

CASH COLLATERAL

A. Cash Collateral Motion. As required by Bankruptcy Rule 4001(b)(1)(A), cash collateral motions (including emergency motions), should be accompanied by a proposed form of order, which ordinarily should be attached as an exhibit to the motion. The motion and/or order should include, as an attachment, a summary of projected revenue and a line item expense budget during the proposed cash collateral period. The budget ordinarily should be weekly for emergency motions and monthly for other motions.

B. Service of the Motion. The Debtor should serve the motion on any party holding or claiming an interest in cash collateral; the United States Trustee; the official committee of unsecured creditors or, if no such committee has been appointed, to the creditors included on the list prepared under Bankruptcy Rule 1007(d); and to counsel who have entered an appearance in the case. Bankruptcy Rule 4001(b)(1)(C).

C. Notice of Hearings. Unless the Court directs otherwise, the Debtor should give notice of any hearing to the parties required to receive service of the motion as set forth above. Counsel for the Debtor should also call the local office of the United States Trustee and any known bankruptcy counsel for a cash collateral creditor to alert them that the motion has been filed, and of the date and time of any hearing.

D. Preliminary (“Emergency”) Hearing on the Motion. Pursuant to Bankruptcy Rule 4001(b)(2), the Court will hold an emergency hearing on use of cash collateral, if needed, to consider authorizing use of cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Debtor’s counsel is encouraged to plan a chapter 11 case, if possible, such that an emergency hearing is not needed the same day the case is commenced, or the next day. Counsel is also encouraged to call Chambers staff to obtain a hearing on use of cash collateral before or shortly after the cash collateral motion is filed. The Court will take testimony at an emergency hearing on use of cash collateral, if testimony is proffered. If granting authority to use cash collateral requires consideration of evidence, the Debtor should present evidence.

E. Final Hearing on the Motion. If a notice of the motion is given that specifies an objection period, the notice should include notice of the hearing. All cash collateral hearings, except emergency hearings, ordinarily will be final hearings. The final hearing cannot be sooner than 14 days after the motion is filed and served. Bankruptcy Rule 4001(b)(2).

F. Contents of Cash Collateral Orders. The Court will review certain provisions in a cash collateral order with heightened scrutiny, such as provisions validating pre-petition claims or the extent, validity and priority of pre-petition liens (unless parties in interest are given at least 75 days from the date of entry of the order, and the creditors committee if formed is given at least 60 days from the date of its formation, to investigate such matters); provisions granting liens against avoidance actions or avoidance action recoveries; cross-collateralization of debt not cross-collateralized pre-petition, unless necessary to provide adequate protection; waiver of surcharge rights under Bankruptcy Code §506(c); and provisions converting pre-petition debt to post-petition debt. If a motion seeks entry of an order containing any of the above provisions,

the notice of the motion should specifically disclose that the motion seeks such relief. The Court will not approve the above provisions in an emergency cash collateral order absent extraordinary and compelling circumstances.