

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Adoption of Guidelines for First Day Motions

Administrative Order No. 565

-----X

UPON the resolution of the Board of Judges for the United States Bankruptcy Court for the Eastern District of New York, it is hereby

ORDERED, that the annexed Guidelines for First Day Motions are adopted.

Dated: Brooklyn, NY

July 6, 2010

/s/Carla E. Craig

CARLA E. CRAIG

Chief United States Bankruptcy Judge

GUIDELINES FOR FIRST DAY MOTIONS

1. Statement of Purpose

(a) The purpose of this document is to establish guidelines (the “**Guidelines**”) for “first day” motions in business chapter 11 cases in the United States Bankruptcy Court for the Eastern District of New York (the “**Court**”).

(b) The Guidelines are designed to help practitioners identify issues that typically are of concern to the Court where motions are brought before the Court shortly after the filing of a petition and to highlight such matters so that, among other things, determinations can be made, if necessary, on an expedited basis.

2. First Day Motions and Orders

(a) “**First Day Orders**” are orders a Debtor seeks to have entered by the Court shortly after the filing of a petition. Generally, the purpose of First Day Orders is to address administrative matters, to facilitate the transition to debtor in possession status and to ensure that a Debtor’s business and operations are stabilized. The request for a First Day Order should be made by motion (a “**First Day Motion**”), and a copy of the proposed First Day Order should be filed as an exhibit to the First Day Motion. The relief that may be granted by First Day Orders will depend upon the facts and circumstances of the case, the notice given and other related factors, and will take into account the needs of the Debtor and the rights of other parties in interest.

(b) While the Court recognizes the necessity and appropriateness of entertaining First Day Motions, only those motions seeking and appropriately requiring emergency relief will be heard on an expedited basis. Other motions may still be filed shortly after the filing of a petition, but they should seek relief at a future hearing in accordance with 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Bankruptcy Rules for the Eastern District of New York. The early filing of these motions will serve as useful guidance to the Court as to how the case may proceed.

3. Select First Day Motions and Orders¹

(a) Joint Administration

(b) Ministerial Matters

(i) This First Day Motion might request Court authorization to, among other things:

(A) extend the time to file schedules of assets and liabilities and the statement of financial affairs (which ordinarily should not exceed sixty (60) days from the date of the filing of the petition);

(B) establish procedures for mailing matrix/ mailing issues;

(C) waive the requirement to file a list of creditors in cases where a motion to retain a claims/noticing agent has been filed; and

(D) use prepetition business forms, including letterhead, checks, etc.

(ii) The relief listed above should, where sought, ordinarily be sought in a single omnibus motion.

(iii) This First Day Motion should not include requests to use prepetition bank accounts or waive the investment requirements of section 345 of the Bankruptcy Code, which are discussed below.

(c) Cash Collateral and Financing

This First Day Motion should be brought in accordance with this Court's "Guidelines for Financing Motions" adopted pursuant to Administrative Order 558 dated April 15, 2010.

¹ This list does not preclude other relief from being sought on an expedited basis where necessary, and a Debtor is not required to seek all or any of the relief discussed herein. The inclusion of any item in this list should not be viewed or cited as justification for, or approval of, the legality or appropriateness of any such relief and does not guarantee that any or all of such relief will be granted.

(d) Cash Management Arrangements

(i) This First Day Motion should describe the proposed cash management system, including the rights and any procedures for the repayment of obligations incurred thereunder, and, in cases where money will be transferred between Debtors or from a Debtor to a non-debtor affiliate, give a business purpose for such transfers.

(ii) This First Day Motion should seek authorization (but not direction) for banks to follow the Debtor's instructions with respect to clearing checks, etc. The proposed First Day Order for this First Day Motion should also state that the banks are entitled to rely on the Debtor's representations as to which checks to clear.

(iii) This First Day Motion should not request relief that is inconsistent with the relief requested in connection with any debtor in possession financing and cash collateral motions.

(e) Prepetition Employee Compensation, Benefits and Business Expenses

(i) This First Day Motion should disclose the gross amounts to be paid per employee or for lower level employees, by employee group (*i.e.*, general job categories) and in the aggregate.

(ii) This First Day Motion should estimate by category (salaries, commissions, reimbursable business expenses, etc.) the aggregate amounts proposed to be paid.

(iii) This First Day Motion should state whether, and the extent to which, the claims proposed to be paid constitute priority claims under section 507 of the Bankruptcy Code ("**Priority Claims**") and, if such claims are not Priority Claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(iv) To the extent this First Day Motion requests Court authority to pay amounts in excess of the priority amount to any individual employees, a list of the names and position/job titles of all employees as to whom those excess payments will be made should be attached. The propriety of those requests will be considered on a case by case basis. There may be a need to present individual information confidentially in certain circumstances; however, the Court and the United States Trustee should receive this information (on a confidential basis where necessary).

(v) This First Day Motion should describe any relief that will be sought at a later hearing with respect to prepetition employee retention plans.

(f) Critical Vendors

(i) This First Day Motion should ordinarily be brought as a single omnibus First Day Motion.

(ii) This First Day Motion and proposed First Day Order should identify, by category, the types of claims that the Debtor proposes to pay and should authorize specific non-cumulative capped amounts and describe the basis for the estimate of the expenditure. There may be a need to present vendor information confidentially in certain circumstances; however, the Court and the United States Trustee should receive this information (on a confidential basis where necessary).

(iii) This First Day Motion should state whether, and the extent to which, the prepetition claims proposed to be paid constitute (or are believed to constitute) claims under section 503(b)(9) of the Bankruptcy Code and, if such claims are not administrative expense claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(g) Customer Claims

(i) This First Day Motion might request Court authorization to, among other things, satisfy or honor prepetition obligations with respect to refunds of deposits, lay-away plans, rebates, customer programs, warranty claims, etc.

(ii) This First Day Motion and the related proposed First Day Order should (other than for claims such as warranties or rebates) specify a cap on the amount to be paid or honored per claimant and in the aggregate, and the basis for such cap. There may be a need to present customer information confidentially in certain circumstances; however, the Court and the United States Trustee should receive this information (on a confidential basis where necessary).

(iii) This First Day Motion should state whether, and the extent to which, the claims proposed to be paid constitute (or are believed to constitute) Priority Claims and, if such claims are not Priority Claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(h) Prepetition Taxes

This First Day Motion should state whether, and the extent to which, the claims proposed to be paid constitute (or are believed to constitute) trust fund taxes, ad valorem taxes that result in liens and other taxes whose nonpayment gives rise to personal liability for officers, directors or employees, or other Priority Claims. If such claims are not Priority Claims, this First Day Motion should explain why those claims should be afforded the treatment requested.

(i) Investment Guidelines

(i) This First Day Motion should disclose:

(A) the approximate amount of funds that the Debtor proposes to invest outside the enumerated investments permitted under section 345(b) of the Bankruptcy Code;

(B) the proposed types of investment to be made; and

(C) whether the United States Trustee has approved the Debtor's proposed arrangements.

(ii) If the Debtor proposes to invest or deposit money in or with an entity that has not satisfied the requirements of section 345(b) of the Bankruptcy Code (a "**Non-Qualified Entity**"), this First Day Motion should explain why such an investment or deposit is preferred and, to the extent known, why the Non-Qualified Entity cannot or has not satisfied the requirements of section 345(b) of the Bankruptcy Code. A list of United States Trustee-approved depositories for the Eastern District of New York can be found at www.usdoj.gov/ust/r02.

(j) Administrative Procedures

This First Day Motion might request Court authorization to, among other things, establish a core service list and set omnibus hearing dates.

(k) Retention of Claims/Noticing Agent

Where it is anticipated that more than 1,000 proofs of claim will be filed, the Debtor should retain a claims/noticing agent to receive mailed proofs of claim. In such cases, counsel should contact the Clerk's Office for procedures involving claims/noticing agents.

(l) Restrictions on Certain Transfers

This First Day Motion might request Court authorization to, among other things, restrict certain transfers of claims against, and equity interests in, the Debtor and establish procedures for notice of certain transfers of claims against, and equity interests in, the Debtor.

4. Extraordinary Relief

(a) Any First Day Motion requesting the relief identified in Bankruptcy Rule 6003 prior to the expiry of the twenty-one (21) day period provided by Bankruptcy Rule 6003 will be considered a request for “**Extraordinary Relief.**”

(b) If the Debtor requests any Extraordinary Relief, the First Day Motion, together with the omnibus affidavit or declaration, as applicable, should specifically state that Extraordinary Relief is sought and provide appropriate justification therefor, in accordance with E.D.N.Y. Local Bankruptcy Rule 9077-1.

(c) In connection with a request for Extraordinary Relief, the Court will consider, among other factors:

(i) the extent and adequacy of the notice provided;

(ii) whether only the minimal relief necessary is requested on an interim basis, with a broader final order to be submitted on notice;

(iii) whether an Official Committee of Unsecured Creditors appointed under section 1102 of the Bankruptcy Code (the “**Creditors’ Committee**”) or other parties in interest will have the ability to conduct an investigation and bring any appropriate proceedings related to the Extraordinary Relief (including, if relief is granted prior to any Creditors’ Committee appointment, a motion to modify or prospectively vacate the relief granted, if appropriate); and

(iv) the urgency of the relief requested.

5. Participation of the Creditors’ Committee

(a) Absent good cause shown, the Court will not grant an order approving final substantive relief with respect to any matter that is granted on an interim basis pursuant to a First Day Motion unless the Creditors’ Committee is in place for at least seven (7) days before the motion is heard.

(b) Absent good cause shown, the Creditors’ Committee should be in place for at least seven (7) days before the following motions are heard:

(i) Rejection of leases and executory contracts. Affected landlords and other direct counterparties should receive appropriate notice of any motion.

- (ii) Procedures establishing payment of interim compensation for retained professionals.
- (iii) Approval of severance and employee retention programs.
- (iv) Approval of the assumption of existing employment agreements.

6. Background and Factual Support

A single omnibus affidavit or declaration (or, if necessary, a small number of affidavits or declarations) should include the necessary general background as well as specific factual support for each First Day Motion, as necessary. The relevant affidavit or declaration may expressly be incorporated by reference into each motion in place of a lengthy background section of First Day Motions and other motions filed in the case.

7. Notice of First Day Motions

(a) An index (the “**Index**”) of First Day Motions and proposed First Day Orders that includes a brief summary of the relief sought in each (which summary may be in chart form and should not generally exceed one (1) paragraph per Motion) should be prepared by the Debtor. The Index also should note which First Day Motions, if any, include a request for Extraordinary Relief. The Index should inform parties that the First Day Motions and proposed First Day Orders may be viewed on the Court’s website (<http://www.nyeb.uscourts.gov/>) with a login and password to the Court’s Public Access to Court Electronic Records and that copies can be obtained from the Debtor’s counsel and/or the Debtor’s noticing agent. The Index will make the hearing on the First Day Motions more efficient as well as provide additional notice to parties in interest.

(b) The Index and a binder of all First Day Motions and proposed First Day Orders should ordinarily be provided to the United States Trustee, any party with a security interest in substantially all of the Debtor’s assets and, if appropriate, any unofficial committee at least one (1) business day prior to the filing of the petition.

(c) Once the petition is filed and the Debtor is notified of the scheduling of the hearing on the First Day Motions, the Index should immediately be sent to the United States Trustee, counsel to any party with a security interest in substantially all of the Debtor’s assets, counsel to any other party adversely affected by the relief requested, and the holders of the twenty (20) largest unsecured claims against each Debtor, if not onerous in view of the number of Debtor entities, or if a consolidated list is filed, to the holders of the thirty (30) largest unsecured claims, by hand delivery, facsimile or email, along with a notice of the time and place of the hearing on the First Day Motions, in the manner best designed to give adequate notice under the circumstances. It is understood that email addresses and/or facsimile numbers for some creditors may not be known by the Debtor at that time, and that such parties may not receive actual notice of the hearing.

(d) Whenever practicable, a list of email addresses for the Debtor, counsel to the Debtor, counsel to any party with a security interest in substantially all of the

Debtor's assets, counsel to any other party adversely affected by the relief requested, and the holders of the twenty (20) largest unsecured claims against each Debtor, or if a consolidated list is filed, the holders of the thirty (30) largest unsecured claims should be provided to the United States Trustee before the First Day Motions are filed, and in any case, before the final hearing with respect to any matter that is granted on an interim basis pursuant to a First Day Motion.

8. List of Unsecured Creditors

Whenever practicable, a separate list of creditors holding the twenty (20) largest unsecured claims against each Debtor should be filed as required by Bankruptcy Rule 1007 before the hearing on the First Day Motions is held. In cases involving multiple Debtors, if it would be impracticable for each Debtor to file a separate list, an explanation should be set forth in the Bankruptcy Rule 1007 affidavit and a consolidated list of the holders of the thirty (30) largest unsecured claims should be filed.²

² The United States Trustee may require an expanded list of creditors depending on the circumstances of the case.