

Local Bankruptcy Rules: Georgia (N.D. Ga.)

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A Practice Note summarizing selected local rules of the US Bankruptcy Court for the Northern District of Georgia (N.D. Ga.).

AUTOMATIC STAY

BACKGROUND/FEDERAL REQUIREMENTS

An automatic stay:

- Except as provided in section 362(b) and (c) of the Bankruptcy Code, is triggered immediately on filing of the bankruptcy petition.
- Automatically stops substantially all acts and proceedings against the debtor and its property.
- Is a nationwide injunction barring almost all actions against the debtor and its property, including the exercise of remedies regarding collateral, enforcement of prepetition judgments, litigation, collection efforts, and acts to create, perfect, and enforce liens granted before the petition date.
- Generally applies only to prepetition events and does not, for instance, bar suit against a debtor based on a cause of action arising postpetition. The stay's broad scope applies to all creditors, whether secured or unsecured, and to all of the debtor's property, wherever located.
- Forbids creditors from pursuing both formal and informal actions and remedies against the debtor and its property. It also covers remedies that could be exercised outside of the US.

For more information about the stay, see Practice Note, Automatic Stay: Overview ([9-380-7953](#)).

LOCAL RULES

N.D. Ga. Local Bankruptcy Court Rule 4001-1 provides that the holder of a claim secured by an over-the-road vehicle may file a motion seeking ex parte relief from the stay under section 362(f) of the Bankruptcy Code to obtain possession of the collateral if the collateral is not insured with full collision or comprehensive insurance. The local rule specifies requirements for the motion (including that the motion be verified) and the proposed order.

Before filing any stay relief motion, practitioners should consult the page of the bankruptcy court's website for the judge assigned to the case (see Bankr. N.D. Ga.: Judges' Information). Some of the judges have specific requirements for stay relief motions, notices of hearing, and proposed orders.

There is a filing fee for a stay relief motion. The amount of that fee can be found on the bankruptcy court's website (see Bankr. N.D. Ga.: Fees). The Gainesville, Newnan, and Rome divisional offices accept attorney's checks, cashier's checks, and money orders. The Atlanta divisional office accepts cash payments, as well as attorney's checks, cashier's checks, and money orders. The court will not accept personal checks.

BANKRUPTCY APPEALS

There are no local bankruptcy court rules relating to appeals in the N.D. Ga. Movants should follow the procedures in Federal Rule of Bankruptcy Procedure 8001 to Federal Rule of Bankruptcy Procedure 8028.

Procedural Rules Applicable to Bankruptcy Appeals

Section 158 of the Judicial Code (28 U.S.C. § 158) generally governs bankruptcy appeals, but counsel must also review:

- The Federal Rules of Bankruptcy Procedure.
- The Federal Rules of Appellate Procedure.
- The Official Bankruptcy Forms.
- The N.D. Ga. Local Civil Rules and Standing Orders.
- The N.D. Ga. Local Bankruptcy Court Rules and General Orders.
- The Rules of the US Court of Appeals for the Eleventh Circuit.
- The instructions of the assigned judge.

Consider whether the bankruptcy order is final or interlocutory (see Bankruptcy Appeals Checklist: Final Versus Interlocutory Orders ([W-017-3286](#)) and Practice Note, Appealing a Bankruptcy Court Order: Overview: Appeals "As of Right" Versus Appeals "By Permission" ([W-001-3320](#))). If it is interlocutory, review Federal Rule of Bankruptcy Procedure 8004 on motions for leave to appeal an interlocutory order (see Bankruptcy Appeals Checklist: Permission for Interlocutory Appeals ([W-017-3286](#))).

For:

- Timing on filing the notice of appeal, review Federal Rule of Bankruptcy Procedure 8002 (see Bankruptcy Appeals Checklist: Timing Issues ([W-017-3286](#))).
- Instructions on filing and the contents of the notice of appeal, review Federal Rule of Bankruptcy Procedure 8003 and Official Bankruptcy Form B417A (see Notice of Appeal).
- The effect of appeal on bankruptcy jurisdiction, see Bankruptcy Appeals Checklist: Effect of Appeal on Bankruptcy Jurisdiction ([W-017-3286](#)).
- Extending the time to file a notice of appeal, review Federal Rule of Bankruptcy Procedure 8002(d)(2) (see Bankruptcy Appeals Checklist: Extension of Time to File Notice of Appeal ([W-017-3286](#))).
- Disputes relating to the record on appeal, review Federal Rule of Bankruptcy Procedure 8009 (see Bankruptcy Appeals Checklist: Correcting or Modifying the Record ([W-017-3286](#))).
- Filing fees, see Docket Fee.
- Docketing of appeal in the district court, review Federal Rule of Bankruptcy Procedure 8003(d) (see Bankruptcy Appeals Checklist: Docketing of Appeal in the District Court or BAP ([W-017-3286](#))).
- Obtaining a stay of a bankruptcy court order or judgment pending appeal, review Federal Rule of Bankruptcy Procedure 8007 (see Eleventh Circuit's Four-Part Test for Stays Pending Appeal and Bankruptcy Appeals Checklist: Stay Pending Appeal ([W-017-3286](#))).
- Designating the record on appeal and the statement of the issues on appeal, review Federal Rule of Bankruptcy Procedure 8009 (see Bankruptcy Appeals Checklist: Designation of the Record and Statement of Issues ([W-017-3286](#)) and Record on Appeal ([W-017-3286](#))).
- Designating sealed documents, review Federal Rule of Bankruptcy Procedure 8009(f) (see Bankruptcy Appeals Checklist: Sealed Documents ([W-017-3286](#))).
- The duties of the parties to provide a transcript, review Federal Rule of Bankruptcy Procedure 8009(b) (see Bankr. N.D. Ga.: Transcripts and Bankruptcy Appeals Checklist: Transcripts ([W-017-3286](#))).
- Certifying an appeal directly to the Eleventh Circuit, review 28 U.S.C. Section 158, Federal Rule of Bankruptcy Procedure 8006, and Official Bankruptcy Form B424 (see Direct Appeals to Eleventh Circuit, Bankruptcy Appeals Checklist: Direct Appeals to the Circuit Court of Appeals ([W-017-3286](#)), and Practice Note, Appealing a Bankruptcy Court Order: Overview: Appealing a Bankruptcy Court Order Directly to the Court of Appeals in Limited Circumstances ([W-001-3320](#))).
- Alternatives to an appeal, including motions for amended or new findings or to seek relief from a bankruptcy court order or judgment, review Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 and N.D. Ga. Local Bankruptcy Court Rule 9023-1 (see Alternatives to Appeal).
- Notice to the bankruptcy court of preliminary appellate motions, review Federal Rule of Bankruptcy Procedure 8010(c) (see Bankruptcy Appeals Checklist: Notice to Bankruptcy Court of Preliminary Appellate Motions ([W-017-3286](#))).
- District court review of a judgment the bankruptcy court lacked constitutional authority to enter, review Federal Rule of Bankruptcy

Procedure 8018.1 (see Bankruptcy Appeals Checklist: Challenges to Bankruptcy Court Authority ([W-017-3286](#))).

- Page or word limitations and other rules relating to appellate briefs, review Federal Rules of Bankruptcy Procedure 8013, 8014, 8015, 8016, and 8017 and Official Bankruptcy Form B417C (see Bankruptcy Appeals Checklist: Other Appeal Responsibilities ([W-017-3286](#))). See also the policies and procedures of the assigned judge regarding page limitations, courtesy copies, and other requirements.

For more information on bankruptcy appeals generally, see Practice Note, Appealing a Bankruptcy Court Order: Overview ([W-001-3320](#)) and Bankruptcy Appeals Checklist ([W-017-3286](#)).

Notice of Appeal

Regardless of whether a bankruptcy court order is final or interlocutory, a party seeking to appeal must file a notice of appeal that substantially conforms to Official Bankruptcy Form B417A, attaching a copy of the order, judgment, or decree (Fed. R. Bankr. P. 8003(a)(3)). The notice of appeal must be electronically filed in the bankruptcy court from which the appeal is taken.

The appellant must also:

- Include in the notice of appeal the names of all parties to the order, judgment, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, if any.
- Pay the docket fee when the notice of appeal is filed (see Bankr. N.D. Ga.: Fees).
- Complete the civil cover sheet (see Bankr. N.D. Ga.: Civil Cover Sheet).

Unless a Notice of Appeal is filed electronically, the appellant must file one copy of the notice with the original Notice of Appeal (N.D. Ga. BLR 5005-2(b)).

Docket Fee

The filing fee for a notice of appeal can be found on the bankruptcy court's website (see Bankr. N.D. Ga.: Fees). The Gainesville, Newnan, and Rome divisional offices accept attorney's checks, cashier's checks, and money orders. The Atlanta divisional office accepts cash payments, as well as attorney's checks, cashier's checks, and money orders. The court will not accept personal checks. These fees are not refunded if the appeal is dismissed or denied.

An appellant that cannot afford to pay the fee may apply to the district court for in forma pauperis (IFP) status (see US Courts: Fee Waiver Application Forms).

Eleventh Circuit's Four-Part Test for Stays Pending Appeal

The Eleventh Circuit follows an established four-part test for determining whether to grant a stay pending appeal. The test considers whether:

- The appellant has made a strong showing of a likelihood of success on the merits.
- The appellant is likely to suffer irreparable injury absent a stay.
- A stay is likely to substantially harm other parties with an interest in the litigation.
- A stay is in the public interest.

(See *Hand v. Scott*, 888 F.3d 1206 (11th Cir. 2018).)

Direct Appeals to Eleventh Circuit

The Eleventh Circuit does not have a Bankruptcy Appellate Panel (BAP) so N.D. Ga. bankruptcy appeals are heard in the district court. However, when the criteria in Section 158(d)(2)(A) of the Judicial Code (28 U.S.C. § 158(d)(2)(A)) are met, a direct appeal to the Eleventh Circuit is possible (Fed. R. Bankr. P. 8006). For more information on these criteria, see Practice Note, [Appealing a Bankruptcy Court Order: Overview: Appealing a Bankruptcy Court Order Directly to the Court of Appeals in Limited Circumstances \(W-001-3320\)](#) and [Bankruptcy Appeals Checklist: Direct Appeals to the Circuit Court of Appeals \(W-017-3286\)](#).

An appellant must file a certification of a bankruptcy court order, judgment, or decree for direct appellate review under Section 158(d)(2)(A) with the clerk of the court where the matter is pending using Official Bankruptcy Form B424. Once a certification of direct appeal under Federal Rule of Bankruptcy Procedure 8006(b) is filed, the matter remains pending in the bankruptcy court for 30 days after the appeal's effective date to provide the judge with an opportunity to decide the issue of certification.

Once the bankruptcy court has certified the direct appeal, the appellant must request permission to take a direct appeal with the circuit clerk within 30 days of the certification date under Federal Rule of Appellate Procedure 6(c) (Fed. R. Bankr. P. 8006(g)). The Federal Rules of Appellate Procedure govern any further proceedings in the court of appeals.

However, review by the Eleventh Circuit is discretionary. To obtain direct appellate review, the appellant must file:

- A petition for permission to appeal in the court of appeals (Fed. R. App. P. 5).
- A motion within 60 days of the judgment (28 U.S.C. § 158(d)(2)(E)).
- A notice of appeal within 14 days of the judgment (Fed. R. Bankr. P. 8002).

Regarding direct appeals from the bankruptcy court, the Eleventh Circuit's Internal Operating Procedure for Federal Rule of Appellate Procedure 6 states that a direct appeal from a bankruptcy court is available only as authorized by 28 U.S.C. Section 158(d).

Alternatives to Appeal

There are alternatives that parties may wish to exhaust before filing an appeal, such as filing a motion to reconsider or reargue with the bankruptcy court. Federal Rule of Civil Procedure 59, made applicable to bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 9023, permits a party to make a motion to alter or amend a judgment. Federal Rule of Bankruptcy Procedure 9024 permits a party to move for reconsideration.

The Eleventh Circuit has held that the major grounds justifying reconsideration are:

- An intervening change in controlling law.
- The availability of new evidence.
- The need to correct clear error of law or prevent manifest injustice. (See *Delaware Valley Floral Grp. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1383 (11th Cir. 2010).)

Parties considering these devices should review Federal Rules of Bankruptcy Procedure 9023 and 9024 and N.D. Ga. Local

Bankruptcy Court Rule 9023-1. Practitioners should note that N.D. Ga. Local Bankruptcy Court Rule 9023-1 specifies that motions for reconsideration should not be filed as a matter of routine but only when the party believes the motion is "absolutely necessary." In adversary proceedings, a party may also file a motion seeking new or amended findings with the bankruptcy court within 14 days of the entry of the court's order (Fed. R. Bankr. P. 7052). This rule also applies in contested matters (Fed. R. Bankr. P. 9014).

Parties should review Federal Rule of Bankruptcy Procedure 8002(b) related to the timing for filing a notice of appeal (see Practice Note, [Appealing a Bankruptcy Court Order: Overview: Later Motions May Extend the Time to Appeal \(W-001-3320\)](#)).

CASH COLLATERAL

BACKGROUND/FEDERAL REQUIREMENTS

The bankruptcy court, after notice and a hearing, may approve a debtor's request for use of cash collateral (§ 363(a), (c)(2), Bankruptcy Code). A debtor-in-possession or trustee seeking permission to use cash collateral must comply with:

- Section 363 of the Bankruptcy Code (see Section 363(c) of the Bankruptcy Code).
- Federal Rule of Bankruptcy Procedure 4001(b) (see Bankruptcy Rule 4001(b)).
- Any applicable local bankruptcy court rules (see Local Rules).

This Note assumes that the prepetition lender is not providing DIP financing and, therefore, does not discuss any provisions that normally apply when the prepetition lender is the DIP lender.

For more information on the use of cash collateral in bankruptcy, see Practice Note, [Cash Collateral: Overview \(3-618-3450\)](#).

Section 363(c) of the Bankruptcy Code

A debtor-in-possession can continue to use noncash property that has been pledged as collateral in the ordinary course, such as equipment, inventory, or other tangible assets, without the need to obtain permission from the bankruptcy court (§ 363(c)(1), Bankruptcy Code). However, a debtor-in-possession that seeks to use its lender's cash collateral must either obtain:

- The consent of all lenders holding security interests in the cash collateral.
- An order from the bankruptcy court permitting use of cash collateral, usually based on a showing that the secured creditor is adequately protected (see Practice Note, [Cash Collateral: Overview: Adequate Protection \(3-618-3450\)](#)).

(§ 363(c)(2), Bankruptcy Code.)

The limitations on the use of cash collateral, such as lender consent or bankruptcy court approval, help ensure that the secured lender's interest in cash collateral is adequately protected and that the lender is afforded due process.

To use cash collateral, the following requirements must be satisfied:

- **Notice and a hearing.** The court must determine that reasonable notice has been given to parties in interest regarding the motion and hearing, to the extent one is necessary (§ 363(c)(2), (c)(3), Bankruptcy Code). The court may hold an interim cash collateral

hearing on the first day of the case to avoid immediate and irreparable harm to the debtor but cannot hold a final hearing earlier than 14 days from the date the cash collateral motion is filed (Fed. R. Bankr. P. 4001(b)(2) and see *In re Dynaco Corp.*, 158 B.R. 552 (Bankr. D. N.H. 1993); *In re Post-Tron Sys. Corp.*, 106 B.R. 345, 346 (Bankr. D. R.I. 1989)).

- **Adequate protection.** On request of a party with an interest in the debtor's cash collateral, the debtor must show that such party's interest is adequately protected from any diminution in the value of its collateral caused by using cash collateral (§ 363(e), Bankruptcy Code). The adequate protection provided depends on the circumstances of the case (see Practice Notes, Cash Collateral: Overview: Adequate Protection ([3-618-3450](#)) and Adequate Protection: Overview ([8-382-8989](#))).

Though not required, a debtor may submit a written declaration from a business person or a financial advisor to the debtor in support of the debtor's need to use its lender's cash collateral (see Standard Document, Declaration: General (Federal) ([5-507-4700](#))). It is common practice and sometimes required by local bankruptcy court rules for the declarant, a business person from the debtor (who may also be the declarant), and a lender representative to attend the cash collateral hearing or be reasonably available by telephone to address questions and, if necessary, authorize revisions to the proposed use of cash collateral.

Bankruptcy Rule 4001(b)

A request to use cash collateral in any jurisdiction must comply with Bankruptcy Rule 4001(b), which contains requirements regarding:

- The contents of a cash collateral motion (see Contents of the Cash Collateral Motion).
- Service of the cash collateral motion (see Service of the Cash Collateral Motion).
- Notice and hearing on the cash collateral motion (see Notice and Hearing on the Cash Collateral Motion).

Contents of the Cash Collateral Motion

In all jurisdictions, a cash collateral motion must be:

- Brought as a contested matter under Federal Rule of Bankruptcy Procedure 9014 (Bankruptcy Rule 9014).
- Accompanied by a proposed form of order.

(Fed. R. Bankr. P. 4001(b)(1)(A).)

The cash collateral motion must include a concise statement of the relief requested that summarizes and identifies the location within the relevant documents of all the material provisions of the proposed cash collateral agreement and form of order, including:

- The name of each secured lender with an interest in the cash collateral.
- The purposes for using the cash collateral.
- The material terms of the agreement, including the duration of the debtor's use of cash collateral.
- Any liens, cash payments, or adequate protection that the secured lender is to receive or an explanation of why each secured creditor's interest is adequately protected.

(Fed. R. Bankr. P. 4001(b)(1)(B).)

Service of the Cash Collateral Motion

The cash collateral motion must be served on:

- Any entity with an interest in the cash collateral.
- Any committee or its authorized agent formed under:
 - section 705 of the Bankruptcy Code in a Chapter 7 case; or
 - section 1102 of the Bankruptcy Code in a Chapter 11 case (see Practice Notes, Chapter 11 Creditors' Committees ([1-508-8252](#)) and Chapter 11 Equity Committees ([6-608-2869](#))).
- The top 20 unsecured creditors identified on the list filed under Federal Rule of Bankruptcy Procedure 1007(d) if the case is a Chapter 9 municipality case or a Chapter 11 case in which no committee has been appointed (see Standard Document, List of Largest Unsecured Creditors ([3-610-4108](#))).
- Any other entity that the court may direct.

(Fed. R. Bankr. P. 4001(b)(1)(C).)

A cash collateral motion is a contested matter for which a motion must be made under Bankruptcy Rule 9014 (Fed. R. Bankr. P. 4001(b)(1)(A)). Under Bankruptcy Rule 9014, the debtor must serve the motion in the same manner provided for service of a summons and complaint under Federal Rule of Bankruptcy Procedure 7004.

The debtor need not submit a written declaration in support of its cash collateral motion, but may choose to do so if the circumstances of the case and the need for use of cash collateral warrant further support. If the motion is supported by an affidavit or declaration, the debtor must serve them together and any written response must be served no later than one day before the hearing, unless otherwise permitted by the court (Fed. R. Bankr. P. 9006(d)) (see Section 363(c) of the Bankruptcy Code).

Notice and Hearing on the Cash Collateral Motion

The court may hold an interim hearing to authorize the immediate access to cash collateral to the extent necessary to avoid immediate and irreparable harm to the estate, but it cannot hold a final hearing earlier than 14 days from the date the debtor serves the cash collateral motion (Fed. R. Bankr. P. 4001(b)(2)).

The debtor must give notice of the cash collateral hearing to all parties it must serve with the cash collateral motion and any other entities as the court may direct (Fed. R. Bankr. P. 4001(b)(3) and see Service of the Cash Collateral Motion).

LOCAL RULES

The N.D. Ga. does not have any generally applicable local rules concerning cash collateral motions. However, the N.D. Ga. has procedures for cash collateral for cases qualifying as complex Chapter 11 cases under General Order No. 26-2019 (Complex Case Order) (see Complex Chapter 11 Cases). The Complex Case Order creates one set of procedures applicable to both cash collateral motions and motions to approve DIP financing (see DIP Financing: Local Rules).

Contents of Cash Collateral Motion in Complex Chapter 11 Cases

Practitioners should refer to Section G of the Complex Case Order. That section requires that requests to use cash collateral under section 363 of the Bankruptcy Code be heard by motion filed under Federal Rules of Bankruptcy Procedure 2002, 4001, and 9014.

Section G(1) of the Complex Case Order requires the debtor to highlight certain provisions that it must identify in a cash collateral motion under Bankruptcy Rule 4001(b) and specify where each of those provisions can be found within the proposed cash collateral stipulation and form of order (see Contents of the Cash Collateral Motion). The debtor must also justify the inclusion of these provisions (other than the summary of the essential terms of the proposed use of cash collateral). This table summarizes the requirements of Section G(1) of the Complex Case Order.

Provision	N.D. Ga. Bankruptcy Court Required Information
Essential terms of the proposed use of cash collateral.	<p>A summary of the essential terms of the proposed use of cash collateral, including:</p> <ul style="list-style-type: none"> ■ The interest rate on underlying obligations. ■ The maturity date, or expiration date, of cash collateral use. ■ Events of default. ■ Use of funds limitations. ■ Lien and priority protections proposed to be provided under section 363 of the Bankruptcy Code.
Cross-collateralization.	Provisions that grant cross-collateralization protection to prepetition secured creditors, other than replacement liens or other adequate protection (see Practice Note, Cash Collateral: Overview: Cross-Collateralization (3-618-3450)).
Investigation period relating to prepetition liens and claims.	<p>Provisions or findings of fact that bind the estate or other parties in interest without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of its formation to investigate matters concerning:</p> <ul style="list-style-type: none"> ■ The validity, perfection, or amount of the secured creditor's prepetition lien. ■ The waiver of claims against the secured creditor. <p>(See Practice Note, Cash Collateral: Overview: Validation of Prepetition Liens (3-618-3450) and Waivers and Concessions of Validity of Prepetition Debt (3-618-3450)).</p>
Section 506(c) waivers.	Provisions that seek to waive, without notice, whatever rights the estate may have under section 506(c) of the Bankruptcy Code (see Practice Note, The Section 506(c) Surcharge on Collateral: Section 506(c) Waivers (9-565-5645)).
Liens on avoidance actions.	Provisions that grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, 548, or 549 of the Bankruptcy Code (see Practice Note, Cash Collateral: Overview: Extraordinary Provisions in a Cash Collateral Order (3-618-3450)).

Provision	N.D. Ga. Bankruptcy Court Required Information
Carve-outs.	Professional fee carve-out provisions that provide for disparate treatment of creditors' committee professionals compared to the debtor's professionals.
Priming liens.	Provisions that prime any secured lien without that lienor's consent.
Court's power and discretion.	Provisions that seek to affect the court's power to consider the equities of the case under section 552(b)(1) of the Bankruptcy Code to terminate or modify a creditor's prepetition lien on postpetition proceeds (see Practice Note, Treatment of Prepetition Liens in Postpetition Property: Equity Exception (1-580-7346)).

Interim Relief in Complex Chapter 11 Case

Under Section G(2) of the Complex Case Order, when cash collateral motions are filed on or shortly before the petition date in complex Chapter 11 cases, the court may grant interim relief at an expedited hearing pending further notice and opportunity for review and objection at a final hearing. For guidelines and procedures relating to scheduling an interim hearing on any cash collateral motion in a complex Chapter 11 case, see First Day Motions: Local Rules.

A template for a request for expedited consideration of first day matters, including a cash collateral motion, is attached as Exhibit B to the Complex Case Order.

Final Relief in Complex Chapter 11 Case

A final order on any cash collateral motion will only be entered after notice and a hearing under Federal Rule of Bankruptcy Procedure 4001 (Complex Case Order, Section G(3)).

CHAPTER 15

BACKGROUND/FEDERAL REQUIREMENTS

Chapter 15 of the Bankruptcy Code, enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), is designed to help the US recognize foreign insolvency proceedings and increase international cooperation among courts in multinational insolvency cases to more effectively address cross-border insolvency issues. Chapter 15 expands the scope of its predecessor, section 304 of the Bankruptcy Code, which is now repealed. It codifies the Model Law on Cross-Border Insolvency in substantially the same way it was written by the United Nations Commission on International Trade Law (UNCITRAL). In the US, Chapter 15 is the exclusive remedy for a foreign representative seeking injunctive relief against litigation in US courts that would interfere with a foreign bankruptcy proceeding.

The following Bankruptcy Rules apply in Chapter 15 cases:

- Federal Rule of Bankruptcy Procedure 1002.
- Federal Rule of Bankruptcy Procedure 1004.2.
- Federal Rule of Bankruptcy Procedure 1007(a)(4).
- Federal Rule of Bankruptcy Procedure 1010.

- Federal Rule of Bankruptcy Procedure 1011.
- Federal Rule of Bankruptcy Procedure 1012.
- Federal Rule of Bankruptcy Procedure 2002(q).
- Federal Rule of Bankruptcy Procedure 2015(d).
- Federal Rule of Bankruptcy Procedure 3002.
- Federal Rule of Bankruptcy Procedure 5012.

For more information on Chapter 15, see Practice Note, Chapter 15 Overview: US Bankruptcy Cases Ancillary to Foreign Proceedings ([7-520-4512](#)).

LOCAL RULES

The N.D. Ga. does not have any local rules regarding Chapter 15 cases.

CLAIMS TRADING

BACKGROUND/FEDERAL REQUIREMENTS

Bankruptcy claims trading generally involves the buying and selling of claims against companies seeking relief under the Bankruptcy Code. Estimates of the size of the bankruptcy claims trading market vary widely, and range in recent years from an estimated \$14 billion in the first half of 2016 to more than \$40 billion in 2012. The vast majority of the claims trading market centers on those claims which are, at least to some degree, liquidated and undisputed. Buyers and sellers trade secured claims, trade claims, and counterparty claims.

The claims trading market is not limited to traditional buy and hold investors. Particularly in large Chapter 11 cases, claims are often traded and re-traded many times by large scale market players and those who practice arbitrage, either as part of a buy low, sell high strategy, or as part of a larger strategic effort to exercise control in a debtor's case.

For more information on claims trading, see Practice Note, Bankruptcy Claims Trading: Basic Concepts ([5-526-6247](#)).

Bankruptcy Rule 3001(e)(1)

If a proof of claim has not been filed before the time of the transfer, then the buyer may file a proof of claim if the claim has been transferred other than for security. A claim is transferred other than for security if it is not transferred for providing collateral. (Fed. R. Bankr. P. 3001(e)(1).)

Bankruptcy Rule 3001(e)(2)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred other than for security after a proof of claim has been filed, the buyer must file evidence of the transfer. Once the evidence has been filed, the court clerk notifies the seller by mail of the filing. The seller then has 21 days after the mailing of the notice to object. The court holds a hearing if the seller files a timely objection. If the court finds that the claim has been transferred other than for security, it enters an order substituting the buyer for the seller as the new owner of the claim on the books and records of the bankruptcy court. If the seller does not file an objection, the buyer is automatically substituted for the seller. (Fed. R. Bankr. P. 3001(e)(2).)

Bankruptcy Rule 3001(e)(3)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred for security before a proof of claim has been filed, the buyer or the seller or both can file a proof of claim for the full amount of the transfer. A claim is transferred for security if it is transferred to provide collateral. The proof of claim must be supported by a statement setting out the terms of the transfer. (Fed. R. Bankr. P. 3001(e)(3) and see Bankruptcy Rule 3001(e)(1).)

Bankruptcy Rule 3001(e)(4)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred for security after a proof of claim has been filed, the buyer must file evidence of the transfer (Fed. R. Bankr. P. 3001(e)(4) and see Bankruptcy Rule 3001(e)(2)).

LOCAL RULES

The N.D. Ga. does not have any local rules relating specifically to claims trading. N.D. Ga. Local Bankruptcy Court Rule 3001-1 specifies requirements for filing notice of the transfer of a claim. N.D. Ga. Local Bankruptcy Court Rule 5005-9 sets out requirements for electronically filing a transfer of claim.

DIP FINANCING

BACKGROUND/FEDERAL REQUIREMENTS

The bankruptcy court, after notice and a hearing, may approve a debtor's DIP financing arrangements (§ 364(c), (d), Bankruptcy Code). A debtor-in-possession or trustee seeking DIP financing must comply with:

- Section 364 of the Bankruptcy Code (see Section 364(d) of the Bankruptcy Code).
- Federal Rule of Bankruptcy Procedure 4001(c) (see Bankruptcy Rule 4001(c)).
- Any applicable local bankruptcy court rules (see Local Rules).

This Note assumes that the DIP financing does not include provisions regarding use of cash collateral.

For more information on DIP financing, see Practice Note, DIP Financing: Overview ([1-383-4700](#)) and Timeline of DIP Financing Process ([9-383-6738](#)).

Section 364(d) of the Bankruptcy Code

A DIP financing request in any jurisdiction must provide:

- **Notice and a hearing.** The court must determine that reasonable notice has been given to parties in interest and that there has been a hearing, to the extent one is necessary (§ 364(c), (d), Bankruptcy Code and see Notice and Hearing on the DIP Financing Motion).
- **A showing of the inability to obtain credit on less onerous terms.** The debtor must demonstrate that it made efforts to obtain financing elsewhere on better terms (§ 364(c), (d)(1)(A), Bankruptcy Code). The debtor's efforts do not have to be exhaustive, just sufficient under the circumstances, which means that for:
 - non-priming DIPs, the debtor tried but was unable to obtain financing on an unsecured, administrative priority basis (see Practice Note, DIP Financing: Overview: Non-Priming DIPs

([1-383-4700](#)) and Box: Unsecured Postpetition Financing ([1-383-4700](#)); and

- priming DIPs, the debtor tried but was unable to obtain a non-priming DIP (see Practice Note, DIP Financing: Overview: Priming DIPs ([1-383-4700](#))).
- The debtor commonly submits a written declaration of a business person or a financial advisor in support of its motion that discusses the debtor's efforts to obtain financing on better terms (see Standard Document, Declaration: General (Federal) ([5-507-4700](#))). It is also common practice and sometimes required by local bankruptcy court rules for the declarant, a business person from the debtor (who may also be the declarant), and a lender representative to attend the hearing or be reasonably available by telephone to address questions and, if necessary, authorize revisions to the proposed financing.
- **Adequate protection.** This requirement only applies to priming DIPs. The debtor must show that the holder of the existing lien on property on which a senior or equal lien is granted is adequately protected from any diminution in the value of its collateral caused by the priming of its lien (§ 364(d)(1)(B), Bankruptcy Code). This requirement is usually difficult to satisfy if the primed lender objects, unless there is a substantial equity cushion for the objecting lender (see Practice Note, DIP Financing: Overview: Perspective of the Primed Lender ([1-383-4700](#))). The adequate protection provided depends on the circumstances of the case (see Practice Note, Adequate Protection: Overview: What Constitutes Adequate Protection? ([8-382-8989](#))).

Bankruptcy Rule 4001(c)

A DIP financing request in any jurisdiction must comply with Bankruptcy Rule 4001(c), which sets out requirements regarding:

- The contents of a DIP financing motion (see DIP Financing Motion Attachments and Contents).
- Service of the DIP financing motion (see Service of the DIP Financing Motion).
- Notice and hearing on the DIP financing motion (see Notice and Hearing on the DIP Financing Motion).

DIP Financing Motion Attachments and Contents

A DIP financing motion must be accompanied by:

- A copy of the proposed DIP financing credit agreement.
- The proposed form of order.

(Fed. R. Bankr. P. 4001(c)(1)(A).)

The DIP financing motion must include a concise statement of the relief requested, summarizing, and setting out the location within relevant documents of, all the material provisions of the proposed credit agreement and form of order, including:

- The interest rate.
- Maturity.
- Events of default.
- Liens.
- Borrowing limits.
- Borrowing conditions.

(Fed. R. Bankr. P. 4001(c)(1)(B).)

If the proposed credit agreement or form of order includes any of the provisions below, the concise statement must also:

- Briefly list or summarize each provision.
- Identify their location in the proposed agreement or form of order.
- Identify any provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Bankruptcy Rule 4001(c)(2).

(Fed. R. Bankr. P. 4001(c)(1)(B).)

The motion must also describe the nature and extent of each of the following provisions:

- A grant of priority or a lien on property of the estate under:
 - section 364(c) of the Bankruptcy Code, which addresses non-priming DIPs (see Practice Note, DIP Financing: Overview: Non-Priming DIPs ([1-383-4700](#))); or
 - section 364(d) of the Bankruptcy Code, which addresses priming DIPs (see Practice Note, DIP Financing: Overview: Priming DIPs ([1-383-4700](#))).

(Fed. R. Bankr. P. 4001(c)(1)(B)(i).)

- The method of providing adequate protection or priority for a prepetition claim, including:
 - granting a lien on property of the estate to secure the claim (see Practice Note, Adequate Protection: Overview: Additional or Replacement Lien ([8-382-8989](#))); or
 - using property of the estate or credit obtained under section 364 of the Bankruptcy Code to make cash payments on account of the claim (see Practice Note, Adequate Protection: Overview: Cash Payment or Periodic Cash Payments ([8-382-8989](#))).

(Fed. R. Bankr. P. 4001(c)(1)(B)(ii).)

- A determination of the validity, enforceability, priority, or amount of a prepetition claim or of any lien securing the claim (Fed. R. Bankr. P. 4001(c)(1)(B)(iii)).
- A waiver or modification of the automatic stay (Fed. R. Bankr. P. 4001(c)(1)(B)(iv) and see Practice Note, Automatic Stay: Overview: Relief from the Stay ([9-380-7953](#)) and Waivers of the Stay ([9-380-7953](#))).
- A waiver or modification of any party's authority or right to:
 - file a plan (see Practice Note, Chapter 11 Plan Process: Overview: Who May File a Plan? ([0-502-7396](#)));
 - seek an extension of the debtor's exclusivity period to file a plan (see Practice Note, Chapter 11 Plan Process: Overview: Contesting Exclusivity ([0-502-7396](#)));
 - request the use of cash collateral under section 363(c) of the Bankruptcy Code (see Practice Note, Cash Collateral: Overview ([3-618-3450](#))); or
 - request authority to obtain credit under section 364 of the Bankruptcy Code (see Practice Note, DIP Financing: Overview ([1-383-4700](#))).

(Fed. R. Bankr. P. 4001(c)(1)(B)(v).)

- The setting of a deadline for:
 - filing a plan of reorganization;
 - approval of a disclosure statement;

- a hearing on confirmation; or
 - entry of a confirmation order.
- (Fed. R. Bankr. P. 4001(c)(1)(B)(vi) and see Practice Note, Chapter 11 Plan Process: Overview ([0-502-7396](#))).
- A waiver or modification of the applicability of nonbankruptcy law relating to:
 - the perfection of a lien on property of the estate; or
 - the foreclosure or other enforcement of the lien.

(Fed. R. Bankr. P. 4001(c)(1)(B)(vii).)
 - A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to file an action (Fed. R. Bankr. P. 4001(c)(1)(B)(viii)).
 - The indemnification of any entity (Fed. R. Bankr. P. 4001(c)(1)(B)(ix)).
 - A release, waiver, or limitation of any right to surcharge collateral under section 506(c) of the Bankruptcy Code (Fed. R. Bankr. P. 4001(c)(1)(B)(x) and see Practice Note, The Section 506(c) Surcharge on Collateral ([9-565-5645](#))).
 - The granting of a lien on any claim or cause of action arising under:
 - section 544 of the Bankruptcy Code (transfers avoidable under applicable state law);
 - section 545 of the Bankruptcy Code (avoidable statutory liens);
 - section 547 of the Bankruptcy Code (transfers avoidable as preferences);
 - section 548 of the Bankruptcy Code (transfers avoidable as fraudulent conveyances);
 - section 549 of the Bankruptcy Code (transfers avoidable as postpetition transactions);
 - section 553(b) of the Bankruptcy Code (setoffs made during the 90-day period before bankruptcy that improve a creditor's position);
 - section 723(a) of the Bankruptcy Code (claims against general partners who are personally liable for any deficiency of the partnership debtor's property to meet claims against the partnership); and
 - section 724(a) of the Bankruptcy Code (avoidable liens that secure a fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, but not to the extent that these liens secure claims for actual pecuniary loss).

Service of the DIP Financing Motion

The DIP financing motion must be served on:

- Any committee or its authorized agent formed under:
 - section 705 of the Bankruptcy Code in a Chapter 7 case; or
 - section 1102 of the Bankruptcy Code in a Chapter 11 case (see Practice Notes, Chapter 11 Creditors' Committees ([1-508-8252](#)) and Chapter 11 Equity Committees ([6-608-2869](#))).
- If the case is a Chapter 9 municipality case or a Chapter 11 case in which no committee has been appointed under section 1102, the top 20 unsecured creditors identified on the list filed under

Federal Rule of Bankruptcy Procedure 1007(d) (see Standard Document, List of Largest Unsecured Creditors ([3-610-4108](#))).

- Any other entity that the court may direct.
- (Fed. R. Bankr. P. 4001(c)(1)(C).)

A DIP financing motion is a contested matter for which a motion must be made under Federal Rule of Bankruptcy Procedure 9014 (Fed. R. Bankr. P. 4001(c)(1)(A)). Under Bankruptcy Rule 9014, the motion must be served in the manner provided for service of a summons and complaint by Federal Rule of Bankruptcy Procedure 7004.

If the motion is supported by an affidavit, the debtor must serve them together and any written response must be served no later than one day before the hearing, unless otherwise permitted by the court (Fed. R. Bankr. P. 9006(d)). The debtor commonly submits a written declaration of a business person or financial advisor in support of its DIP financing motion (see Section 364(d) of the Bankruptcy Code).

Notice and Hearing on the DIP Financing Motion

The court may hold an interim hearing to authorize the immediate access to financing to the extent necessary to avoid immediate and irreparable harm to the estate, but it cannot hold a final hearing earlier than 14 days from the date the debtor serves the DIP financing motion (Fed. R. Bankr. P. 4001(c)(2)).

The debtor must give notice of the hearing to all parties it must serve with the DIP financing motion and to any other entities as the court may direct (Fed. R. Bankr. P. 4001(c)(3) and see Service of the DIP Financing Motion).

LOCAL RULES

The N.D. Ga. does not have any generally applicable local rules concerning DIP financing motions. However, the N.D. Ga. has procedures for seeking court approval of DIP financing for cases qualifying as complex Chapter 11 cases under General Order No. 26-2019 (Complex Case Order) (see Complex Chapter 11 Cases). The Complex Case Order creates one set of procedures applicable to both cash collateral motions and motions to approve DIP financing (see Cash Collateral: Local Rules).

Contents of DIP Financing Motion in Complex Chapter 11 Cases

Practitioners should refer to Section G of the Complex Case Order. That section requires that DIP financing requests under section 364 of the Bankruptcy Code be heard by motion filed under Federal Rules of Bankruptcy Procedure 2002, 4001, and 9014.

Section G(1) of the Complex Case Order requires the debtor to highlight certain provisions that it must identify in a DIP financing motion under Bankruptcy Rule 4001(c) and specify where each of those provisions can be found within the proposed loan agreement and form of order (see DIP Financing Motion Attachments and Contents). The debtor must also justify the inclusion of these provisions (other than the summary of the essential terms of the proposed DIP financing). This table summarizes the requirements of Section G(1) of the Complex Case Order.

Provision	N.D. Ga. Bankruptcy Court Required Information
Essential terms of the proposed DIP financing.	A summary of the essential terms of the proposed DIP financing, including: <ul style="list-style-type: none"> ■ The maximum borrowing available on a final basis. ■ The interim borrowing limit. ■ Borrowing conditions. ■ The interest rate. ■ The maturity date. ■ Events of default. ■ Use of funds limitations. ■ Lien and priority protections proposed to be provided under section 364 of the Bankruptcy Code.
Cross-collateralization.	Provisions that grant cross-collateralization protection to prepetition secured creditors, other than replacement liens or other adequate protection (see Practice Note, DIP Financing: Overview: Increased Collateral Securing Prepetition Debt (1-383-4700)).
Investigation period relating to prepetition liens and claims.	Provisions or findings of fact that bind the estate or other parties in interest without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of its formation to investigate matters concerning: <ul style="list-style-type: none"> ■ The validity, perfection, or amount of the secured creditor's prepetition lien. ■ The waiver of claims against the secured creditor. (See Practice Note, DIP Financing: Overview: Validation of Prepetition Liens and Releases (1-383-4700)).
Section 506(c) waivers.	Provisions that seek to waive, without notice, whatever rights the estate may have under section 506(c) of the Bankruptcy Code (see Practice Note, The Section 506(c) Surcharge on Collateral: Section 506(c) Waivers (9-565-5645)).
Liens on avoidance actions.	Provisions that grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, 548, or 549 of the Bankruptcy Code.
Roll-ups.	Roll-up provisions that: <ul style="list-style-type: none"> ■ Deem prepetition secured debt to be postpetition debt. ■ Use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in section 552(b) of the Bankruptcy Code. (See Practice Note, Roll-Up DIP Financing (1-386-8691)).

Provision	N.D. Ga. Bankruptcy Court Required Information
Carve-outs.	Professional fee carve-out provisions that provide for disparate treatment of creditors' committee professionals compared to the debtor's professionals.
Priming liens.	Provisions that prime any secured lien without that lienor's consent.
Court's power and discretion.	Provisions that seek to affect the court's power to consider the equities of the case under section 552(b)(1) of the Bankruptcy Code to terminate or modify a creditor's prepetition lien on postpetition proceeds (see Practice Note, Treatment of Prepetition Liens in Postpetition Property: Equity Exception (1-580-7346)).

Interim Relief in Complex Chapter 11 Case

Under Section G(2) of the Complex Case Order, when DIP financing motions are filed on or shortly before the petition date in complex Chapter 11 cases, the court may grant interim relief at an expedited hearing pending further notice and opportunity for review and objection at a final hearing. For guidelines and procedures relating to scheduling an interim hearing on any DIP financing motion in a complex Chapter 11 case, see First Day Motions: Local Rules.

A template for a request for expedited consideration of first day matters, including a DIP financing motion, is attached as Exhibit B to the Complex Case Order.

Final Relief in Complex Chapter 11 Case

A final order on any DIP financing motion will only be entered after notice and a hearing under Federal Rule of Bankruptcy Procedure 4001 (Complex Case Order, Section G(3)).

FIRST DAY DECLARATIONS

BACKGROUND/FEDERAL REQUIREMENTS

The first day declaration is an independent document executed by a key executive or senior officer of the debtor, providing an explanation of the debtor's business, the events leading to the Chapter 11 case, the basis for the relief sought in the first day motions, and often the debtor's future intentions for the Chapter 11 case.

The transition into bankruptcy can be difficult for most companies, as their board of directors and management are forced to accept new limitations on their authority to operate the business and adapt to their new fiduciary duties to the debtor's secured creditors and unsecured creditors. The transition is equally difficult for a debtor's employees, lessors, creditors, and customers.

A first day declaration can help mitigate these concerns by providing an explanation for the events that led to the bankruptcy and a road map for the Chapter 11 case.

For more information on first day declarations, see Practice Note, Chapter 11 First Day Declaration ([7-617-7678](#)).

LOCAL RULES

The N.D. Ga. does not have any local rules regarding first day declarations, but bankruptcy judges in the N.D. Ga. likely anticipate that first day declarations will be filed. Bankruptcy courts in the N.D. Ga. will accept a first day declaration into evidence if no party objects to the admission of the declaration.

First day declarations typically contain:

- A description of the debtor's:
 - assets;
 - business and operations;
 - capital structure and ownership interests; and
 - debt structure.
- A corporate organizational chart.
- A discussion of:
 - the events that led to a Chapter 11 filing;
 - the purpose of the filing; and
 - the anticipated path forward in the case.
- Sections providing any facts or other evidence in support of the motions that will be heard at the first day hearing.

FIRST DAY MOTIONS

BACKGROUND/FEDERAL REQUIREMENTS

A Chapter 11 debtor typically files several motions on or soon after the petition date to seek relief necessary to ease the debtor's transition into bankruptcy. These first day motions address both administrative and operational issues and may seek relief on an interim or final basis.

For more information on first day motions, see Practice Note, First Day Motions: Overview ([W-000-5994](#)) and First Day Relief: Debtor Checklist ([W-000-6011](#)).

LOCAL RULES

N.D. Ga. Local Bankruptcy Court Rule 5005-2 specifically requires any pleadings filed in a Chapter 11 case, other than pleadings in adversary proceedings, to be served on the US Trustee.

First Day Matters in Complex Chapter 11 Cases

N.D. Ga. has procedures for first day relief for cases qualifying as complex Chapter 11 cases under General Order No. 26-2019 (Complex Case Order) (see Complex Chapter 11 Cases).

For first day motions, the debtor must file a document titled Request for Expedited Consideration of Certain First Day Matters (First Day Hearing Request) (Complex Case Order, Section E(1)(a)). A form to be used for First Day Hearing Requests is attached to the Complex Case Order as Exhibit B. Once filed, counsel for the debtor should contact chambers for the judge to whom the complex Chapter 11 case has been assigned, after which the court must hold a hearing within two business days of the First Day Hearing Request.

After the court has entered an order scheduling a hearing on the first day motions (First Day Order and Notice), counsel for the debtor must serve a copy of the First Day Order and Notice by hand delivery, fax, email, overnight courier, or next-day US mail on the parties specified in Section E(1)(b) of the Complex Case Order.

Section E(1)(c) of the Complex Case Order provides that first day motions or pleadings otherwise related to this relief must be served either:

- By posting the pleading to a website maintained by:
 - a claims and noticing agent; or
 - the debtor or its counsel.
- Under the Federal Rules of Bankruptcy Procedure.

Section E of the Complex Case Order also describes procedures for:

- Requesting omnibus hearings (Complex Case Order, Section E(2)-(3)).
- Requesting expedited hearings for matters not related to first day motions (Complex Case Order, Section E(4)).
- Telephonic participation for hearings related to first day motions or omnibus hearings (Complex Case Order, Section E(5)).

Section C of the Complex Case Order states that the court may enter an order of joint administration without notice and opportunity for hearing on the filing of a motion for joint administration under Federal Rule of Bankruptcy Procedure 1015 if the motion is supported by an affidavit, declaration, or verification establishing that joint administration is warranted. The debtor must also file a list of the 30 largest unsecured creditors on a consolidated basis in the proposed lead case.

Section D of the Complex Case Order permits the debtor to establish a limited service list that can be used for all matters except:

- Notice of the section 341 meeting.
- The time fixed for filing proofs of claim under Federal Rule of Bankruptcy Procedure 3003(c).
- The time fixed for filing objections to and the hearing to consider approval of a disclosure statement or confirmation of a plan of reorganization.
- Notice and transmittal of ballots for accepting or rejecting a plan of reorganization.

Section D(2) of the Complex Case Order specifies which parties must be included on the limited service list. Section D(3) of the Complex Case Order requires the limited service list to be updated monthly and for an updated list to be filed with the court whenever the list has been modified from the last limited service list filed with the court.

POST-CONFIRMATION REQUIREMENTS

BACKGROUND/FEDERAL REQUIREMENTS

Local bankruptcy court rules may contain post-confirmation requirements for Chapter 11 cases, including liquidating cases. These requirements can include:

- Submission of a post-confirmation timetable and proposed order.
- Filing of periodic post-confirmation reports.
- Filing a closing or final report.
- A motion for a final decree.

LOCAL RULES

Within 120 days of the entry of the order of confirmation of a Chapter 11 plan or after final compensation is approved, whichever

is later, the debtor, trustee, successful plan proponent, or other disbursing agent must file and transmit to the US Trustee:

- A Final Administrative Expense Report, which discloses certain administrative expenses (N.D. Ga. BLR 3022-1(b)).
- A report stating whether the estate has been fully administered within the meaning of Federal Rule of Bankruptcy Procedure 3022 (N.D. Ga. BLR 3022-1(c)).

The debtor, trustee, successful plan proponent, or other disbursing agent must also file a Report of Substantial Consummation and Request for Final Decree within 30 days of substantial consummation of the plan, unless the bankruptcy court otherwise orders (N.D. Ga. BLR 3022-1(d)).

PREPACKS

BACKGROUND/FEDERAL REQUIREMENTS

Prepackaged bankruptcies, typically known as “prepacks,” have become more popular since the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The BAPCPA has promoted the use of prepacks and has made traditional Chapter 11 bankruptcy cases more difficult and expensive. A prepack is a Chapter 11 bankruptcy in which the debtor negotiates the terms of and solicits votes on a plan before it files its Chapter 11 bankruptcy petition. Prepacks allow a company to emerge more quickly and efficiently from bankruptcy, while reducing the risks and uncertainties involved with negotiating a traditional plan during bankruptcy proceedings.

For more information on prepacks, see Practice Note, The Prepackaged Bankruptcy Strategy ([9-503-4934](#)) and Timeline of a Prepackaged Bankruptcy Case ([9-504-0794](#)).

LOCAL RULES

The N.D. Ga. does not have any local rules or specific guidelines governing prepackaged bankruptcies.

PROFESSIONAL FEE REQUESTS

BACKGROUND/FEDERAL REQUIREMENTS

There are three components to getting paid as a professional to a Chapter 11 estate:

- The bankruptcy court must approve the professional’s retention on notice to the US Trustee and key creditors. For information on getting retained as a professional to the DIP, see Practice Note, Getting Retained as a Professional to the Debtor-in-Possession ([0-616-6522](#)).
- Once a retention is approved, professionals have ongoing fiduciary duties and statutory obligations. For information on a DIP professional’s ongoing duties and obligations, see Practice Note, Fiduciary Duties and Statutory Obligations of Professionals to the Debtor-in-Possession ([6-616-6524](#)).
- A DIP professional’s fees and expenses must be approved under section 330 of the Bankruptcy Code and, if applicable, section 328 of the Bankruptcy Code (see Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee ([8-616-5137](#))).

The fees and expenses of a professional retained under section 327 of the Bankruptcy Code are subject to court approval under sections 330 and 331 of the Bankruptcy Code. Section 328(a) of the

Bankruptcy Code provides a mechanism for seeking preapproval of reasonable terms and conditions for compensation of professionals employed under section 327 (see Practice Note, Getting Retained as a Professional to the Debtor-in-Possession: Preapproval of Fee Arrangements ([0-616-6522](#))).

Individual judges and local court rules also contain requirements relating to fee requests. The US Trustee has also issued fee guidelines with detailed requirements (see Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee: US Trustee Fee Guidelines ([8-616-5137](#))).

Under section 503(b)(2) of the Bankruptcy Code, compensation awarded under section 330(a) is classified as an administrative claim.

For more information on professional fee requests, see Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee ([8-616-5137](#)).

LOCAL RULES

The N.D. Ga. does not have any local rules governing professional fee requests generally. However, the N.D. Ga. has procedures for fee applications by any professional retained under sections 327, 328, or 1103 of the Bankruptcy Code in cases qualifying as complex Chapter 11 cases under General Order No. 26-2019 (Complex Case Order) (see Complex Chapter 11 Cases). With the stated purpose of streamlining the process for professional compensation and enabling interested parties to monitor the professional fees and expenses incurred in a complex Chapter 11 case, Section J of the Complex Case Order prescribes procedures for:

- Preparing and serving monthly fee statements.
- Asserting and resolving any objections to these monthly statements.
- Paying interim compensation based on these monthly statements.
- Preparing and filing quarterly and final fee applications.

PROFESSIONAL RETENTION APPLICATIONS

BACKGROUND/FEDERAL REQUIREMENTS

A debtor-in-possession (DIP) must obtain bankruptcy court approval in order to retain professionals. Those professionals must demonstrate disinterestedness and a lack of any interest adverse to the estate. Court approval of the retention of the DIP’s professionals is subject to significant disclosure obligations and conflict-of-interest rules.

To ensure the disinterestedness of the DIP’s professionals, conflicts of interest are more strictly interpreted in bankruptcy than in other areas of the law. Certain conflicts that a client can waive after full disclosure outside of bankruptcy (such as simultaneous representation of a client and a client’s creditor) cannot be waived in bankruptcy. Even potential conflicts must be avoided. The Bankruptcy Code’s strict conflict-of-interest requirements help ensure undivided loyalty and promote public confidence in the bankruptcy process.

For more information on the rules and procedures related to the DIP’s retention of professionals, see Practice Note, Getting Retained as a Professional to the Debtor-in-Possession ([0-616-6522](#)).

LOCAL RULES

N.D. Ga. Local Bankruptcy Court Rule 5005-2 specifically requires any application for the employment of professionals to be served on the US Trustee. The N.D. Ga. Local Bankruptcy Rules otherwise do not specify any requirements for professional retention applications.

N.D. Ga. Local Bankruptcy Court Rule 9007-2, which contains requirements for the service of pleadings and other papers generally, would apply to applications to retain professionals.

PROOFS OF CLAIM AND OBJECTIONS TO CLAIMS

BACKGROUND/FEDERAL RULES

A proof of claim is a written statement setting out a creditor's claim and asserting its right to receive a distribution from the bankruptcy estate. It must "conform substantially" to Official Bankruptcy Form B410 (Fed. R. Bankr. P. 3001(a)). The purpose of a proof of claim is to give notice of the claim to the court, the debtor, the trustee, and other creditors.

A properly prepared proof of claim constitutes prima facie evidence of the validity and amount of the claim (Fed. R. Bankr. P. 3001(f)) and is deemed allowed, unless a party in interest (such as the debtor) objects (§ 502(a), Bankruptcy Code). This means any distribution of the debtor's assets made on account of a claim is based on the filed proof of claim if it is not challenged (or survives a challenge).

For more information on proofs of claim, see Practice Notes, Filing a Proof of Claim in a Chapter 11 Bankruptcy Case ([8-385-1512](#)) and Filing a Proof of Claim: Pitfalls and Precautions ([W-004-2098](#)).

For more information on objections to claims, see Practice Note, Objections to Claims: Overview ([W-008-8970](#)).

LOCAL RULES

N.D. Ga. Local Bankruptcy Court Rule 3001-1 sets out some requirements for filing a proof of claim, including that the proof of claim:

- Complies with the format requirements specified in N.D. Ga. Local Bankruptcy Court Rule 5005-1(a), (b), (d), and (h).
- Contains the name of the person signing the proof of claim typed or printed legibly under the signature.
- Contains the name of the holder and the address where notices should be sent.

N.D. Ga. Local Bankruptcy Court Rule 5005-9 pertains to filing a proof of claim electronically.

N.D. Ga. Local Bankruptcy Court Rule 3007-1 specifies requirements for preparing objections to proofs of claims, including the requirement that the objection identify the name of the holder of the claim and the number of the proof of claim as reflected on the claims register maintained by the court. N.D. Ga. Local Bankruptcy Court Rule 3007-1 also sets out requirements for serving objections to proofs of claim on:

- The claimant.
- Counsel for the claimant.
- Governmental entities.

N.D. Ga. Local Bankruptcy Form 3007-1(c) provides a template for notice of an objection to a proof of claim.

REMOVAL, REMAND, AND ABSTENTION IN BANKRUPTCY BACKGROUND/FEDERAL REQUIREMENTS

Removal, remand, and abstention are important tools to be considered during a bankruptcy proceeding for transferring claims to another court or to prevent that court from determining an issue that it should not hear and decide.

A party can unilaterally remove an action pending in state court to either the district court or the bankruptcy court. After removal, on motion of a non-removing party, the court can remand the matter back to state court or the court, on its own motion or a motion of a party, can abstain from hearing a matter because the state court is capable of hearing and deciding the matter. Abstention is either mandatory or permissive.

For more information on removal, remand, and abstention in bankruptcy cases, see Practice Note, Notice of Removal, Remand, and Abstention in Bankruptcy ([W-000-7148](#)).

LOCAL RULES

Removal statutes are strictly construed (see *Tisdale v. Westmore Grp., LLC*, 2018 WL 1157627 (Bankr. N.D. Ga. Mar. 2, 2018)).

N.D. Ga. Local Bankruptcy Court Rule 9027-1 provides that:

- When an action or proceeding is removed to the bankruptcy court with pending motions on which briefs have not been submitted, the moving party must serve a memorandum in support of the motion within 14 days after removal.
- Each party opposing the motion must respond in compliance with N.D. Ga. Local Bankruptcy Court Rule 7007-1(c).

N.D. Ga. Local Bankruptcy Court Rule 7007-1(c) specifies the procedural rules applicable to briefing in any adversary proceeding and in any contested matter in which the court makes these rules applicable, such as a motion for removal.

Federal Rule of Bankruptcy Procedure 9027(e)(3) requires the opposing party, by 14 days after the filing of a notice of removal, to file a statement indicating whether the party consents to the entry of a final order or judgment by the bankruptcy court (for example, whether the action is core or non-core). The failure to file a timely statement constitutes a waiver of the party's right to contest whether the action is a core proceeding (see *Chambers v. Silliman (In re Bryan)*, 308 B.R. 583 (Bankr. N.D. Ga. 2004)).

N.D. Ga. Local Bankruptcy Court Rule 5005-2 requires that copies of all pleadings filed in a Chapter 12 case or Chapter 11 case (except pleadings filed in an adversary proceeding) be served on the US Trustee.

N.D. Ga. Local Civil Rule 83.7(B) provides that, according to 28 U.S.C. Section 157(e), the bankruptcy judges of the N.D. Ga. are specially designated to conduct jury trials when the right to a jury trial applies, but that this jurisdiction is subject to the express consent of all parties under the procedure set out in N.D. Ga. Local Bankruptcy Court Rule 9015-2.

N.D. Ga. Local Bankruptcy Court Rule 9015-2 states that when a trial by jury is properly demanded under N.D. Ga. Local Bankruptcy Court Rule 9015-1, the clerk of the bankruptcy court must notify the parties of the right to expressly consent to a trial by jury in the bankruptcy court. The parties have 30 days after the date of this notice in which

to execute and file a joint pleading consenting to the bankruptcy court presiding over the jury trial.

Concerning a jury trial, N.D. Ga. Local Bankruptcy Court Rule 9015-3 provides that when parties do not consent to a jury trial in bankruptcy court, the matter must be transferred to the district court. However, this transfer only occurs when the bankruptcy judge determines that the case is ready for trial. The bankruptcy judge is otherwise responsible for ruling on all pre-trial and dispositive motions. If, after the transfer of a case to district court, parties withdraw the jury trial demand, the case will be remanded to the bankruptcy court for a bench trial unless otherwise directed by the district court (N.D. Ga. BLR 9015-3(b)).

RETAINING A CLAIMS AGENT

BACKGROUND/FEDERAL REQUIREMENTS

To relieve administrative pressure on both debtors and the bankruptcy clerk, Congress enacted 28 U.S.C. Section 156(c) to permit outside vendors (claims agents), at the expense of the bankruptcy estate, to assume certain specified administrative functions mandated by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Section 156(c) limits the function of the claims agent to that of a delegee of the clerk of court to perform the following tasks:

- Managing the claims process.
- Providing noticing services.
- Disseminating information to the public and responding to requests for case information.

Claims agents, however, may also be retained as administrative agents under section 327 of the Bankruptcy Code to provide services beyond the constraints of 28 U.S.C. Section 156(c), including:

- Assisting with the preparation of schedules of assets and liabilities (schedules) and statements of financial affairs (statements) (see Practice Note, Schedules and Statements of Financial Affairs: Overview ([W-000-9982](#))).
- Aggregating, sorting, and analyzing proofs of claims.
- Assisting with the reconciliation of claims and the analysis of executory contracts and unexpired leases, including issues such as the cure, assumption, and rejection of contracts and leases.
- Soliciting and tabulating votes on plans of reorganization.
- Making distributions according to the terms of the plan.

For more information on the role and responsibilities of a claims agent, see Practice Note, The Retention and Role of a Claims Agent in Bankruptcy ([W-001-1117](#)).

LOCAL RULES

The N.D. Ga. does not have any local rules that contain special or additional requirements for retaining a claims agent. For a case designated as a complex Chapter 11 case under General Order No. 26-2019 (Complex Case Order) (see Complex Chapter 11 Cases), Section E(1)(i) of the Complex Case Order specifies procedures for posting notice of first day matters and of the hearing on first day matters on the website of any claims agent retained in the case.

RETENTION OF LOCAL COUNSEL

BACKGROUND/FEDERAL REQUIREMENTS

As a general rule, attorneys not admitted in the jurisdiction where a bankruptcy case is pending must be admitted *pro hac vice* to appear before the bankruptcy court in that case. To be admitted *pro hac vice*, an attorney must often certify or attest to certain facts, including that the attorney is:

- Eligible for admission to the bankruptcy court.
- Admitted and in good standing as a member of the bar in the attorney's state of practice.
- Willing to submit to the disciplinary jurisdiction of the bankruptcy court for any alleged misconduct in the course of the case for which the attorney is admitted.
- Generally familiar with the court's local rules.

Applicable rules also frequently require the attorney seeking *pro hac vice* admission to pay a fee.

Counsel must review rules and practices of the relevant jurisdiction in which a case is filed or will be filed to determine whether to retain local counsel and to understand the requirements for *pro hac vice* admission.

LOCAL RULES

Any non-resident attorney who is not an active member in good standing of the State Bar of Georgia but who is a member in good standing of the bar of any US court or of the highest court of any state must file an application and pay the applicable fee to the N.D. Ga. Bankruptcy Court for admission before the attorney can appear *pro hac vice* in a case (N.D. Ga. BLR 9010-2).

An attorney applying to appear *pro hac vice* must also designate a local member of the bar of the N.D. Ga. Bankruptcy Court with whom the opposing counsel and the bankruptcy court may readily communicate regarding the conduct of the case and to receive service of papers (N.D. Ga. BLR 9010-2(a)).

If the non-resident attorney fails to respond to any order of the bankruptcy court for appearance or otherwise, the designated local attorney has the responsibility and full authority to act for and on behalf of the client in all proceedings concerning the case, including hearings, pretrial conferences, and trial (N.D. Ga. BLR 9010-2(b)).

The court's website provides a template for applying for admission *pro hac vice*.

SECTION 363 SALES

BACKGROUND/FEDERAL REQUIREMENTS

After notice and a hearing, the bankruptcy court may approve a section 363 sale of a debtor's assets, other than in the ordinary course of business (§ 363(b), Bankruptcy Code). A debtor-in-possession or trustee seeking approval of a section 363 sale must comply with:

- Section 363(b) of the Bankruptcy Code (see Section 363(b) Requirements and Section 363(b)(1)(A) and (B): Sale of PII Requirements).
- Federal Rule of Bankruptcy Procedure 2002 (see Bankruptcy Rule 2002 Notice Requirements).

- Federal Rule of Bankruptcy Procedure 6004 (see Bankruptcy Rule 6004 Requirements and Bankruptcy Rule 6004(g): Sale of PII Requirements).
- Section 365 of the Bankruptcy Code, to the extent that the sale involves the assumption, assignment, or rejection of any executory contracts or leases (see Section 365 Requirements).
- Any applicable local bankruptcy court rules (see Local Rules).

Debtors-in-possession and trustees have great discretion over the method of conducting the sale and are not required to use any specific sale or bidding procedures (§ 363(b), Bankruptcy Code). However, they must comply with certain procedural requirements under Bankruptcy Rules 2002 and 6004 regardless of the form of sale and any applicable local bankruptcy court rules.

For more information on section 363 sales, see:

- Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview ([1-385-0115](#)).
- Timeline of a Section 363 Sale ([3-385-0751](#)).
- Article, Strategies for Purchasing and Selling Assets in Chapter 11 ([W-001-4106](#)).

Section 363(b) Requirements

After a notice and a hearing, the trustee (including a debtor-in-possession) may use, sell, or lease property of the estate outside of the ordinary course of business. Therefore, the debtor must provide adequate and reasonable notice of a proposed sale (§ 363(b), Bankruptcy Code and see Bankruptcy Rule 2002 Notice Requirements).

Courts have also held that the sale must:

- Be in the best interests of the estate and its creditors. The debtor generally has a fiduciary duty to obtain the highest or best price for the assets (see *Cello Bag Co., Inc. v. Champion Int'l Corp. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). To satisfy this requirement, the sale is usually subject to an auction. The highest price is not always the best price, and it is unnecessary to show that the purchase price was the highest possible price obtainable under the circumstances.
- Be proposed in good faith (see *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 (3d Cir. 1986)).
- Have a legitimate business justification (see *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)).

Section 363(b) sales of all or substantially all of the debtor's assets also require a court to find that the sale is not a *sub rosa* plan (see Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview: Sales of All or Substantially All Assets ([1-385-0115](#))). A *sub rosa* plan is a transaction that has the practical effect of predetermining the essential terms of a plan of reorganization.

For more information on section 363 requirements, see Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview: Legal Requirements ([1-385-0115](#)).

Section 363(b)(1)(A) and (B): Sale of PII Requirements

Because of privacy issues, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) restricted the use, lease,

and sale of personally identifiable information (PII). These restrictions do not apply to other forms of estate property.

Specifically, a debtor cannot sell or lease PII outside the ordinary course of business unless either:

- The sale or lease does not violate the debtor's privacy policy. The transfer of PII is allowed if permitted by the debtor's privacy policy and the transfer complies with all the terms of the privacy policy.
- A consumer privacy ombudsman is appointed under section 332 of the Bankruptcy Code and the court approves the sale or lease after considering the facts, circumstances, and conditions of the sale or lease, and finding that the sale or lease does not violate applicable non-bankruptcy law.

(§ 363(b)(1), Bankruptcy Code.)

For additional requirements for the sale of PII, see Bankruptcy Rule 6004(g): Sale of PII Requirements.

For more information on the sale of PII, see Practice Note, Property of the Estate: Special Intangible Property Interests: Customer Data ([3-616-3701](#)).

Bankruptcy Rule 2002 Notice Requirements

Bankruptcy Rule 2002 sets out notice requirements for section 363 sales regarding:

- **Length and method of notice.** The clerk of the bankruptcy court or another person directed by the court must give parties at least 21 days' notice of the sale by mail, unless the court limits or shortens the time or directs another method of giving notice (Fed. R. Bankr. P. 2002(a)(2)).
- **Content of notice.** The notice must include:
 - the time and place of any public sale;
 - the terms and conditions of any private sale;
 - the time fixed for filing objections; and
 - a general description of the property to be sold. The notice of a proposed sale of PII must state whether the sale is consistent with the debtor's privacy policy (see Section 363(b)(1)(A) and (B): Sale of PII Requirements).
 (Fed. R. Bankr. P. 2002(c)(1).)
- **Parties served.** The notice of the sale must be served on:
 - the debtor;
 - the trustee, if any;
 - all creditors;
 - any indenture trustees;
 - any official creditors' committees and equity committees, or their authorized agents;
 - the Securities and Exchange Commission (SEC), if appropriate;
 - the Commodity Futures Trading Commission, in a commodity broker case;
 - the Internal Revenue Service (IRS);
 - the US attorney for the district where the case is pending, if a debt is owed to the US other than for taxes, and on the department, agency, or instrumentality of the US through which the debtor became indebted;

- the Secretary of the Treasury, if the US has a stock interest;
- the US Trustee;
- equity security holders, in sales of all or substantially all assets, unless the court orders otherwise; and
- entities who have requested notice under Federal Rule of Bankruptcy Procedure 2002.

(Fed. R. Bankr. P. 2002(a)(2), (d), (g), (i), (j), (k).)

■ **Additional parties served.** Notice must also be served on:

- the consumer privacy ombudsman, if applicable (§ 332(a), Bankruptcy Code and see Section 363(b)(1)(A) and (B): Sale of PII Requirements and Bankruptcy Rule 6004(g): Sale of PII Requirements);
- all parties to executory contracts or unexpired leases to be assumed and assigned, or rejected as part of the sale (see Section 365 Requirements) (Fed. R. Bankr. P. 6006(c));
- all parties known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in the assets to be sold (Fed. R. Bankr. P. 6004(c) and see Bankruptcy Rule 6004 Requirements); and
- the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, if the sale implicates the antitrust laws of the US (§ 363(b)(2), Bankruptcy Code).

Bankruptcy Rule 6004 Requirements

Bankruptcy Rule 6004 sets out requirements for:

- **Notice.** Notice of a proposed sale of estate property outside of the ordinary course of business must be given consistent with Bankruptcy Rule 2002 (Fed. R. Bankr. P. 6004(a) and see Bankruptcy Rule 2002 Notice Requirements).
- **Objections.** Objections to the proposed sale must be filed and served at least seven days before the date of the sale or within the time fixed by the court (Fed. R. Bankr. P. 6004(b)). An objection gives rise to a contested matter governed by Federal Rule of Bankruptcy Procedure 9014 (Bankruptcy Rule 9014).
- **Sale free and clear of liens.** A sale free and clear of liens or other interests under section 363(f) of the Bankruptcy Code is a contested matter for which a motion must be made under Bankruptcy Rule 9014 and served on the parties who have liens or other interests in the property to be sold (Fed. R. Bankr. P. 6004(c)). The notice must include the date of the sale hearing and the deadline to file and serve objections on the debtor or the trustee. Under Bankruptcy Rule 9014, the motion must be served in the manner provided for service of a summons and complaint by Federal Rule of Bankruptcy Procedure 7004.
- **Hearing.** If a timely objection is made, the hearing date may be set out in the original notice of the sale (Fed. R. Bankr. P. 6004(e)). No hearing is required if there are no objections. If the original sale notice does not contain a hearing date, the objecting party commonly obtains a hearing date and time from the court and states it on the objection.
- **Public or private sale.** The sale may be by private sale or public auction. On the completion of the sale, unless it is impracticable, the trustee or the debtor must file and transmit to the US Trustee an itemized statement of:

- the property sold;
- the name of each purchaser; and
- the price received for each item or lot or for the property as a whole if sold in bulk.

(Fed. R. Bankr. P. 6004(f)(1).)

- If an auctioneer sells the property, then the auctioneer must file the statement and provide a copy to the US Trustee and the debtor or the trustee.
- **Execution of instruments.** The debtor or the trustee must execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser (Fed. R. Bankr. P. 6004(f)(2)).
- **Stay of sale order.** Sale orders are stayed for 14 days, unless the court orders otherwise (Fed. R. Bankr. P. 6004(h)). This gives any objecting parties time to seek a further stay while they appeal the sale order. Courts can waive or reduce the 14-day appeal period, on request of the parties, if there is a reason to close the sale early.

Bankruptcy Rule 6004(g): Sale of PII Requirements

A motion to sell PII outside of the terms of the debtor's privacy policy:

- Must include a request for an order directing the US Trustee to appoint a consumer privacy ombudsman under section 332 of the Bankruptcy Code, whom it must appoint at least seven days before the sale hearing.
- Is a contested matter governed by Bankruptcy Rule 9014 and must be transmitted to the US Trustee and served on:
 - any official creditors' and equity committees;
 - the creditors included on the list of the 20 largest creditors filed under Federal Rule of Bankruptcy Procedure 1007(d), if no creditors' committee has been appointed (see Standard Document, List of Largest Unsecured Creditors ([3-610-4108](#))); and
 - any other entity that the court may direct.

(Fed. R. Bankr. P. 6004(g)(1).)

If a consumer privacy ombudsman is appointed, then at least seven days before the sale hearing, the US Trustee must file a notice of the appointment, including:

- The name and address of the person appointed.
- A verified statement of that person setting out their connections with:
 - the debtor;
 - creditors;
 - any other party in interest;
 - the respective attorneys and accountants of the above entities;
 - the US Trustee; and
 - any person employed in the office of the US Trustee.

(Fed. R. Bankr. P. 6004(g)(2).)

Section 363(b)(1)(A) and (B) of the Bankruptcy Code contains additional requirements for the sale of PII (see Section 363(b)(1)(A) and (B): Sale of PII Requirements).

For more information on the sale of PII, see Practice Note, Property of the Estate: Special Intangible Property Interests: Customer Data ([3-616-3701](#)).

Section 365 Requirements

Executory contracts and unexpired leases may be assumed by the debtor and assigned to buyers either as a stand-alone section 363 sale of just contracts and leases or as part of a larger section 363 sale of other assets.

To assume and assign an unexpired lease or executory contract:

- The debtor must cure all defaults, including all non-monetary defaults, or provide adequate assurance that the default will be cured promptly, except for incurable non-monetary breaches of unexpired real property leases and defaults based on breaches of ipso facto provisions (§ 365(b)(1)(A), (2), Bankruptcy Code).
- The debtor must compensate or provide adequate assurance that it will promptly compensate the non-debtor for any actual monetary loss caused by the default (§ 365(b)(1)(B), Bankruptcy Code).
- The purchaser must provide adequate assurance of future performance, even if there are no defaults (§ 365(b)(1)(C), (f)(2)(B), Bankruptcy Code).

Federal Rule of Bankruptcy Procedure 6006(c) and Bankruptcy Rule 9014 govern the timing and procedure for giving notice of the proposed assumption, assignment, or rejection of a lease or executory contract, including providing notice to the other parties to the lease or contract, as well as to the US Trustee.

For more information on the assignment of executory contracts and unexpired leases, see Practice Note, Executory Contracts and Leases: Overview: Assignment ([8-381-2672](#)).

LOCAL RULES

N.D. Ga. Local Bankruptcy Court Rule 9014-2(a) provides that in a case under Chapter 7 or 13, a response or objection to a motion or notice regarding the use, sale, or lease of property under Federal Rule of Bankruptcy Procedure 6004 is required if the party filing the motion or notice provides notice that substantially complies with N.D. Ga. Local Bankruptcy Form 9014-2 and contains:

- An adequate description of the proposed action or relief requested and summary of the grounds for the proposed action or relief requested regarding an order that is sought or, if the motion or notice is served on all parties entitled to notice, a description of the motion or notice.
- A notice that this rule requires the timely filing of a written response or objection to the proposed action or relief requested and service by mailing or delivering a copy to the moving party or the moving party's attorney.
- The time within which the Federal Rules of Bankruptcy Procedure and this rule require a response or objection to be filed and served and a statement that the response or objection must be actually received by the bankruptcy clerk within the required time.
- The date on which the notice is served.
- The mailing address of the bankruptcy clerk for the division in which the case is pending where the response or objection must be filed.
- The name and mailing address of the moving party or attorney to whom the response or objection must be served.
- Notice that if no response or objection is timely filed and served as required, the bankruptcy court may grant the relief requested or

authorize the proposed action without further notice and without a hearing.

- Notice that if an objection or response is timely filed and served as required, a hearing will be held and that a party filing an objection or response must appear at the hearing to advocate the response or objection.
- Notice of the date, time, and place of the hearing, which must be scheduled according to the procedures determined by the assigned bankruptcy judge.

If N.D. Ga. Local Bankruptcy Court Rule 9014-2(b) requires a written response and no response is timely filed, the bankruptcy court may grant the relief requested without further notice or a hearing.

Section 363 Sales in Complex Chapter 11 Cases

In a case designated as a complex Chapter 11 case under General Order No. 26-2019 (Complex Case Order) (see Complex Chapter 11 Cases), Section H of the Complex Case Order provides procedures related to motions to sell property of the estate under section 363 of the Bankruptcy Code (Sale Motions). Section H requires the debtor to attach certain documents to its Sale Motion and to highlight certain material terms and provisions.

Section H(2) of the Complex Case Order requires the debtor to attach to the Sale Motion:

- A copy of the proposed purchase agreement or a form of this agreement substantially similar to the one the debtor reasonably believes it will execute concerning the proposed sale.
- A proposed form of sale order.
- A request, if necessary, for the appointment of a consumer privacy ombudsman under section 332 of the Bankruptcy Code.

Section H(3) of the Complex Case Order requires the debtor to highlight in the Sale Motion the material provisions summarized in the table below, including:

- Whether the proposed form of sale order or underlying purchase agreement include these provisions.
- The location of these provisions in the proposed form of order or purchase agreement.
- The justification for the inclusion of certain specified provisions.

Provision	N.D. Ga. Bankruptcy Court Required Information
Sale to insider.	<ul style="list-style-type: none"> ■ Identity of insider. ■ The insider's relationship to the debtor. ■ Any measures taken to ensure the fairness of the sale process and the proposed transaction. <p style="text-align: right; margin-right: 20px;">(Complex Case Order, Section H(3)(i).)</p>
Agreements with management.	<ul style="list-style-type: none"> ■ The material terms of any agreement with management or key employees regarding compensation or future employment. ■ Any measures taken to ensure the fairness of the sale and the proposed transaction in light of those agreements. <p style="text-align: right; margin-right: 20px;">(Complex Case Order, Section H(3)(ii).)</p>

Provision	N.D. Ga. Bankruptcy Court Required Information
Releases.	Releases of entities or claims that are being waived or otherwise satisfied (Complex Case Order, Section H(3)(iii)).
Private sale/no competitive bidding.	<ul style="list-style-type: none"> ■ Whether an auction is contemplated. ■ The debtor's agreement to not solicit competing offers or to otherwise limit shopping of the assets to be sold. (Complex Case Order, Section H(3)(iv).)
Closing and other deadlines.	Deadlines: <ul style="list-style-type: none"> ■ For the closing of the proposed sale. ■ That are conditions to the closing of the proposed transaction. (Complex Case Order, Section H(3)(v).)
Good faith deposit.	<ul style="list-style-type: none"> ■ Whether the proposed purchaser has submitted or will be required to submit a good faith deposit. ■ If so, the conditions under which the deposit may be forfeited. (Complex Case Order, Section H(3)(vi).)
Interim arrangements with proposed buyer.	Any provision regarding an interim arrangement with a proposed buyer (Complex Case Order, Section H(3)(vii)).

SETTING BAR DATES IN CHAPTER 11 CASES

BACKGROUND/FEDERAL REQUIREMENTS

A bankruptcy court presiding over a Chapter 11 case must issue an order setting a deadline by which all creditors must file proofs of claim to evidence and preserve a claim against the debtor (Fed. R. Bankr. P. 3003). This deadline is known as a bar date. Both unsecured creditors and secured creditors holding claims against the bankruptcy estate must either be scheduled as creditors by the debtor or file a proof of claim by the bar date to receive a distribution under a plan of reorganization or a plan of liquidation.

By fixing a bar date, a debtor can begin the process of analyzing creditors' claims and determine how to expeditiously administer and conclude its Chapter 11 case.

The Federal Rules of Bankruptcy Procedure, together with the local rules of the bankruptcy court where the bankruptcy case is filed, dictate the requirements for setting bar dates and providing notice to creditors. Many bankruptcy courts across the country have adopted their own local procedural guidelines for debtors seeking entry of an order setting a bar date. Debtors and their counsel must check the local rules of the bankruptcy court when preparing to request that the court set a bar date. Some local rules permit bar date motions to be decided without a hearing provided notice is given and parties in interest do not request a hearing.

For more information on the purpose of bar dates and the various bar dates in Chapter 11 cases, see Practice Note, Bar Dates in a Chapter 11 Bankruptcy Case ([O-617-4008](#)).

LOCAL RULES

The N.D. Ga. does not have any local rules for setting a bar date or serving bar date notices to mass tort claimants.

Practitioners should consult the bankruptcy court's website to confirm whether the judge assigned to the case has adopted a form of proposed order for establishing a bar date for filing proofs of claim.

UNCLAIMED FUNDS

BACKGROUND/FEDERAL REQUIREMENTS

The treatment of unclaimed property in a bankruptcy case is addressed by section 347 of the Bankruptcy Code. Unclaimed funds arise in bankruptcy cases when distributions to creditors are returned and remain unclaimed. Most unclaimed funds arise when checks to creditors are not cashed. Ownership of unclaimed funds depends on the nature of the bankruptcy proceeding.

In a Chapter 7, 12, or 13 case, the trustee must stop payment on any check that remains unpaid 90 days after final distributions (§ 347(a), Bankruptcy Code). These unclaimed funds are turned over to the court to hold for the creditor's benefit for five years, after which time they escheat to the US Treasury (28 U.S.C. §§ 2041 to 2044).

In a Chapter 9 or 11 case, unclaimed property is typically addressed by the terms of the confirmed plan. Section 347(b) of the Bankruptcy Code provides a backstop for property that is not addressed by the plan and remains unclaimed at the expiration of the time allowed for distributions. This unclaimed property is either:

- Returned to the debtor or the entity that acquired the debtor's assets under the plan after five years (§ 347(b), Bankruptcy Code).
- In certain circumstances, deposited with the court.

When unclaimed funds are deposited with the bankruptcy court, they can only be released by court order. Motions for the release of unclaimed funds must comply with 28 U.S.C. Section 2042.

For more information on unclaimed funds in bankruptcy cases, see Practice Note, Unclaimed Property in Bankruptcy ([W-017-5896](#)).

LOCAL RULES

N.D. Ga. Local Bankruptcy Court Rule 7067-1, by express incorporation of N.D. Ga. Local Civil Rule 67.1, specifies requirements for depositing and disbursing funds, including unclaimed funds, from the registry of the court.

WITHDRAWAL OF THE REFERENCE

BACKGROUND/FEDERAL REQUIREMENTS

General orders of reference issued by a district court enable the district court to automatically refer cases under 28 U.S.C. Section 1334(b) to the bankruptcy court for that district (28 U.S.C. § 157(a)). If there are issues in a case that has been automatically referred that are beyond the scope of the bankruptcy court's expertise, the district court can, on its own motion or the motion of a party in interest, withdraw the reference and bring the case back to the district court (28 U.S.C. § 157(d)).

Withdrawal of the reference is either mandatory or discretionary. A party seeking discretionary withdrawal must show cause for that

withdrawal. A party seeking mandatory withdrawal must show that the case requires consideration of bankruptcy laws and other federal laws regulating organizations or activities affecting interstate commerce.

For more information on withdrawal of the reference, see Practice Note, *Withdrawal of the Reference* ([W-000-9965](#)).

LOCAL RULES

The N.D. Ga. Local Bankruptcy Court Rules impose additional administrative duties on the party seeking withdrawal of the reference.

N.D. Ga. Local Bankruptcy Court Rule 5011-1 requires that pleadings regarding the withdrawal motion be filed directly with the bankruptcy clerk and clearly and conspicuously state "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE."

N.D. Ga. Local Bankruptcy Court Rule 5011-2 requires that a motion to withdraw the reference of:

- All or any part of a bankruptcy case be served and filed on or before 30 days after the date first scheduled for the meeting of creditors under section 341 of the Bankruptcy Code.
- All or any part of an adversary proceeding be served and filed not later than 14 days after service of any paper or pleading in which the ground for withdrawal arises.
- A contested matter be served and filed no later than 14 days after service of the motion that initiates the contested matter.

N.D. Ga. Local Bankruptcy Court Rule 5011-3 requires the moving and responding parties to attach the relevant portions of the record in the bankruptcy court as exhibits and limits the district court to consideration of those portions of the record when making a ruling.

N.D. Ga. Local Bankruptcy Court Rule 5011-4 states that the responding party must file a response within 14 days of receiving the motion and that the moving party may file a reply within 14 days after service of the response.

N.D. Ga. Local Bankruptcy Court Rule 5011-5 states that once the record is complete for transmittal but without awaiting the filing of any transcripts, the bankruptcy clerk must promptly transmit to the district clerk the motion papers and attached exhibits. Once the matter has been accepted, all filings must be filed with the district clerk.

OTHER TOPICS

COMPLEX CHAPTER 11 CASES

Complex Chapter 11 cases are governed by General Order No. 26-2019 (Complex Case Order).

Cases may be considered complex based on:

- The size of the case (usually total debt or total assets more than \$25 million).
- The large number of parties in interest (usually more than 100, excluding current and former employees).
- The fact that claims against the debtor and its equity interests are publicly traded (with some creditors being represented by an indenture trustee).
- Any other circumstances justifying complex case treatment.

(Complex Case Order, Section A(1).)

Unless circumstances justify complex Chapter 11 case treatment, a complex Chapter 11 case cannot be filed by:

- An individual.
- A debtor owning single asset real estate.

If the debtor believes that a case exhibits one or more of these factors, then the debtor should file a Notice of Designation as Complex Chapter 11 Case in the form attached as Exhibit A to the Complex Case Order and follow the procedures set out in Section A(3) of the Complex Case Order. If the court approves the designation, then the case will be designated as complex, and the procedures set out in the Complex Case Order will apply.

Under the Complex Case Order, all complex Chapter 11 cases will be assigned to judges within the appropriate division as set out in Section B of that order.

The Complex Case Order includes procedures for:

- Joint administration of complex Chapter 11 cases (see *First Day Motions: Local Rules*).
- Establishing, updating, and maintaining a limited service list and serving pleadings on this list (see *First Day Motions: Local Rules*).
- Obtaining and serving notice of hearings in complex Chapter 11 cases, including:
 - a hearing on first day matters;
 - omnibus hearing dates;
 - matters requiring expedited consideration (other than first day matters); and
 - telephonic participation.
 (See *First Day Motions: Local Rules*.)
- Preparing, filing, and serving hearing agendas (see *Agendas*).

The Complex Case Order also contains requirements for complex Chapter 11 cases relating to:

- Use of cash collateral (see *Cash Collateral: Local Rules*).
- DIP financing (see *DIP Financing: Local Rules*).
- Sales of assets (see *Section 363 Sales: Local Rules*).
- Chapter 11 plans and disclosure statements, including procedures for:
 - interim approval of a disclosure statement;
 - approval of solicitation procedures; and
 - scheduling a combined hearing on approval of a disclosure statement and confirmation of a plan in a liquidating case.
- The compensation and expense reimbursement of professionals (see *Professional Fee Requests: Local Rules*).
- Debtor-in-possession bank accounts (see *Debtor-in-Possession Bank Accounts in Complex Chapter 11 Cases*).

Agendas

Under Section F of the Complex Case Order, in complex Chapter 11 cases (see *Complex Chapter 11 Cases*) where three or more matters are noticed for the same hearing date, counsel for the debtor must file and serve an agenda 24 hours before the scheduled hearing describing the nature of the items set for hearing. Section F sets out requirements for preparing, filing, and serving each hearing agenda.

Debtor-in-Possession Bank Accounts in Complex Chapter 11 Cases

For any case designated as a complex Chapter 11 case, Section K of the Complex Case Order authorizes the court, on motion of the debtor but without notice or a hearing, to permit the debtor to continue to use its existing checks without the designation “Debtor-in-Possession” and to use its existing bank accounts or cash management systems. Once the debtor’s existing checks have been used, the debtor must, when re-ordering checks, have the designation “Debtor-in-Possession” and the corresponding bankruptcy case number on all checks. If the debtor’s depository banks have executed a Uniform Depository Agreement with the Office of the US Trustee or have otherwise been approved by the Office of the US Trustee to maintain debtor-in-possession bank accounts, then on motion by the debtor, the bankruptcy court may enter an order that provides that:

- Each bank at which the debtor maintained a bank account before the petition date is authorized to continue to service and administer this bank account as a depository account of the debtor as debtor-in-possession, without interruption and in the usual and ordinary course of business, and to receive, process, honor, and pay any or all checks, drafts, wire transfers, or ACH transfers drawn on this bank account. No bank will be obligated to honor any check, draft, wire transfer, ACH transfer, or other payment item drawn on a bank account unless there are sufficient and collected funds in the bank account.
- The debtor is authorized to pay in the ordinary course of business and each bank is authorized to deduct from the debtor’s balances all bank fees, costs, and charges arising out of the maintenance and use of the bank accounts.
- Each bank is authorized to accept and rely on, without further inquiry, all representations from the debtor about which checks, drafts, wire transfers, or ACH transfers are dated before, on, or after the petition date and which checks are to be honored or dishonored, regardless of whether or not this payment or honoring is or is not authorized by an order of the court. No bank will incur and each bank will be released from any liability for relying on the debtor’s instruction about which checks, drafts, wire transfers, or ACH transfers should be honored or dishonored, or for the bank’s inadvertence in honoring any check, draft, wire transfer, or ACH transfer varying from the debtor’s instructions, unless this inadvertence constituted gross negligence or willful misconduct on the part of the bank.
- The debtor should:
 - submit and implement stop payment orders concerning all checks that are to be dishonored by each bank, which may include those issued after the petition date as well as those issued before the petition date that are not to be honored or paid; and
 - provide a list of checks to each bank for each bank account maintained at the bank, specifying by check sequencing number, dollar amount, and payee information all of the checks that should not be honored or paid, and direct the bank to stop payment on these checks. Each bank may honor all other checks for which a stop payment order has not been properly implemented by the debtor.

EXHIBITS AT HEARING OR TRIAL

Concerning exhibits to be used at any hearing or trial, N.D. Ga. Local Bankruptcy Court Rule 9017-1 provides that:

- A party expecting to offer exhibits into evidence at a hearing or trial must:
 - sequentially number the exhibits before the hearing or trial and mark each exhibit with this number and the name of the introducing party or other appropriate identification (for example, plaintiff, defendant, movant, respondent, debtor, creditor, or trustee);
 - provide a list of the exhibits that the party may use as part of its case in chief to opposing counsel, to any unrepresented party, and to the bankruptcy court not later than the commencement of the hearing or trial if there are more than five exhibits; and
 - provide a copy of any exhibit for inspection and use by opposing counsel or unrepresented parties at the time it is first used at a hearing or trial.
- The provisions of N.D. Ga. Local Bankruptcy Court Rule 9017-1 do not supersede the requirements of a pretrial order, a scheduling order, or any applicable N.D. Ga. Local Bankruptcy Court Rule or Federal Rule of Bankruptcy Procedure that requires the production or listing of documents at an earlier time.
- Unless otherwise ordered by the bankruptcy court, the courtroom deputy must retain custody of exhibits offered into evidence at any hearing or trial until 30 days after the date on which the order, judgment, or recommendation, entered in the proceeding in which the exhibits were introduced, has become final and is not subject to further appeal, review, or consideration by the district court, the court of appeals, or the US Supreme Court. Within 30 days thereafter, the attorney for the introducing party or an unrepresented introducing party must retrieve from the courtroom deputy all exhibits offered by this party that are in the custody of the courtroom deputy. Exhibits that are not timely removed according to N.D. Ga. Local Bankruptcy Court Rule 9017-1 may be destroyed or otherwise disposed of by the bankruptcy court clerk.

EXTENSIONS OF TIME

N.D. Ga. Local Bankruptcy Court Rule 9006-1 provides that when a response is required in adversary proceedings or contested matters, the time within which a party must answer or otherwise respond may be extended once, by consent of all counsel and all the parties, without a bankruptcy court order for a period not to exceed 30 days if:

- The stipulation is signed before the expiration of the original period and promptly filed with the bankruptcy court.
- The extension is permitted by law.

All motions or requests for an extension of time must set out:

- The date of the original expiration.
- Any other extensions of time previously granted.

(N.D. Ga. BLR 9006-1.)

MOTIONS TO SHORTEN TIME FOR NOTICE AND HEARING

Regarding motions to shorten time for notice and hearing, N.D. Ga. Local Bankruptcy Court Rule 9013-4 provides that:

- On written motion and for good cause shown, the bankruptcy court may shorten the time for notice and hearing regarding an emergency matter requiring immediate attention or a matter requiring expedited consideration.
- The motion must set out in detail the necessity for this expedited procedure and must contain the words “Emergency” or “Expedited” in the title of the motion.
- A party filing a pleading or motion that requires immediate judicial attention must advise the chambers staff of the judge to which the matter is assigned of the filing of the pleading or motion.

WHEN RESPONSE TO MOTION REQUIRED: NEGATIVE NOTICE

N.D. Ga. Local Bankruptcy Court Rule 9014-2(a) specifies that in a case under Chapter 7 or 13, a response or objection to a motion or a notice for relief of the type set out below is required if the party filing the motion or notice provides notice that substantially complies with N.D. Ga. Local Bankruptcy Form 9014-2 and contains:

- An adequate description of the proposed action or relief requested and summary of the grounds for the proposed action or relief requested regarding an order that is sought or, if the motion or notice is served on all parties entitled to notice, a description of the motion or notice.
- Notice that N.D. Ga. Local Bankruptcy Court Rule 9014-2 requires the timely filing of a written response or objection to the proposed action or relief requested and service by mailing or delivering of a copy to the moving party or the moving party’s attorney.
- The time within which the Federal Rules of Bankruptcy Procedure and N.D. Ga. Local Bankruptcy Court Rule 9014-2 require a response or objection to be filed and served and that the response or objection must be actually received by the clerk of the bankruptcy court within the required time. If the Bankruptcy Rules do not specify the number of days’ notice that must be given, the time for the filing of the required response or objection is 21 days from the date of service of the motion or notice. The notice may provide for a longer period of time for a response or objection to be filed and served than specified by the Bankruptcy Rules. In all matters, three days will be added to the prescribed notice period to account for service of the notice by mail. The date by which a required response or objection must be filed must be computed according to the Bankruptcy Rules.
- The date on which the notice is served.
- The mailing address of the clerk for the division in which the case is pending where the response or objection must be filed.
- The name and mailing address of the moving party or attorney to whom the response or objection must be served.
- Notice that if:
 - no response or objection is timely filed and served as required, the bankruptcy court may grant the relief requested or authorize the proposed action without further notice and without a hearing; and
 - an objection or response is timely filed and served as required, a hearing will be held and that the party filing the objection or

response must appear at the hearing to advocate the response or objection.

- Notice of the date, time, and place of the hearing, which must be scheduled according to procedures determined by the judge to whom the case is assigned.

If N.D. Ga. Local Bankruptcy Court Rule 9014-2 requires a response or objection and if no response or objection is timely filed, the bankruptcy court may grant the relief requested or authorize the proposed action without further notice and without a hearing (N.D. Ga. BLR 9014-2(b)). However, practitioners are advised also to consult the particular judge’s case procedures on the Judges’ Information section of the N.D. Ga. website for specific requirements that may be applicable to cases in each judge’s court.

N.D. Ga. Local Bankruptcy Court Rule 9014-2(c) provides that:

- The person serving the notice must promptly file proof of service of notice according to the Bankruptcy Rules.
- The certificate of service must be signed by the person making service and must include:
 - the names and addresses of all parties and attorneys served;
 - the dates of service; and
 - the manner of service.

N.D. Ga. Local Bankruptcy Court Rule 9014-2 applies to:

- Motions and notices regarding the use, sale, or lease of property under Federal Rule of Bankruptcy Procedure 6004 (see Bankruptcy Rule 6004 Requirements).
- Motions and notices regarding the abandonment or disposition of property under Federal Rule of Bankruptcy Procedure 6007.
- Motions and notices regarding proposed compromises or settlements under Federal Rule of Bankruptcy Procedure 9019 (see Practice Note, Rule 9019 Settlements ([W-000-9618](#))).
- Motions to extend the time to object to the list of property a debtor claims as exempt under Federal Rule of Bankruptcy Procedure 4002(b).
- Motions to extend the time to object to the discharge of a debtor under Federal Rule of Bankruptcy Procedure 4004(a) or to file a complaint objecting to the dischargeability of a debt under section 523(c) of the Bankruptcy Code, in each case under Federal Rule of Bankruptcy Procedure 4007(c).
- Motions to extend the time to file a motion to dismiss for substantial abuse under section 707(b) of the Bankruptcy Code under Federal Rule of Bankruptcy Procedure 1017(e).
- Motions by a Chapter 13 debtor to suspend plan payments or to incur debt.
- Modifications of a Chapter 13 plan under section 1329 of the Bankruptcy Code.

(N.D. Ga. BLR 9014-2(d).)

Responses to:

- Motions to avoid liens or to redeem property are governed by N.D. Ga. Local Bankruptcy Court Rule 6008-2.
- Objections to proofs of claim are governed by N.D. Ga. Local Bankruptcy Court Rule 3007-1.

(N.D. Ga. BLR 9014-2(e).)

On request of any party in interest or on its own motion, the judge to whom a case or proceeding is assigned may order that:

- N.D. Ga. Local Bankruptcy Court Rule 9014-2 applies in a case under Chapter 11 or 12 or to motions and notices not otherwise subject to N.D. Ga. Local Bankruptcy Court Rule 9014-2.
- Notice be given other than as provided in N.D. Ga. Local Bankruptcy Court Rule 9014-2.
- A response is not required.
- An answer, response, or objection be filed regarding any application, motion, notice, or order not otherwise subject to N.D. Ga. Local Bankruptcy Court Rule 9014-2.

(N.D. Ga. BLR 9014-2(f).)

PROPOSED ORDERS

Concerning proposed orders, N.D. Ga. Local Bankruptcy Court Rule 9013-2 specifies that:

- All proposed orders (including findings of fact and conclusions of law or other rulings orally announced by the judge and orders submitted following the call of a matter at a scheduled hearing about which there is no opposition) must:
 - be prepared in writing and signed by the attorney for the prevailing party, unless the bankruptcy court directs otherwise;
 - include the scheduled hearing date, if applicable; and
 - be submitted to the judge within seven days after the date of pronouncement or scheduled hearing, if applicable.
- A copy of the proposed order must be provided to each party.
- An attorney's signature as the preparer of a proposed order constitutes a certification that the contents of the proposed order accurately reflect the judge's oral ruling or the proceedings at the call of the matter, as applicable.
- Every proposed order, including a consent order, must be signed by each attorney or party preparing, submitting, or consenting to the proposed order and must provide an identification of each attorney and the name of the represented party according to N.D. Ga. Local Bankruptcy Court Rule 5005-1(e).
- If the clerk of the bankruptcy court is to serve the order, the order must be accompanied by a distribution list containing the names and addresses of the attorneys and parties to be served.
- If a judge authorizes an attorney to submit a proposed order to chambers by electronic means, N.D. Ga. Local Bankruptcy Court Rule 5005-7 applies to this submission and to the required signatures on the electronically filed document.

REQUESTS FOR IMMEDIATE RELIEF

N.D. Ga. Local Bankruptcy Court Rule 9003-1 provides that:

- Whenever an attorney seeks an immediate order of the bankruptcy court, the attorney must submit a motion to the judge to whom the case has been assigned if the judge is present within the district. If the judge is not available or if the case has not yet been assigned to a particular judge, the attorney must contact the clerk of the bankruptcy court for instructions about which judge the motion should be submitted to.
- All courtesy copies of proposed orders must be clearly marked.

RESTRICTIONS ON LETTER COMMUNICATIONS

N.D. Ga. Local Bankruptcy Court Rule 9003-2 provides that:

- Communications to a judge regarding a request for an order or other relief (including a request for an extension of time) or matters that are or may be in dispute, or communications of facts or legal issues regarding a particular case, proceeding, or matter pending before that judge, must be by written motion, pleading, or other paper and not by letter. Ordinarily, a letter seeking this action will not be treated as a motion, will not be considered by the bankruptcy court, and will not be filed with the clerk.
- Parties and their counsel should not provide the bankruptcy court with copies of correspondence among themselves relating to matters that are or may be in dispute.

SELF-CALENDERING OF HEARINGS ON ROUTINE MOTIONS

The bankruptcy judges of the N.D. Ga. Bankruptcy Court employ a self-calendering procedure for many routine motions that may not require evidentiary hearings. Under this procedure, attorneys may select a hearing date from a list of available dates, rather than relying on the court to set a hearing.

SERVICE OF ORDERS AND NOTICES

For orders and notices that the clerk of the bankruptcy court does not serve, N.D. Ga. Local Bankruptcy Court Rule 9013-3 requires that the serving party file a certificate of service containing:

- A list of the complete names and addresses of the parties and attorneys served.
- The dates of service.
- The manner of service.

US TRUSTEE OPERATING GUIDELINES AND REPORTING REQUIREMENTS

The US Trustee, a representative of the US Department of Justice, oversees the administration of bankruptcy cases and supervises a panel of private bankruptcy trustees for Chapter 11 and Chapter 7 cases (28 U.S.C. § 586(a)). In particular, the US Trustee must extensively monitor a debtor-in-possession's Chapter 11 estate (see Practice Note, Property of the Estate: Overview ([5-613-8145](#))).

The Executive Office for US Trustees in Washington, D.C. supervises the US Trustee Program and provides general policy and legal guidance to US Trustees, as well as substantive and administrative support. There are 21 regional US Trustee offices throughout the US, and each has instituted its own guidelines derived from the policies of the Executive Office for US Trustees as well as the US Trustee's duties listed in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the US Code. While the guidelines are similar in each region, they differ in various ways, including the timing for a debtor's compliance and the amount of detailed information required from each debtor.

The US Trustee's office for Region 21 serves the federal bankruptcy courts located in:

- Georgia.
- Florida.
- Puerto Rico.
- US Virgin Islands.

This Note discusses the general operating guidelines and procedural requirements enacted by the US Trustee for Region 21 (Region 21 Guidelines) as they apply to Chapter 11 cases filed in the N.D. Ga.

The US Trustee’s operating guidelines covering cases filed in the N.D. Ga., including all Chapter 11 forms and instructions, are publicly available and can be obtained from the website for the US Trustee’s office for Region 21 (see US Trustee Operating Guidelines, Region 21).

For more information on the US Trustee’s role in Chapter 11 cases and the general US Trustee requirements for Chapter 11 debtors, see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors ([W-000-5977](#)).

FIRST DAY REQUIREMENTS

Once the debtor files its Chapter 11 petition, it immediately owes certain fiduciary duties to the estate. For this reason, US Trustees in nearly all districts across the country have implemented guidelines requiring a Chapter 11 debtor-in-possession to monitor its postpetition activities and preserve the enterprise value for the benefit of the estate.

The following table summarizes the US Trustee guidelines for Chapter 11 cases filed in the N.D. Ga. concerning a debtor’s initial Chapter 11 obligations and reporting requirements during the first few days of a case (see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: First Day Duties of the Debtor ([W-000-5977](#))). These guidelines may be waived on request to the US Trustee.

US Trustee Operating Requirements	N.D. Ga. Bankruptcy Court Requirements
Books and Records	<p>The debtor must:</p> <ul style="list-style-type: none"> ■ Close books and records (general ledger accounts) as of the petition date and open new books and records. ■ Retain old books and records and make them available to the US Trustee for review and inspection. <p>(See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Postpetition Books and Records (W-000-5977)).</p>
Bank Accounts	<p>The debtor must:</p> <ul style="list-style-type: none"> ■ Close on the petition date all prepetition bank accounts in its control and immediately open new debtor-in-possession bank accounts at a US Trustee-approved depository (see Practice Note, Understanding FDIC Deposit Insurance (O-386-5607)). ■ Maintain separate: <ul style="list-style-type: none"> • operating accounts; • payroll accounts; and • tax accounts. ■ Initially deposit all business revenues into the operating account.

US Trustee Operating Requirements	N.D. Ga. Bankruptcy Court Requirements
	<ul style="list-style-type: none"> ■ Make all disbursements by numbered check. Counter checks are prohibited. ■ Submit in writing to the US Trustee any request to use, create, or maintain a petty cash account. Each account must be located in a US Trustee-approved depository. ■ Within 14 days of the petition date, provide a sworn statement describing all prepetition accounts by depository name, account number, and account name and verifying that all prepetition accounts have been closed (the US Department of Justice website provides a form that complies with this requirement). The debtor must also provide proof from the bank that it closed prepetition accounts and opened new accounts. <p>(See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Bank Accounts (W-000-5977)).</p>

Insurance

The debtor must:

- Maintain certain insurance coverage, as appropriate to the debtor’s business, including:
 - general comprehensive liability;
 - property (personal and theft);
 - casualty and theft;
 - workers’ compensation (see Practice Note, Workers’ Compensation: Common Questions ([O-504-9497](#)));
 - vehicle;
 - product liability;
 - flood insurance;
 - directors and officers insurance;
 - professional malpractice; and
 - other coverage customary or prudent in the debtor’s business or required by law.
- Instruct insurance companies to add the US Trustee as a certificate holder on each policy.
- If insurance coverage expires or ends, immediately provide the US Trustee with adequate proof of replacement coverage.
- Within 14 days of the petition date, provide proof of insurance coverage, disclosing at a minimum:
 - the effective date of coverage;
 - the termination date of coverage;
 - the types and limits of coverage; and
 - the identity of all loss payees.
- Include paid receipts with any insurance binders.

(See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Insurance ([W-000-5977](#))).

US Trustee Operating Requirements	N.D. Ga. Bankruptcy Court Requirements
Taxes	<p>The debtor must:</p> <ul style="list-style-type: none"> ■ Pay all taxes, including state and local taxes, from the tax account, accompanied by the appropriate tax deposit coupons. ■ When making each payroll, transfer sufficient funds from the payroll account to the tax account to cover payroll taxes (see Practice Note, Payroll (FICA) Taxes (1-512-7630)). ■ Deposit sales and use taxes to the tax account on a weekly basis. ■ Timely file tax returns and reports, accompanied by evidence that the debtor has paid the tax liability in full. <p>(See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Taxes (W-000-5977)).</p>

ADDITIONAL US TRUSTEE PROCEDURAL REQUIREMENTS

In addition to the significant first day requirements (see First Day Requirements), the US Trustee Operating Guidelines, Region 21 require debtors to provide additional information to the US Trustee relating to the debtor's finances and operations during the first month of the case.

Within 14 days of the petition date, the debtor must provide the US Trustee with copies of:

- **Rental property records.** For debtors that own commercial or residential real property, provide any agreement with a third party to manage the property and a rent roll as of the petition date that includes:
 - a description of each property owned;
 - the rental price of each unit;
 - the amounts of security or other deposits held;
 - the name of tenant, occupancy, and payment status of each unit;
 - the name, address, and phone number of the management company, if any; and
 - the monthly management fee for each unit.
- Debtors with rental property must also provide a copy of any agreement with a third party to manage the property.
- **Prepetition financial statements.** Provide copies of debtor's most recent audited and unaudited financial statements.
- **Federal income tax returns.** Provide copies of the debtor's federal income tax returns for the two years before the petition date.

It is the debtor's responsibility to notify the US Trustee and the bankruptcy court of any change of address or telephone number in writing within 14 days of the change.

PHYSICAL INVENTORY

The debtor must, on request, provide the US Trustee with a physical inventory within 30 days of filing the petition. Inventory includes all goods in possession of the debtor intended for sale to customers,

including finished and unfinished goods. Inventory does not include fixed assets owned by the debtor.

The physical inventory must be itemized and indicate cost values.

INITIAL DEBTOR INTERVIEW

In a Chapter 11 case, the US Trustee meets with the debtor and the debtor's counsel before the section 341 meeting of creditors to obtain requested information and ensure the debtor understands the requirements of the US Trustee guidelines.

MEETING OF CREDITORS

Federal Rule of Bankruptcy Procedure 2003 and sections 341 and 343 of the Bankruptcy Code govern the date, place, and order of section 341 meetings in all districts that have a US Trustee.

For more information on section 341 meetings, see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Section 341 Meeting ([W-000-5977](#)).

EMPLOYMENT OF PROFESSIONALS AND PRINCIPALS

Applications to employ or compensate a professional (including lawyers, accountants, real estate agents and brokers, appraisers, auctioneers, and other professional persons) must be filed with the bankruptcy court.

Each application must be accompanied by a verified statement that discloses any relationship or contact the applicant has with the debtor, any creditor, any party in interest, their attorneys and accountants, and employees of the US Trustee. A general statement that the applicant is disinterested and does not represent an interest adverse to the estate is not sufficient.

The debtor must provide certain information regarding employment and compensation of its principals, including:

- The name and position of the individual.
- A detailed description of the duties and responsibilities.
- Reasons why employment of the individual is necessary for successful reorganization.
- Details of the compensation sought.
- Details of any other benefits or consideration to be received, including use of:
 - vehicles;
 - housing;
 - expense reimbursement;
 - insurance; and
 - pension or profit sharing.
- Each individual's salary and benefit history for the year immediately preceding the filing of the petition.

US TRUSTEE QUARTERLY FEES

A Chapter 11 debtor must pay a quarterly fee to the US Trustee for each calendar quarter or portion of a calendar quarter between the date of the filing of the petition and the date the court enters a final decree closing the case, dismisses the case, or converts the case to another chapter in bankruptcy. Payment of all fees that are due and owing must be made before the effective date of a plan of reorganization.

The quarterly fee is calculated by totaling the debtor's disbursements as reported on the operating reports for the calendar quarters ending on March 31, June 30, September 30, and December 31 according to a fee schedule. A minimum fee of \$325 is due even if there are no disbursements during a calendar quarter. There is no proration of the fee.

MONTHLY OPERATING REPORT

The debtor must file an original monthly operating report with the clerk of the bankruptcy court and serve a paper copy on the US Trustee. The monthly operating reports must be prepared using the forms provided on the Region 21 website.

Debtors who are individuals or operate a sole proprietorship must complete and file a monthly operating report for individuals. Debtors that are partnerships, limited liability companies, professional corporations, or corporations must complete and file the monthly operating report for businesses. Small business debtors must complete and file the small business monthly operating report. The monthly operating report is based on a calendar month (for example, January 1 to January 31), and all reports must be filed by the 21st day of the month following the reporting period. The monthly operating report cover page must be signed by the debtor's attorney before filing with the court.

Debtors must file monthly operating reports until a plan is confirmed. Following confirmation of the plan, debtors (or trustees) must file quarterly operating reports using the form provided by the DOJ.

LIST OF CREDITORS

The debtor must file with its petition a list of its 20 largest unsecured creditors, excluding insiders, with the clerk of the bankruptcy court (see Standard Document, List of Largest Unsecured Creditors ([3-610-4108](#))).

Practitioners should note that the N.D. Ga. has established certain specific requirements for filing a list of creditors in complex Chapter 11 cases in which the court has granted a joint administration motion (see First Day Matters in Complex Chapter 11 Cases). In Section C of the Complex Case Order, the court may enter an order of joint administration without notice and opportunity for hearing on the filing of a motion for joint administration under Federal Rule of Bankruptcy Procedure 1015 if the motion is supported by an affidavit, declaration, or verification establishing that joint administration is warranted. In that event, the debtor must also file a list of the 30 largest unsecured creditors on a consolidated basis in the proposed lead case.

ADDITIONAL NOTICE REQUIREMENTS

The debtor must advise the US Trustee of any significant changes in the debtor's business. Significant changes include:

- Casualty or theft losses.
- Changes in insurance coverage.
- Allegations of violations of law, ordinances, or regulations, including the failure to pay taxes, which could affect the operation of the debtor's business.

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