditors' committee within fourteen (14) days after the convening of the Section 341 meeting of creditors, said salaries shall be fixed; shall not, without, court approval, use "cash collateral" as defined in 11 U.S.C. Section 363 (a) unless the secured party consents; shall not sell property of the estate other than in the ordinary course of business except with court approval; may obtain unsecured credit in the ordinary course of business; may not obtain secured, priority or senior lien credit without court approval under 11 U.S.C. Section 364; and shall maintain adequate insurance on the property of the estate and make timely payment of any and all premiums thereon.

2. Debtor shall close its current books and open new books of account showing all earnings, expenses, receipts and disbursements commencing with the date of the petition; shall segregate on its books all taxes collected or withheld whether federal, state, or local; shall close all bank accounts currently maintained and open two new bank accounts, a Debtor in Possession "Operating Account" and a Debtor in Possession "Tax Account". Debtor shall deposit in the tax account all funds required to be escrowed under state or federal law, to be disbursed only for the purpose for which they are set aside. All federal payroll taxes (e.g. FICA, FUTA) shall be deposited each time a payroll is made; and Debtor shall notify: Chief, Technical Section, Internal Revenue Service, P. O. Box 10025, Richmond, Virginia 23240 of the date, place, amount of each deposit and whether it is the entire amount due and promptly prepare and file all tax returns required by law. Debtor shall follow all guidelines, regulations and directives of the Office of the United States Trustee pertaining to Chapter 11 cases including, but not limited to, payment of the required quarterly fees.

3. Failure by debtor to comply with the terms, conditions and provisions of this order may require debtor to appear before this court for a hearing relative to the further administration of debtor's case, or for debtor to show cause why a trustee should not be appointed, or the debtor's case should not be converted to Chapter 7 or dismissed; and it is

FURTHER ORDERED:

That within fourteen (14) days after the entry of this order, counsel shall file with this court a report disclosing counsel's fee arrangement with debtor, the amount of the retainer received, if any, the disposition of the same, and comply with the provisions of 11 U.S.C. Section 327, et seq. and Bankruptcy Rule 2014. Failure of counsel to comply with the foregoing may result in disallowance of attorney's fees. Upon review by this court of counsel's filings and barring any written objection to counsel's employment and a request for hearing thereon, counsel of record shall continue, until further order of court, as counsel for the debtor in possession.

Service of a copy of this order shall be made by mail to debtor, counsel for debtor, and the United States Trustee.

****END OF ORDER****

_____ is overseeing the above-referenced Chapter 11 case. _____ would like to conduct the § 341 meeting on either _____ or _____, at 11 a.m. in _____. Bankruptcy Analyst Everette Mann has requested I set the initial debtor conference for _____ between 9 a.m. and 4 p.m., in Roanoke. Please contact me at your earliest convenience to schedule these meetings.

On the conference date, Mr. Mann will meet you and your client at our offices located at First Campbell Square Building, 210 First Street, Suite 120, Roanoke, Virginia. Please note that the debtor (President/CEO) and financial person (Accountant/CFO/Controller) are required to personally attend. Counsel for the debtor must appear by telephone or in person.

Below is a list of documents to be filed with our office **not less than** 36 hours before the scheduled conference date.

- Pre-petition Profit/Loss Statement and balance sheet or in the case of an individual debtor, the most recent financial statement;
- Insurance documentation showing the debtor is insured by workers compensation, liability, auto, fire and theft and any other insurance customarily maintained in the business in which the debtor is engaged. (**Please note that the U. S. Trustee is to be added as certificate holder**);
- Original checks marked VOID from the post-petition Debtor in Possession bank accounts (**UST approved**). Please see Guidelines for further instructions. Please note that you must provide a copy of the Debtor in Possession Order when you open your bank accounts.
- A statement detailing the salary of officers, directors and principals of the debtor;
- Copies of monthly bank statements for all pre-petition accounts for the preceding 12 months.
- Copies of the Federal Tax Returns for the preceding 3 years (if any returns have not been prepared, copies of filed extensions);
- 6 month operating projection
- Individual Debtors - Employer Identification Number for the Estate - See IRS Notice to Individual Debtors (attached).

A copy of the Chapter 11 Instruction Package is attached. You will find forms that comply with many of referenced requests. Included in this package are monthly reporting forms which you must familiarize yourself with prior to your meeting with Mr. Mann. Please bring samples of the in-house reports for review during your conference.

If you have any questions regarding the information contained in this e-mail, please contact Everette Mann at 540-857-2836 or Everette.Mann@usdoj.gov.

Sincerely,

Heidi

Heidi N. Poda, Legal Assistant
Office of the United States Trustee
210 First Street, Suite 505

Roanoke, VA 24011
540.857.2223 Direct
540.857.2806 Main
Heidi.N.Poda@usdoj.gov