

Commentary

[Source – L.B.R. 215(b). Added on 6/13/08 based on EEB forms provided during last comment period.]

See the *Amended Memorandum of Understanding Between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closings and Post Confirmation Chapter 11 Monitoring*, dated April 1, 1999.

See also [L.B.R. 2015-1](#) for other reporting requirements.

LOCAL BANKRUPTCY RULE 4001-1 RELIEF FROM AUTOMATIC STAY

(a) Motions for Relief From Automatic Stay Under 11 U.S.C. § 362(d) Against Debtor:

(1) Selection of Hearing Date: Each division maintains a separate motion for relief from stay calendar. Information as to the time and dates of each division's calendar may be obtained from the assigned judge's staff or the court's website at www.cob.uscourts.gov. All motions for relief from stay must be set for hearing on the calendar of the division to which the case is assigned. A party desiring to file a motion for relief from stay in a bankruptcy case will select from the calendar of available hearing dates a proposed hearing date, which must be the latest hearing date available on the assigned judge's calendar which is not more than thirty (30) days from the date the motion for relief from stay is filed with the court.

(2) Waiver of Rights under 11 U.S.C. § 362(e): In the event the movant sets a hearing date beyond thirty (30) days, the movant is deemed to have waived its right under 11 U.S.C. § 362(e) to automatic relief after thirty (30) days.

(3) Notice of Hearing and Time to Object: Subject to the provisions of this L.B.R., the movant must comply with the provisions of [L.B.R. 9013-1](#). In addition to the parties specified in FED. R. BANKR. P. 4001, the notice and motion must be served on the debtor and debtor's counsel, the United States Trustee, the case trustee, and any party with an interest, such as a party claiming lien rights in property against which the movant seeks relief. The notice of hearing must specify that any objection and request for hearing must be filed at least seven (7) days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing.

(4) Mandatory Motion Requirements: In addition to complying with [L.B.R. 9013-1](#), the movant must:

(A) plead with specificity facts supporting the requirements of 11 U.S.C. § 362(d);

(B) if, as a basis for relief, a default is alleged as to payment on a business or consumer debt, attach a detailed, understandable payment history regarding the debt and arrearages;

(C) file and serve a notice in substantial conformity with **L.B. Form 4001-1.1**;

(D) file and serve a relief from stay cover sheet in substantial conformity with **L.B. Form 4001-1.2**;

(E) if the debtor is an individual, file a Servicemembers Civil Relief Act (“SCRA”) Affidavit pursuant to **L.B.R. 4002-2(c)**;

(F) file and serve a proposed order in substantial conformity with **L.B. Form 4001-1.4**; and

(G) pay the prescribed filing fee.

(5) No objections: If no objections are filed, the Movant **must** file a certificate of non-contested matter, **L.B. Form 4001-1.3**, at least three (3) days prior to the scheduled hearing.

(b) Motions for Relief from Stay Under 11 U.S.C. §§ 1201 or 1301 Against Co-Debtor: The procedures for seeking relief from the co-debtor stay are the same as that specified **in (a) above** except:

(1) the party must select a hearing date that is not more than twenty (20) days from the date of the motion, and

(2) the response and request for hearing must be filed not more than fourteen (14) days following the filing of the motion for relief from stay.

In the event that the movant sets a hearing date beyond twenty (20) days, the movant is deemed to have waived its right to relief within twenty days under 11 U.S.C. § 1201(d) and 1301(d). If the movant files a combined motion under 11 U.S.C. § 362(d) and § 1201 or 1301, the movant will be deemed to have waived their rights under § 1201(d) or § 1301(d) to automatic relief after twenty (20) days.

(c) Procedures for Preliminary Hearings: The following procedures apply at preliminary hearings on motions for relief from stay:

(1) No testimony will be taken. Evidence will only be accepted by way of an oral offer of proof and exhibits. Such offers must provide sufficient detail to enable the court to make specific findings based thereon and must include the identity of the witnesses

available to testify at an evidentiary hearing and an explanation of their expected testimony. Written summaries of witnesses' testimony are not required but may be submitted.

(2) Parties must exchange all exhibits they intend to use, or may reasonably anticipate using, 24 hours prior to the preliminary hearing. The exhibits must be tendered to the court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.

(3) Objections to tendered evidence should be made at the conclusion of each party's declaration. Any objection must identify the evidence objected to and specify the grounds for the objection.

(4) The court will treat the hearing as a preliminary hearing and, based on the proffers of evidence, if there is a reasonable likelihood that the party opposing relief will prevail at a final hearing, may set the matter over for a final hearing. In the alternative, the court may consider the offers of proof and, absent the need for an evidentiary hearing, grant or deny the request for relief from stay.

(5) Expert Witnesses: Any party anticipating the use of an expert witness for a final hearing will, at the initial hearing, comply with FED. R. BANKR. P. 7026(a)(2).

(d) Telephonic Hearings: Parties, through counsel, are required to attend the hearing in person except on prior request and approval of a telephonic appearance by the judge to whom the case is assigned. Telephonic appearances must be requested by filing a motion. If a telephonic appearance is permitted, the parties must exchange witness lists and exhibits and file them with the court no later than 24 hours prior to the hearing.

Commentary

See FED. R. BANKR. P. 4001 and 9014.

Parties are advised to use the proper forms applicable to this L.B.R. 4001-1 (relief from stay) and not those applicable to L.B.R. 4001-2 (termination/absence of stay).

Telephonic appearances may be requested by motion or pursuant to other procedures which may be established by the presiding judge. Parties should review each judge's website for additional information.

See Servicemembers Civil Relief Act of 2003 ("SCRA"), 50 App. U.S.C. § 501 et seq. and [L.B.R. 4002-2](#) for further information on SCRA.

[Source: [L.B.R. 401 and GPO 2005-2](#)]

**LOCAL BANKRUPTCY RULE 4001-2
TERMINATION, ABSENCE, OR EXTENSION OF AUTOMATIC STAY**

(a) Procedures: Motions filed pursuant to this L.B.R. 4001-2 are subject to the procedures in L.B.R. 4001-1(a)(1) Selection of Hearing Date, (a)(3) Notice of Hearing and Time to Object, (c) Procedures for Preliminary Hearing and (d) Telephonic Hearings.

(b) Forms: Parties must file and serve a notice and proposed order in substantial conformity with **L.B. Forms 4001-2.1** and **4001-2.2**, respectively.

(c) Requests Pursuant to 11 U.S.C. § 362(c)(3)(B) (to continue and extend the stay) and 11 U.S.C. § 362(c)(4)(B) (for the stay to take effect):

(1) Motions filed pursuant to 11 U.S.C. § 362(c)(3)(B) and (c)(4)(B) must:

(A) explain why this later case is filed in good faith as to the creditor(s) to be stayed, and specify whether the request extends to all creditors or only specified creditors; and

(B) unless ordered otherwise, give at least fourteen (14) days notice of the objection date and hearing date to the applicable trustee, debtor, debtor's attorney and all affected creditors.

(2) If seeking to extend the stay to certain property of the estate, service of the motion and notice must also comply with the requirements of FED. R. BANKR. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.

(3) Motions filed pursuant to 11 U.S.C. § 362(c)(3)(B) should be filed with the petition or promptly thereafter in order to permit compliance with statutory time limits.

(4) Motions filed pursuant to 11 U.S.C. § 362(c)(4)(B) must be filed within 30 days after filing of the petition.

(d) Requests Pursuant to 11 U.S.C. § 362(h)(1) (to terminate the stay for failure to comply with duties under 11 U.S.C. § 521(a)(2) with respect to personal property): The movant must plead the following with sufficient specificity:

(1) recital of the facts supporting the requested relief pursuant to the terms of 11 U.S.C. § 362(h)(1);

(2) a detailed description of the property interest securing the debtor's obligation to the movant; and

(3) a statement of whether the debtor timely filed, and performed under, a statement of intention pursuant to 11 U.S.C. § 521(a)(2).

(e) Requests Pursuant to 11 U.S.C. § 362(h)(2) (determination that property is of consequential value or benefit):

(1) The motion must explain the basis for the belief that the property is of consequential value or benefit to the estate, describe what adequate protection is appropriate to protect the creditor's interest and whether or not the debtor has delivered the collateral to the trustee.

(2) Service of the motion and notice must also comply with the requirements of FED. R. BANKR. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.

(3) Motions filed pursuant to 11 U.S.C. § 362(h)(2) must be filed within thirty (30) days after the first date set for the meeting of creditors.

(f) Requests Pursuant to 11 U.S.C. § 362(j) (confirming termination of the stay): The movant must plead the following with sufficient specificity to permit the court to grant the motion:

(1) the requirements of 11 U.S.C. § 362(c); and

(2) the facts supporting the requested relief, including the following information regarding the previous case or cases:

- (A) case name,
- (B) case number,
- (C) court where filed,
- (D) date filed,
- (E) date dismissed,
- (F) whether the dismissal was pursuant to 11 U.S.C. § 707(b),
- (G) as to a request under 11 U.S.C. § 362(c)(3)(A), describe any formal pre-petition action commenced by the movant; and
- (H) any additional relevant information.

Commentary

[Source: modified guideline]

Parties are advised to use the proper forms applicable to this L.B.R. 4001-2 (termination/absence of stay) and not those applicable to L.B.R. 4001-1 (relief from stay).

Motions to extend the stay under 11 U.S.C. § 362(c)(3)(B) may be summarily denied if they are not timely filed such that meaningful due process can be afforded and a hearing held before the end of the 30-day period set forth in 11 U.S.C. § 362(c)(3)(B). Typically, a motion filed within

seven (7) to ten (10) calendar days of the commencement of the case can be timely prosecuted under these guidelines, depending upon the assigned judge's relief from stay hearing dates.

LOCAL BANKRUPTCY RULE 4001-3 CASH COLLATERAL AND POST-PETITION FINANCING

(a) Motions: Except as provided herein and elsewhere in these L.B.R., all cash collateral and/or financing requests under 11 U.S.C. §§ 363 and 364 must be made by motion filed pursuant to FED. R. BANKR. P. 2002, 4001 and 9014 and **L.B.R. 2081-1 and 9013-1** as applicable ("Financing Motions").

(1) Provisions to be highlighted: All Financing Motions must:

(A) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated in the appendix at **L.B.R. 4001-3App.**;

(B) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement by page, paragraph and/or line number; and

(C) provide the justification for the inclusion of each such provision.

(2) Mandatory inclusions: All Financing Motions must also provide a summary of the essential terms of the proposed use of cash collateral and/or financing including, but not limited to:

(A) the maximum borrowing available on a final basis,

(B) the interim borrowing limit,

(C) borrowing conditions,

(D) interest rate,

(E) maturity,

(F) events of default,

(G) use of funds limitations,

(H) protections afforded under 11 U.S.C. §§ 363 and 364,

(I) a line-item budget for both the interim and final order periods, unless the court orders otherwise, and

(J) any other information deemed necessary.

(b) Interim Relief: When Financing Motions are filed with the court on or shortly after the date of the entry of the order for relief pursuant to **L.B.R. 2081-1**, the court may grant interim relief pending review by the interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court may not

approve interim financing orders that include any of the provisions not previously generally approved, as specified in [L.B.R. 4001-3App.](#)

(c) Final Orders: A final order will be entered only after providing parties notice and an opportunity for a hearing pursuant to FED. R. BANKR. P. 4001 and [L.B.R.9013-1](#).

Commentary

[Source: LRRC requested this rule. From D. Del.; Appendix 4001-3App. from N.D. Cal. UST]

LOCAL BANKRUPTCY RULE 4001-4 FORMS OF COMMUNICATION NOT IN VIOLATION OF THE AUTOMATIC STAY

(a) Forms of Communication; Issuance of Monthly Statements is not a Stay Violation: The following communication and issuance of monthly statements are declared appropriate and not a violation of the automatic stay:

(1) Permissible contact with the debtors: Secured creditors may contact the debtors about the status of insurance coverage on property that is collateral for the creditor's claim, may respond to inquiries and requests for information about the account from debtors, and may send the debtor statements, payment coupons, or other correspondence that the creditor sends to its nondebtor customers, without violating the automatic stay, provided none of these communications includes an attempt to collect the debt. Permissible forms of communication are those which are sent to debtors by creditors in the ordinary course of business, to the address that the debtor last provided to the creditor by agreement between the debtor and the creditor. In order for communication to be protected under this L.B.R., the communication must indicate it is provided for information purposes and does not constitute a demand for payment.

(2) Manner of contacting debtors: Permissible communications may be transmitted via electronic mail, facsimile, United States Postal Service, commercial communications carrier, or such other mode as is mutually acceptable to the parties.

Commentary

[Source: GPO 2008-1, March 13, 2008]

This L.B.R. directs that, to the greatest degree possible, the routine flow of information from secured creditors to debtors continue post-petition with respect to secured loans constituting consumer debt (as that term is defined by 11 U.S.C. § 101(8)), in each bankruptcy case where the debtor retains possession of the collateral and continues to make regular installment payments directly to the secured creditor.