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R E G I O N A L G U I D E L I N E S

The United States Trustee for Region 13 (Arkansas, Missouri and Nebraska) has established the following Guidelines identifying procedures and areas of emphasis regarding matters within its supervisory responsibility.

These Guidelines are not local Rules but are intended to supplement those requirements. While the Guidelines are informational in nature, the United States Trustee may request enforcement from the Court for failure to comply.

These Guidelines are subject to revision from time to time as is appropriate. The Guidelines promulgated December 6, 1994 are superseded by these Guidelines.

Effective this 1st day of November, 1996.

JOEL PELOFSKY
UNITED STATES TRUSTEE
REGION 13

OFFICE OF THE UNITED STATES TRUSTEE

REGIONAL GUIDELINES

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GUIDELINE NUMBER ONE

Special Areas of Interest in Chapter 11 Cases

The filing of a Chapter 11 reorganization case creates a new environment for the operation of the debtor's business. In this environment, the United States Trustee represents the public generally and parties in interest otherwise unrepresented and looks after the procedural integrity of the administration of the case. What follows is a list of minimal requirements to evaluate the performance of the debtor. Failure to meet these requirements may result in court proceedings seeking enforcement.

The debtor is expected to do the following:

1. Creation of new books and records for the debtor, post-petition, and of such new bank accounts as are necessary for the operation of debtor's business.
2. Proof of the existence of and maintenance of all insurance customarily purchased by a business of the kind operated by the debtor.
3. Compliance with the requirements of the Bankruptcy Code, Local Rules and the Office of the United States Trustee including, but not limited to, the following:
 - A. Timely filing of complete Schedules and Statements of Affairs.
 - B. Attendance at the 341(a) meeting.
 - C. Attendance at the Initial Debtor Interview.
 - D. Filing of monthly operating reports in a timely fashion.
4. Timely payment in full of all administrative and priority federal, state and local taxes which accrue after the date of filing.
5. Timely payment of all administrative priority wages and other employee related payments that accrue after the date of filing.

GUIDELINE NUMBER TWO

Chapter 11 Operating Reports

1. Monthly operating reports are to be filed no later than fifteen (15) days after the close of the prior month, unless the United States Trustee has agreed to a different date. The signed original report should be filed with the Clerk and a copy served upon the United States Trustee.
2. The report should be completed. Any omissions should be explained.
3. The form for the report shall be that as prescribed by the United States Trustee from time to time.
4. Failure to file timely and adequate monthly reports could result in the filing of a motion to convert or dismiss the case.

GUIDELINE NUMBER THREE

Debtor-in-Possession Bank Accounts

1. Immediately after filing, the Debtor-in-possession shall close any bank account over which it has possession or control and then open as many new bank accounts as are necessary for the operation of its business.
2. All receipts and disbursements made post petition must be from the Debtor-in-possession accounts.
3. Debtor-in-possession accounts can be opened only in banks that have agreed to comply with the requirements promulgated by the United States Trustee. A list of authorized depositories may be obtained from the United States Trustee's office. Debtor-in-possession account balances must not exceed the insured or collateralized limits of the depository.
4. Copies of the current monthly bank statement from each account must be attached to the monthly operating report filed with the United States Trustee. The monthly report should also have documents reflecting tax deposits and payments.

GUIDELINE NUMBER FOUR

Applications to Employ Professional Persons

The Debtor-in-possession may not employ professional persons, such as attorneys or accountants, to assist in the operation of its business and the reorganization unless such employment is authorized by court order, as prescribed by Section 327 of the Bankruptcy Code. These applications should be made at the beginning of the case or whenever the need arises, preferably before the professional begins work.

The application should contain the following information:

1. The identity of the firm and individuals to be retained.
2. The reason for the employment and the services to be rendered.
3. The amount of the retainer, the terms and conditions of employment, including the hourly rates to be charged, and the source of the funds. Whenever feasible, the application should contain an estimated budget for the professional services to be supplied.
4. That no compensation or expense reimbursement will be paid by Debtor-in-possession or Chapter 11 trustee except upon application and an order, after notice and a hearing, unless the court orders otherwise.
5. A verified declaration that the professional is disinterested and does not hold or represent an interest adverse to the estate. The broadest disclosure is expected.
6. The identity and original signature of the party or its representative making the application.

GUIDELINE NUMBER FIVE

Applications for Payment of Professional Fees and Expenses

Applications for payment of professional fees and expenses should be prepared in a format consistent with the guidelines promulgated by the Office of the United States Trustee. Compliance will ensure that the application contains sufficient information to support the request and permit review.

Time records must be provided to support any request but project billing is not required if the aggregate request for services during the entire case does not exceed \$15,000.

The guidelines do not supersede local rules but are intended to supplement them, expedite fee application review and to eliminate disputes over charges.

The attorney for the debtor, when making an application, should be certain that post petition expenses and quarterly fees are current.

GUIDELINE NUMBER SIX

Applications to Approve Outside Ordinary Course of Business Transactions

Sales of property of a Chapter 11 Debtor-in-possession can only occur on application and order, after notice and a hearing. Section 363(b)(1) of the Code. The application should contain the following information and meet the following requirements:

1. The application should be filed by the Debtor-in-possession or the Chapter 11 trustee.
2. It should identify the property to be sold in appropriate detail, the identity of the buyer, the consideration for the sale, costs of sale, any related transactions and the proposed disposition.
3. Parties in interest should receive twenty (20) days notice of the sale unless the court, for cause, shortens the period.
4. If the proposed sale utilizes an escrow, a copy of the escrow agreement should be attached to the application and a copy of the closing statement should be served on the United States Trustee.
5. A copy of the proposed order should be served with the application.

GUIDELINE NUMBER SEVEN

Service of Documents on the United States Trustee

It is important that the United States Trustee be informed as to the status of cases being administered. Therefore, copies of pleadings filed in cases should be served routinely on the United States Trustee in accordance with the following guidelines:

1. In cases under chapter 7 and 11, all documents filed except proofs of claim and petitions and materials contained in the initial filing should be served. No documents filed in chapter 12 and 13 cases need be served.
2. In adversary proceedings, the United States Trustee should receive a copy of any complaint filed under Sections 523 or 727, any document where the case trustee is named as a party and any document filed where the proceedings are related to a case under chapter 11.
3. Service may be in any manner permitted by the Rules.

GUIDELINE NUMBER EIGHT

Creditors' Meetings

The meeting of creditors required by Section 341 of the Code is an important part of the administration of a bankruptcy case. In many instances it is the only contact a debtor will have with the process. It provides parties in interest the opportunity to inquire as to details of the assets and liabilities scheduled, or, in the case of reorganization under chapter 11, 12 or 13, some notion of the debtor's intentions as to a plan.

The following are significant issues:

1. Section 341 of the Code requires the holding of a meeting of creditors in each case.
2. The United States Trustee, a member of the staff or the appropriate panel or standing trustee will preside at the meeting, administer the oath and make inquiry of the debtor or its representative. The oath should be administered on an individual or family basis and not to the docket group as a whole.
3. Debtor or its representative, and debtor's counsel, must attend the meeting unless an appearance is waived. The representative is expected to be familiar with the operation of debtor's business and the bankruptcy case. The United States Trustee or the appropriate panel or standing trustee may request the attendance of additional persons.
4. The meeting will be recorded on tape. A party in interest may, at its own expense, arrange for transcription by a court reporter. Requests for copies of the meeting tapes must be made in writing to the United States Trustee and must include the case name and number, the court district and the date of the meeting. The requesting party should furnish a blank cassette.

GUIDELINE NUMBER NINE

Rescheduling Creditors Meetings

Continuance of the creditors' meeting creates a scheduling problem for the trustee and parties in interest. Nonetheless, continuances should be granted where the request has merit.

1. The request must be made in writing to the United States Trustee and to the panel or standing trustee identified in the Section 341 meeting notice. The request should be made at least seven (7) days prior to the meeting. Where the request must be made, because of circumstances, with less than seven (7) days notice, the request may be made by telecopy or phone, followed by a written request.
2. The request must specify the reasons for the continuance including, where relevant, documentation such as a physician's letter or court conflict.
3. If the request is granted, an agreement of continuance should be filed with the court.
4. If the request is granted, the requesting party is required to give notice of the new date and time to parties previously notified of the meeting now being continued. The requesting party should file a certificate of service with the clerk of the bankruptcy court.
5. If the debtor fails to appear, without arranging for a continuance, the trustee will request an order to show cause why the case should not be dismissed.

GUIDELINE NUMBER TEN

Waiver of Appearance at Section 341 Meeting

Appearance by debtors at the Section 341 meeting is required by statute. Waiver of appearance, however, may be granted for extraordinary circumstances.

1. The request for waiver of appearance must be made in writing to the United States Trustee, with a copy to the panel or standing trustee named in the meeting notice.
2. The request should specify the reason for the waiver and attach supporting documentation such as a physician's certificate.
3. If personal appearance is waived, the trustee may utilize other discovery methods to obtain the necessary information.
4. The request and the United States Trustee's response should be filed with the clerk of the bankruptcy court.
5. In the Districts of Arkansas, practitioners should continue to follow local practice which requires a motion and order.