Local Bankruptcy Rules: Michigan (W.D. Mich.)

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A Practice Note summarizing selected local rules of the US Bankruptcy Court for the Western District of Michigan (W.D. Mich.).

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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.

Local Rules

Use of Notice and Opportunity Procedure

A creditor may use the notice and opportunity procedure set out in W.D. Mich. Local Bankruptcy Court Rule 9013(c) to request relief from the automatic stay. A secured party must attach to its motion documentary proof that any lien it asserts has been perfected according to applicable law (W.D. Mich. LBR 4001-1(b)).

A creditor may combine its stay relief motion with a request to abandon property, if the words "abandon" or "abandonment" clearly appear in the title of the pleading. This combined motion must be served on the entire matrix. (W.D. Mich. LBR 4001-1(b)(1).)

If a party files a response, only the final hearing will be scheduled under W.D. Mich. Local Bankruptcy Court Rule 9012(c)(3). The response must specify the party's good-faith reasons for:

- Objecting to the motion.
- Believing that relief from the stay will be denied if a hearing is held.

(W.D. Mich. LBR 4001-1(b)(2).) Notwithstanding the filing of a response, the court may enter an order lifting the stay without conducting a final hearing if the response does not establish a good-faith basis for objection to the motion.

Use of Contested Motion Procedures

W.D. Mich. Local Bankruptcy Court Rule 4001-1(c) provides that:

- If movant does not use the notice and opportunity procedures, the clerk schedules a preliminary hearing within 30 days and a final hearing within an additional 30 days. At the preliminary hearing, the court determines whether:
    - material disputed issues of fact exist; and
    - there is a reasonable likelihood that the party opposing the relief will prevail.

    These issues are decided solely on the arguments of counsel and limited to no more than one hour unless the court, on its own or on prior request of counsel, permits otherwise.
- The parties may further request that a preliminary hearing be treated as a final hearing. If the court finds the existence of material disputed facts and a likelihood that the party opposing relief will prevail, the hearing may be adjourned to a final hearing. At the conclusion of the preliminary hearing, the court may:
    - decide questions of law;
    - define factual or legal issues to be decided at the final hearing; and
    - issue an appropriate scheduling order.

- If the preliminary hearing is adjourned to a final hearing, the stay remains in effect until the court orders otherwise. The court may also grant **adequate protection** to the movant in the interim.

Bankruptcy Appeals

W.D. Mich. Local Bankruptcy Court Rule 8001 provides that:

- The Bankrupcty Appellate Panel (BAP) hears and determines all appeals from the bankruptcy court unless a party to the appeal files a timely election to opt out and have the appeal heard by the US District Court for the W.D. Mich.
- A party must make this election according to the applicable procedural rules of the BAP.

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 W.D. Mich. Local Civil Rules and Administrative Orders.
- The W.D. Mich. Local Bankruptcy Court Rules and Administrative Orders.
- The Rules of the US Court of Appeals for the Sixth Circuit.
- The Rules of the US Bankruptcy Appellate Panel for the Sixth Circuit (BAP).
- The policies and procedures of the assigned judge.

Consider whether the bankruptcy order is final or **interlocutory** (see Bankruptcy Appeals Checklist: Final Versus Interlocutory Orders and Practice Note, Appealing a Bankruptcy Court Order: Overview: Appeals "As of Right" Versus Appeals "By Permission"). 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).

For:

- Timing on filing the notice of appeal, review Federal Rule of Bankruptcy Procedure 8002 (see Bankruptcy Appeals Checklist: Timing Issues).
- 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.
- 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).

- Disputes relating to the record on appeal, review Federal Rule of Bankruptcy Procedure 8009 (see Bankruptcy Appeals Checklist: Correcting or Modifying the Record).
- Appeals related to pending cases, provide the information required on the civil cover sheet (see W.D. Mich.: Civil Cover Sheet).
- Filing fees, see Docket Fee.
- Docketing of appeal in the district court or the BAP, review Federal Rule of Bankruptcy Procedure 8003(d) (see Bankruptcy Appeals Checklist: Docketing of Appeal in the District Court or BAP).
- Obtaining a stay of a bankruptcy court order or judgment pending appeal, review Federal Rule of Bankruptcy Procedure 8007 (see Sixth Circuit's Four-Part Test for Stays Pending Appeal and Bankruptcy Appeals Checklist: Stay Pending Appeal).
- 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 and Record on Appeal).
- Designating sealed documents, review Federal Rule of Bankruptcy Procedure 8009(f) (see Bankruptcy Appeals Checklist: Sealed Documents).
- The duties of the parties to provide a transcript, review Federal Rule of Bankruptcy Procedure 8009(b) (see Bankr. W.D. Mich.: Transcript Information and Bankruptcy Appeals Checklist: Transcripts).
- Certifying an appeal directly to the Sixth Circuit, review 28 U.S.C. Section 158, Federal Rule of Bankruptcy Procedure 8006, and Official Bankruptcy Form B424 (see Bankruptcy Appeals Checklist: Direct Appeals to the Circuit Court of Appeals and Practice Note, Appealing a Bankruptcy Court Order: Overview: Appealing a Bankruptcy Court Order Directly to the Court of Appeals in Limited Circumstances).
- 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 (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).
- 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).
- 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). See also the policies and procedures of the assigned judge regarding page limitations, courtesy copies, and other requirements.
- Appeals to the BAP, review 28 U.S.C. Section 158(b) (see Practice Note, Appealing a Bankruptcy Court Order: Overview: Appealing a Bankruptcy Court Decision to a BAP).

For more information on bankruptcy appeals generally, see Practice Note, Appealing a Bankruptcy Court Order: Overview and Bankruptcy Appeals Checklist.

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. W.D. Mich.: Fee Schedule).
- Complete the district court bankruptcy matter civil cover sheet (see W.D. Mich.: Civil Cover Sheet).

Docket Fee

The filing fee for a notice of appeal can be found on the bankruptcy court's website (see Bankr. W.D. Mich.: Fee Schedule). These fees are not refunded if the appeal is dismissed or denied. At the Grand Rapids location, payments may be made by:

- Money order or cashier's check (payable to Clerk, US Bankruptcy Court).
- Personal check (but not from a debtor) (payable to Clerk, US Bankruptcy Court).
- Cash (exact amount only).
- Debit or credit card (but not a debtor's).

At the Marquette location, payments may be made by:

- Money order or cashier's check (payable to Clerk, US Bankruptcy Court).
- Personal check (but not from a debtor) (payable to Clerk, US Bankruptcy Court).

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).

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

The Sixth 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 *Service Emps. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012).)

Alternatives to Appeal

There are alternatives that parties may want 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 Sixth 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 *Clark v. United States*, 764 F.3d 653, 661 (6th Cir. 2014).)

Parties considering these devices should review Federal Rules of Bankruptcy Procedure 9023 and 9024. 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).

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).

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 Cash Collateral: 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.

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 obtain either:

- 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).

(§ 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 and Adequate Protection: Overview).

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)). 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 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 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 and Chapter 11 Equity Committees).
- 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).
- 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

Adequate Protection and Valuation of Secured Interests

A motion for use of cash collateral must:

- Explicitly state the adequate protection offered the creditor.
- Assert the moving party's position about the value of each of the secured interests to be protected.
- Summarize appraisals and projections to the extent pertinent and available.

(W.D. Mich. LBR 4001-2(a).)

Interim Relief

If a debtor files a motion for entry of an order approving an agreement to use cash collateral on an expedited basis, the court may enter the order without a hearing if:

- The order is approved by:
  - all creditors who have an interest in the cash collateral to be used;
  - the chairperson or attorney for each official committee, if any; and
  - the **US Trustee**.
- The order provides for the debtor to use cash collateral in a maximum specified dollar amount necessary to avoid immediate and irreparable harm only until the earlier of:
  - a final hearing; or
  - the date the order becomes a final order.
- The order provides for a final hearing to be scheduled by the court when the order is entered.
- The order provides that the debtor will serve a copy of the motion with its attachments and the order on all parties who must be served under Federal Rule of Bankruptcy Procedure 4001(d).
- The order provides that:
  - objections to the order must be filed within 14 days from the service of the order, except that a **creditors' committee** may file an objection within 14 days of its formation;

    - a final hearing will be held on the filing of the objection; and
    - if no objections are timely filed, an order may become final.

- The motion is accompanied by an affidavit or declaration of the debtor or a principal of the debtor, stating:
    - the facts on which the debtor relies in seeking the entry of the order on an expedited basis; and
    - the amount of money needed to avoid immediate and irreparable harm.

(W.D. Mich. LBR 4001-2(b).)

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.

Local Rules

The W.D. Mich. does not have any local rules directly addressing Chapter 15 proceedings.

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 DIP Financing: 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 and Timeline of DIP Financing Process.

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 and Box: Unsecured Postpetition Financing); and
  - priming DIPs, the debtor tried but was unable to obtain a non-priming DIP (see Practice Note, DIP Financing: Overview: Priming DIPs).

  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)). 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** (see Practice Note, DIP Financing: Overview: Perspective of the Primed Lender). The adequate protection provided depends on the circumstances of the case (see Practice Note, Adequate Protection: Overview: What Constitutes Adequate Protection?).

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); or
  - section 364(d) of the Bankruptcy Code, which addresses priming DIPs (see Practice Note, DIP Financing: Overview: Priming DIPs).

  (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); 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).

  (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 and Waivers of the Stay).
- 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?);
  - seek an extension of the debtor's **exclusivity period** to file a plan (see Practice Note, Chapter 11 Plan Process: Overview: Contesting Exclusivity);
  - request the use of cash collateral under section 363(c) of the Bankruptcy Code (see Practice Note, Cash Collateral: Overview); or
  - request authority to obtain credit under section 364 of the Bankruptcy Code (see Practice Note, DIP Financing: Overview).

  (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.)

- A waiver or modification of the applicability of non-bankruptcy 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).
- 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 and Chapter 11 Equity Committees).
- 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).

- 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

Adequate Protection and Valuation of Secured Interests

A DIP financing motion must:

- Explicitly state the adequate protection offered the creditor.
- Assert the moving party's position about the value of each of the secured interests to be protected.
- Summarize appraisals and projections to the extent pertinent and available.

(W.D. Mich. LBR 4001-2(a).)

Interim Relief

If a debtor files a motion for entry of an order approving a DIP financing agreement on an expedited basis, the court may enter the order without a hearing if:

- The order is approved by:
  - any entity extending the requested credit;
  - the chairperson or attorney for each official committee, if any; and
  - the **US Trustee**.

- The order provides for the debtor to obtain DIP financing in a maximum specified dollar amount necessary to avoid immediate and irreparable harm only until the earlier of:
    - a final hearing; or
    - the date the order becomes a final order.
- The order provides for a final hearing to be scheduled by the court when the order is entered.
- The order provides that the debtor will serve a copy of the motion with its attachments and the order on all parties who must be served under Federal Rule of Bankruptcy Procedure 4001(d).
- The order provides that:
    - objections to the order must be filed within 14 days from the service of the order, except that a **creditors' committee** may file an objection within 14 days of its formation;
    - a final hearing will be held on the filing of the objection; and
    - if no objections are timely filed, an order may become final.
- The motion is accompanied by an affidavit or declaration of the debtor or a principal of the debtor, stating:
    - the facts on which the debtor relies in seeking the entry of the order on an expedited basis; and
    - the amount of money needed to avoid immediate and irreparable harm.

(W.D. Mich. LBR 4001-2(b).)

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.

Local Rules

The W.D. Mich. does not have any local rules concerning first day declarations.

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 and First Day Relief: Debtor Checklist.

Local Rules

The W.D. Mich. does not have any local rules concerning first day motions.

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 and Timeline of a Prepackaged Bankruptcy Case.

Local Rules

The W.D. Mich. does not have any local rules or specific guidelines governing prepackaged bankruptcy cases.

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.
- 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.
- 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).

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).

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).

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.

Local Rules

Fee Applications Exceeding $1,000

Under W.D. Mich. Local Bankruptcy Court Rule 2016-2(c), a movant applying for compensation or reimbursement above $1,000 must:

- Proceed by motion with notice and opportunity to object as set out in W.D. Mich. Local Bankruptcy Court Rule 9013(c).
- Use the Notice to Creditors and Other Parties in Interest form, attached as Exhibit 4 to the W.D. Mich. Local Bankruptcy Court Rules.

Additional Requirements

A professional must file an application for fees and expenses before receiving any payment from the estate or applying any retainer that is **property of the estate** (W.D. Mich. LBR 9013-1(b)).

All applications must include:

- The case filing date.

- The current chapter and all dates of **conversion** (if any).
- The amount of any retainer paid.
- The date of each previous application.
- The amount of compensation and expenses previously requested.
- The date of each approval.
- The total amount received to date.

(W.D. Mich. LBR 9013-1(c)(1).)

Each application must:

- Identify each activity by date and the professional who performed the work.
- Include a description of the work involved, its purpose, and the time expended. W.D. Mich. Local Bankruptcy Court Rule 9013-1(c)(2)(A) sets out what details are required for any description.

(W.D. Mich. LBR 9013-1(c)(2).)

Rounding and lumping time entries are prohibited, and each item listed should be stated in tenths of an hour (W.D. Mich. LBR 9013-1(c)(2)(B)).

If multiple professionals charge for the same activity, the applicant must explain the need for each professional's participation in the activity (W.D. Mich. LBR 9013-1(c)(2)(C)).

The application must itemize expenses (W.D. Mich. LBR 9013-1(c)(3)).

Fee Guidelines for Large Chapter 11 Cases

The US Trustee applies the Appendix B fee guidelines to review retention and fee applications for attorneys retained under section 327 of the Bankruptcy Code in Chapter 11 cases filed on or after November 1, 2013, where the debtor's petition lists $50 million or more in assets and $50 million or more in liabilities, aggregated for jointly administered cases (see Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee: US Trustee Appendix B Fee Guidelines for Large Chapter 11 Cases). They do not apply to single asset real estate cases or to non-attorney professionals.

Although these guidelines have not been formally adopted in the W.D. Michigan Local Bankruptcy Court Rules, failure to comply may result in the US Trustee objecting to the fee application.

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.

Local Rules

Each professional must file an application for employment with the clerk and serve it on the US Trustee (W.D. Mich. LBR 2014(b)). The US Trustee has 28 days to file an objection (W.D. Mich. LBR 2014(b)(1)). If the US Trustee does not object, the professional can file a certificate of no objection and the court may enter the order appointing the professional without further notice or hearing (W.D. Mich. LBR 2014(b)(2)).

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.

Local Rules

The W.D. Mich. does not have any additional requirements concerning notice of removal, remand, and abstention in bankruptcy.

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).
- 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.

Local Rules

The W.D. Mich. does not have any special rules expressly relating to claims agents.

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

Pro Hac Vice Admission

Attorneys admitted in Michigan or licensed to practice in another state who maintain a regular office in Michigan must be admitted to the W.D. Mich. and cannot be admitted *pro hac vice* (W.D. Mich. LBR 9010-3(a)).

Local counsel are not required in the bankruptcy court. Licensed attorneys not admitted in Michigan or who do not maintain a a regular office in Michigan may apply for *pro hac vice* admission to appear in a specific case and all **contested matters** and **adversary proceedings** arising in that case (W.D. Mich. LBR 9010-3(b)).

Admission to District Court

An attorney admitted to practice in the W.D. Mich. district court is admitted to practice in the W.D. Mich. bankruptcy court (W.D. Mich. LBR 9010-1(a)).

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 Section 363 Sales: 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.
- Timeline of a Section 363 Sale.
- Article, Strategies for Purchasing and Selling Assets in Chapter 11.

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). 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.

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.

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); 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.

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.

Local Rules

W.D. Mich. Local Bankruptcy Court Rule 6004 supplements the requirements of Bankruptcy Rule 6004 for section 363 sales in the W.D. Mich. It applies to:

- Sales of real estate. Motions regarding use, sale, or lease of real property or liens must include legal descriptions and common street addresses (W.D. Mich. L.B.R. 6004(a)).
- Sale motions by a **Chapter 7 trustee** (W.D. Mich. L.B.R. 6004(b)).

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 (with no designation of being disputed, **contingent**, or **unliquidated**) 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.

Local Rules

The W.D. Mich. does not have any local rules pertaining to setting a bar date.

The W.D. Mich. does not have any local rules regarding bar date notices to mass tort claimants.

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 to the bankruptcy court 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.

Local Rules

W.D. Mich. Local Bankruptcy Court Rule 5011 sets out the local requirements for a party seeking withdrawal of the reference.

Form of Request

Under W.D. Mich. Local Bankruptcy Court Rule 5011(a), the request for a withdrawal of the reference must be made by filing a motion with the clerk, and the motion must clearly and conspicuously state that "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE."

Time for Filing

W.D. Mich. Local Bankruptcy Court Rule 5011(b) provides that a motion to withdraw the reference of:

- The entire bankruptcy case must be filed by the time first set for the **meeting of creditors**.
- All or part of an **adversary proceeding** must be filed by the date on which the answer, reply, or motion under Federal Rule of Bankruptcy Procedure 7012 or 7015 is first due.
- A **contested matter** within a case must be filed not later than 14 days after service of the motion, application, or objection that initiates the contested matter.

Despite the foregoing, a motion to withdraw the reference may still be filed within 14 days of the filing of any pleading or paper that for the first time raises the reason for seeking the withdrawal (W.D. Mich. LBR 5011(b)).

Proceedings Unaffected

The motion will not stay the bankruptcy proceeding (W.D. Mich. LBR 5011(c)).

Designation of Record

Under W.D. Mich. Local Bankruptcy Court Rule 5011(d):

- The moving party must file with the clerk of the bankruptcy court and serve on interested parties a designation of those portions of the record of the case or proceeding in the bankruptcy court that the moving party believes will reasonably be necessary or pertinent to the district court's consideration of the motion.
- Within 14 days after service of this designation of record, any other party may serve and file a designation of additional portions of the record.
- If the record designated by any party includes a transcript of any hearing or trial, that party must, immediately after filing the designation:
    - deliver to the bankruptcy court's electronic court recorder operator or contract court reporter a written request for the transcript; and
    - arrange for payment of its cost.
- The parties must take all steps necessary to enable the clerk to assemble and transmit the record.

Response Filed; Reply

Under W.D. Mich. Local Bankruptcy Court Rule 5011(e):

- If a party opposes the requested withdrawal, it must file and serve its objection within 14 days of service of the motion to withdraw the reference.
- The moving party may then file and serve a reply within 14 days after service of the objection.

Transmittal to and Proceedings in the US District Court

Under W.D. Mich. Local Bankruptcy Court Rule 5011(f), when the record is complete except for transcripts, the clerk of the bankruptcy court will promptly transmit to the clerk of the district court the motion and the designated portions of the record.

Other Topics

Appointment of a Patient Care Ombudsman in a Health Care Business Case

If the debtor in a case under **Chapter 7**, **9**, or 11 is a health care business, the debtor must, at the same time as the petition, file a separate motion to determine whether appointment of a patient care ombudsman is necessary under section 333(a) of the Bankruptcy Code (W.D. Mich. LBR 2007).

Ballots

W.D. Mich. Local Bankruptcy Court Rule 3018 provides that:

- Unless the court orders otherwise, all original ballots accepting or rejecting a Chapter 11 **plan** must be filed with the clerk.
- The clerk will scan paper ballots into **case management/electronic case filing** (CM/ECF) and may draft and file an electronic vote-tally report.
- The clerk's vote-tally report is for informational purposes only and does not constitute the court's findings of fact or conclusions of law regarding **confirmation** of that plan.

Final Decree and Closing

W.D. Mich. Local Bankruptcy Court Rule 3022 provides that:

- On entry of the final decree and after all **contested matters** and **adversary proceedings** are completed, the clerk will close the case.
- Unless the court orders otherwise, a Chapter 11 debtor must file an application for entry of a final decree on substantial consummation of the plan.

Motions for Approval of Agreed Relief

A party may use the notice and opportunity procedure of W.D. Mich. Local Bankruptcy Court Rule 9013(c) to request court approval of an agreement to:

- Provide **adequate protection**.
- Modify or terminate the **automatic stay** under section 362 of the Bankruptcy Code (see Use of Notice and Opportunity Procedure).
- Use **cash collateral**.
- Create a lien senior or equal to an entity's lien or interest in **property of the estate**.

This must be accompanied by a copy of the agreement (W.D. Mich. LBR 4001-3(a)).

In a Chapter 11 case, the moving party must serve the notice, motion, agreement, and proposed order on:

- The parties to the agreement.
- Any creditors' or **equity security holders'** committee appointed under section 1102 of the Bankuptcy Code and its authorized agent or, if no **creditors' committee** has been appointed, on the 20 largest creditors holding **unsecured claims**.
- The **US Trustee**.
- Any other entity the court directs.

(W.D. Mich. LBR 4001-3(b)(2).)

Consent to Final Judgment or Order in Core Proceedings

In any adversary proceedings before the court, the complaint, counterclaim, cross-claim, or third-party complaint must contain a statement that the proceeding is core or non-core and, without regard to whether the proceeding is alleged to be core or non-core, that the pleader does or does not consent to entry of a final order or judgment by the court (W.D. Mich. LBR 7008).

Settlement of Adversary Proceedings

W.D. Mich. Local Bankruptcy Court Rule 7090 provides that:

- Counsel must notify the court immediately on reaching a settlement of an adversary proceeding.
- If, by the date set for trial, the attorneys have not submitted an order disposing of the proceeding, then counsel may be required to appear and state the settlement on the record.
- Unless the court orders otherwise, counsel must submit the appropriate order within 14 days after notifying the court of a settlement. The failure to submit an appropriate order within 14 days or as otherwise ordered may be cause for dismissal.

Motion Practice: Request for Emergency Hearing

An emergency is a matter that requires a hearing in less than seven days and that involves an injury that outweighs procedural concerns. If a motion requires an emergency hearing, a separate motion for the emergency hearing must be filed. The motion for emergency hearing must contain:

- Sufficient information for the court to schedule an emergency hearing (for example, why relief is needed immediately and why affected parties will not be prejudiced if a hearing is held with only limited notice).
- A certificate of service.
- A proposed order scheduling the hearing, with blank spaces for the date, time, and location of the hearing and for the manner and deadline for giving notice of the hearing.

(W.D. Mich. LBR 9013(g).)

Motion Practice: Request for Expedited Hearing

If a motion requires a hearing on shortened notice but is not an emergency, a motion to shorten notice or to schedule an expedited hearing must be:

- Filed according to Federal Rule of Bankruptcy Procedure 9006(c).
- Accompanied by a proposed order.

(W.D. Mich. LBR 9013(h).)

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).

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 9 serves the federal bankruptcy courts located in the states of:

- Michigan.
- Ohio.

This Note discusses the general operating guidelines and procedural requirements enacted by the US Trustee for Region 9 (Region 9 Guidelines) as they apply to Chapter 11 cases filed in the W.D. Mich.

The US Trustee's operating guidelines covering cases filed in the W.D. Mich. are publicly available and can be obtained from the website for the US Trustee's office for Region 9 (see US Trustee Operating Guidelines, Region 9).

The following is a summary of the US Trustee Guidelines for Chapter 11 cases filed in the W.D. Mich.

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.

General Requirements

In the W.D. Mich., the debtor must:

- Serve the US Trustee with all notices, pleadings, stipulations, and proposed orders.
- Pay in full and when due all postpetition obligations.
- File all federal, state, and local tax returns when due.
- Obtain court approval before paying a professional.
- Obtain appropriate authority before paying prepetition obligations.
- Promptly alert the US Trustee of any change of address.

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 W.D. Mich. 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). A request to modify or waive any of these guidelines must be made in writing and approved in writing by the US Trustee.

US Trustee Operating Requirements	W.D. Mich. Bankruptcy Court Requirements
Books and Records	The debtor must: • Close the books and records of the debtor as of the petition date and open new books and records. • Provide separate accounting concerning prepetition and postpetition accounts and transactions. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Postpetition Books and Records.)

Bank Accounts	The debtor must:
	• Immediately close all prepetition bank accounts.
	• Furnish final statements for closed accounts to the US Trustee.
	• Open separate accounts at an authorized depository for:
	  • a general account;
	  • a tax account; and
	  • a payroll account.
	• Provide initial statements for each new account and a voided copy of the first check from each account to the US Trustee.
	• Ensure that the signature cards for the DIP accounts indicate that the debtor is a "debtor in possession."
	• Indicate on checks and statements for DIP accounts:
	  • that the debtor is a "debtor in possession";
	  • the case name; and
	  • the case number.
	• Ensure that all accounts or investments above $250,000 are adequately protected by the pledge of securities or purchase of bonds by the financial institution holding the funds, as required by section 345 of the Bankruptcy Code.
	• Ensure that the new bank is directed to send copies of monthly bank statements to the US Trustee.
	• Obtain prior authorization from the US Trustee before opening any additional accounts.
	(See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Bank Accounts.)

Insurance	The debtor must:
	• Maintain insurance coverage, as appropriate, including:
	  • casualty;
	  • unemployment;

	• **workers' compensation** (see Practice Note, Workers' Compensation: Common Questions); • general liability; • product liability; and • other coverages customarily required in the debtor's industry or business. • Provide to the US Trustee proof that insurance is being maintained by providing a copy of the first page of the binder of all policies and a certificate of insurance indicating the expiration date of each policy and naming the US Trustee as certificate holder. Affirmance that appropriate insurance is being maintained must also be filed with each monthly operating report (see Monthly Operating Reports). • Instruct insurance companies to change the loss payee/beneficiary of each policy to make reference to the debtor as "debtor in possession." • Immediately notify the US Trustee of any change, cancellation, or expiration of insurance coverage. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Insurance.)
Taxes	The debtor must: • File all prepetition and postpetition tax returns when due and pay all postpetition taxes. • Deposit cash on a monthly prorated basis into a tax account for taxes that enjoy a **priority** lien against assets of the estate but for which there is no specific prepayment requirement (for example, real estate taxes). (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Taxes.)

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.

In the W.D. Mich:

- Where the debtor remains in possession, all principals, officers, directors, and employees familiar with the financial affairs and operations must attend the meeting.
- Corporate debtors must be represented by legal counsel familiar with the proceedings at the section 341 meeting.
- The debtor must bring the original signed corporate resolution authorizing the bankruptcy filing and the original signed bankruptcy petition, schedules, and Statement of Financial Affairs.
- After notice has been mailed, a meeting cannot be canceled or rescheduled to accommodate scheduling conflicts. After the initial meeting, the US Trustee may continue the meeting to another date and time until the case is dismissed or **converted** or a plan is confirmed.

Compensation of Principals, Officers, and Directors

The debtor must disclose to the US Trustee at the section 341 meeting:

- All compensation to be paid from estate assets to principals, officers, directors, and **insiders**.
- The name and position of each individual principal, officer, and director, a description of the individual's duties, the amount of compensation paid on a weekly or monthly basis (including all perquisites, benefits, and other consideration of any kind), and the individual's salary history for the year immediately preceding the petition date.

This information should be provided on a separate Form B for each principal, officer, director, or insider.

Initial Debtor Interview

The debtor and its counsel must attend an initial debtor interview, generally scheduled by the US Trustee within ten working days after the filing or appointment of the trustee. The designated principals most familiar with the debtor's financial affairs must also attend.

In W.D. Mich., the US Trustee requires debtors to provide certain key financial documents when attending the initial debtor interview, including:

- Proof of the establishment of the new bank accounts (general operating account, tax account, and payroll account).
- A declaration from the debtor (Form A) verifying the closing of all prepetition bank accounts and stating the date each account was closed and that all monies were transferred to the new accounts.
- Certificates proving insurance coverage for:
    - general comprehensive public liability;
    - fire and theft;
    - workers' compensation;
    - vehicle; and

    - any other insurance coverage customary in the business or industry.

- All federal income tax returns and personal property tax returns for the last two years, with all schedules and attachments.
- Copies of:
    - the current year-to-date financial statements; and
    - financial statements for the last two years.
- A disclosure statement of compensation paid to prinicpals, officers, and directors (Form B).

Business Plan and Cash Projection

The debtor may be required to provide the US Trustee with a detailed written business plan, including a 90-day projection of cash receipts and disbursements.

Periodic Status Conferences

After the section 341 meeting (see Meeting of Creditors), the US Trustee may conduct periodic status conferences with:

- The debtor and its counsel.
- The **creditors' committee** and its counsel.

The purpose of these conferences is to:

- Ascertain the financial status of the debtor.
- Generally monitor the debtor's progress.
- Determine when a plan may be filed.

Monthly Operating Reports

The debtor-in-possession must file operating reports each month throughout the pendency of the Chapter 11 case. The timely filing of reports of operations is crucial to the efficient administration of Chapter 11 cases. These reports are designed to provide the US Trustee, the court, creditors, and other parties in interest with reliable information concerning the debtor's current financial performance. US Trustees use the information contained in the reports to identify cases lacking a realistic prospect of reorganization and to evaluate the **feasibility** of a proposed plan of reorganization (see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Monthly Operating Reports).

In the W.D. Mich., the debtor must file signed copies of operating reports with the court and the US Trustee's office by the 20th of each month following the reporting period. The debtor should also serve these reports on:

- The chairperson of the creditors' committees.

- Counsel for the committees.

All reports must be prepared on the accrual basis of accounting.

After the confirmation of a Chapter 11 plan, the reorganized debtor must submit monthly post confirmation reports to the US Trustee until the court enters an order closing, dismissing, or converting the case.

Quarterly Fees

Each Chapter 11 debtor is responsible for paying a quarterly fee to the US Trustee Program (28 U.S.C. § 1930(a)(6)). Quarterly fees accrue throughout the course of the Chapter 11 case until the case is:

- Closed.
- Dismissed.
- Converted to another chapter.

The fees are payable on a quarterly basis and are due on the last day of the month following the end of each calendar quarter. For example, fees for the first calendar quarter ending March 31 are due on April 30. Failure to pay quarterly fees may result in the court converting or dismissing the Chapter 11 case (§ 1112(b)(4)(K), Bankruptcy Code). A court cannot confirm a Chapter 11 plan unless the plan provides for payment of all unpaid quarterly fees accrued by the **effective date** (§ 1129(a)(12), Bankruptcy Code). For more information on the required fees, see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: US Trustee Fee Guidelines.

The quarterly fee varies depending on the dollar amount of all disbursements made during the calendar quarter, and a minimum fee of $325 is due even if there are no disbursements made during a calendar quarter. A schedule of the required quarterly fees is set out in 28 U.S.C. Section 1930(a)(6).

