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Local Bankruptcy Rules: Mississippi (N.D./S.D. Miss.)

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A Practice Note summarizing selected local rules of the US Bankruptcy Court for the Northern and Southern District of Mississippi (N.D./S.D. Miss.).

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

Relief from Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(a)(1)(A) requires service of a motion for relief from the stay in the manner provided by Federal Rule of Bankruptcy Procedure 7004, in addition to the manner prescribed by Federal Rule of Bankruptcy Procedure 9014. In addition to the parties specified for service in the Federal Rules of Bankruptcy Procedure, a motion for relief must be served on any person who will be affected by the relief sought in the motion, including an entity with a lien on the property made the subject of the motion (excluding taxing authorities), the US Trustee, the case trustee, and any person who has filed and served on the trustee or debtor-in-possession a request for receipt of notices.

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(a)(1)(B) states that a motion for relief from stay must include:

- A description of the subject property.
- Security instruments.
- The value of the property and the method of valuation.
- The amount of outstanding indebtedness as reflected in the schedules or otherwise known to the movant.

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(a)(1)(C) requires counsel for the movant or any objecting parties to meet and confer before any hearing on a motion for relief from stay to determine whether a consensual order may be entered and to determine any facts to which the parties may stipulate.

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(a)(1)(D) provides that if a relief from stay motion is settled, the parties must work together to propose an agreed order within 14 days of the hearing. Any non-drafting party should promptly sign or raise objection to the proposed form of order. Parties must attempt to resolve any differences in the form of the order before submitting competing orders to the court.

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(a)(1)(E) provides that any order affecting real property, other than

an order confirming a Chapter 13 plan, must include the legal description of the property in the body of the order or attach the legal description as an exhibit to the order.

Procedure Regarding Motion to Extend the Stay Under Section 362(c)(3)(B)

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(e)(1) provides procedures for moving the court to extend the automatic stay under section 362(c)(3)(B) of the Bankruptcy Code. A party seeking a stay extension must file a motion and proposed order. The motion must:

- State whether continuation is sought concerning all creditors or specify which creditors it is sought against.
- Set out facts establishing that the bankruptcy was filed in good faith.
- Be filed within seven days of the petition date.
- Include as an attachment a declaration in support of the motion in substantially the form prescribed by N.D./S.D. Miss. Local Bankruptcy Form MSSB-DEAS.
- Be served on all parties against whom the continuation is sought within two days of filing the motion and declaration. The party seeking the continuation must also file a certificate of service reflecting same.

(Miss. Bankr. L.R. 4001-1(e)(1).)

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(e)(2) provides that:

- The court will set timely filed motions for hearing within 30 days of the petition date.
- The court will set untimely filed motions within 14 days.
- Filing the motion does not extend the stay. If the hearing is set more than 30 days from the petition date, the debtor or a party in interest instead must seek injunctive relief by filing a complaint and motion for a temporary restraining order, to enjoin any collection action that may occur after the 30th day following the petition date but before the hearing on the continuation motion.

A party in interest opposing the extension motion must file a response stating specifically why the motion should not be granted or setting out conditions the court should impose in granting the motion (Miss. Bankr. L.R. 4001-1(e)(3)). The court may grant a properly supported motion without a hearing in the absence of a timely filed response (Miss. Bankr. L.R. 4001-1(e)(4)).

Procedure Regarding Motion to Impose the Stay Under Section 362(c)(4)(B)

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(f)(1) provides similar procedures for moving the court to impose the automatic stay under section 362(c)(4)(B) of the Bankruptcy Code. A party seeking a stay must file a motion and proposed order. The motion must:

- State whether imposition of the stay is sought concerning all creditors or specify which creditors it is sought against.
- Set out facts establishing that the bankruptcy was filed in good faith.
- Include as an attachment a declaration in support of the motion in substantially the form prescribed by N.D./S.D. Local Bankruptcy Form MSSB-DIAS.
- Be served on all parties against whom imposition of the stay is sought within two days of filing the motion and declaration. The party seeking the stay must also file a certificate of service reflecting same.

(Miss. Bankr. L.R. 4001-1(f)(1).)

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(f)(2) provides that:

- The court will set the motion for hearing on 14 days' notice or less under extraordinary circumstances.
- Filing the motion does not impose the stay. The debtor or a party in interest must instead seek injunctive relief by filing a complaint and motion for a temporary restraining order, to enjoin any collection action that may occur before the hearing on the imposition motion.

A party in interest opposing the imposition of the stay must file a response stating specifically why the motion should not be granted or setting out conditions the court should impose in granting the motion (Miss. Bankr. L.R. 4001-1(f)(3)). The court may grant a properly supported motion without a hearing in the absence of a timely filed response (Miss. Bankr. L.R. 4001-1(f)(4)).

Abandonment or Disposition of Property

N.D./S.D. Miss. Local Bankruptcy Court Rule 6007-1(b) is clear that an abandonment of property does not, by itself, affect the automatic stay. The rule provides that when a party files a motion seeking to have the trustee abandon property from the estate, the movant ordinarily should also seek relief from the automatic stay under section 362(d) of the Bankruptcy Code and comply with the requirements of N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(a)(1)(B).

If the creditor, debtor, and trustee agree about relief from stay and abandonment, they should submit an agreed order in compliance with N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(a)(1)(D) (Miss. Bankr. L.R. 6007-1(c)).

Bankruptcy Appeals

The steps to appealing a bankruptcy court order or judgment in the N.D./S.D. Miss. are primarily covered by Federal Rules of Bankruptcy Procedure 8001 to 8028.

At this time, the US Court of Appeals for the Fifth Circuit has not convened any special bankruptcy appellate panels (BAPs). All bankruptcy appeals not certified for direct appeal to the Fifth Circuit (see Direct Appeals to Fifth Circuit) go to the district court.

Procedural Rules Applicable to Bankruptcy Appeals

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

- The Federal Rules of Bankruptcy Procedure.
- The Federal Rules of Appellate Procedure.
- The Official Bankruptcy Forms.
- The N.D./S.D. Miss. Local Civil Rules, N.D. Miss. General Orders, and S.D. Miss. General Orders.
- The N.D./S.D. Miss. Local Bankruptcy Court Rules, Bankr. N.D. Miss. Standing Orders, and Bankr. S.D. Miss. Standing Orders.
- The Rules of the US Court of Appeals for the Fifth Circuit.
- The preferences of the assigned judge (see N.D. Miss. Judges' Information and S.D. Miss. Judges' Information).

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 more information on:

- 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 N.D. Miss. Civil Cover Sheet and S.D. Miss. Civil Cover Sheet).
- Filing fees, see Docket Fee.
- Docketing of appeal in the district court, review Federal Rule of Bankruptcy Procedure 8003(d) (see Bankruptcy Appeals Checklist: Docketing of Appeal in the District Court or BAP).
- Obtaining a stay of a bankruptcy court order or judgment pending appeal, review Federal Rule of Bankruptcy Procedure 8007 (see Fifth 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. N.D. Miss.: Transcripts and Audio Files, Bankr. S.D. Miss.: Transcript Order Form, and Bankruptcy Appeals Checklist: Transcripts).
- Certifying an appeal directly to the Fifth Circuit, review 28 U.S.C. Section 158, Federal Rule of Bankruptcy Procedure 8006, Official Bankruptcy Form B424, and 5th Cir. R. 47.4 (see Direct Appeals to Fifth Circuit, 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. The Fifth Circuit Rules apply to appeals to the Fifth Circuit and provide page and word limitations and other guidelines for briefs (5th Cir. R. 28 and 5th Cir. R. 47.4).

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. N.D. Miss.: Bankruptcy Fees and Bankr. S.D. Miss.: Filing Fees).
- Complete the civil cover sheet (see N.D. Miss. Civil Cover Sheet and S.D. Miss. Civil Cover Sheet).

N.D./S.D. Miss. Local Bankruptcy Court Rule 8003-1 provides that:

- The party filing a notice of appeal or cross-appeal must serve the notice on counsel for an official committee in the bankruptcy case and file a certificate of service with the notice (Miss. Bankr. L.R. 8003-1(c)(1)).
- Within 21 days of service of a notice of appeal, any official committee must file with the bankruptcy clerk a request for notice if it wants to be placed on the service list. This request becomes part of the record on appeal and is transmitted to the district court by the bankruptcy clerk. (Miss. Bankr. L.R. 8003-1(c)(2).)
- These rules do not affect any official committee's rights to intervene or obligation to seek leave to do so if not named in an appeal (Miss. Bankr. L.R. 8003-1(c)(3)).

Docket Fee

The filing fee for a notice of appeal can be found on the bankruptcy court's website (see Bankr. N.D. Miss.: Bankruptcy Fees and Bankr. S.D. Miss.: Filing Fees). ECF users must pay all filing fees for ECF transactions through their PACER account, which accepts payment by credit card, debit card, or checking or savings account. All fees must be paid on the same day the ECF filing transaction is submitted (see N.D. Miss. Administrative Procedures for Electronic Case Filing System, Section III.A: ECF Payment of Required Fees and S.D. Miss. Administrative Procedures for Electronic Case Filing, Chapter 2: ECF Payment of Filing Fees). These fees are not refunded if the appeal is dismissed or denied.

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

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

The Fifth 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 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 *Ruiz v. Estelle*, 666 F.2d 854, 856 (5th Cir. 1982);

Arnold v. Garlock, Inc., 278 F.3d 426, 438-39 (5th Cir. 2001); *Moore v. Tangipahoa Parish Sch. Bd.*, 507 F. App'x 389, 392 (5th Cir. 2013).)

Direct Appeals to Fifth Circuit

Appellants can appeal directly to the Fifth Circuit with permission as provided in 28 U.S.C. Section 158(d)(2) and Federal Rule of Appellate Procedure 6. To the procedures set out in the Federal Rules of Appellate Procedure, the Fifth Circuit clarifies at 5th Cir. R. 5 that the certificate of interested persons required by 5th Cir. R. 28.2.1 does not count toward the page limit.

5th Cir. R. 47.4 states that the Federal Rules of Appellate Procedure and the Fifth Circuit's local rules apply to direct bankruptcy appeals. Under this rule, an appeal docketed in the district court or with the clerk of any authorized BAP cannot be transferred to the Fifth Circuit unless the district judge or BAP approves the transfer in writing.

Alternatives to Appeal

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

The Fifth 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 *Mason v. Fremont Inv. & Loan*, 671 F. App'x 880, 884 (5th Cir. 2016).)

Parties considering these devices should review Federal Rules of Bankruptcy Procedure 9023 and 9024 and applicable local rules for their jurisdiction. 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).

Bankruptcy Exemptions

Background/Federal Requirements

An individual debtor is entitled to claim certain property as exempt from the bankruptcy estate, which means the property cannot be used to satisfy claims against the estate. Bankruptcy exemptions do not operate automatically, and all property remains property of the estate until the debtor claims it exempt and the objection period expires. A properly claimed exemption will immunize exempt property from seizure or attachment for satisfaction of debts incurred before the debtor's bankruptcy proceeding. Bankruptcy exemptions are intended to ensure that a debtor can emerge from bankruptcy with enough possessions to make a fresh start.

Under section 522(b) of the Bankruptcy Code, an individual debtor can choose which exemption system is most favorable for the debtor's circumstances. The debtor can use exemptions granted either:

- Under the federal Bankruptcy Code.
- By the state of the debtor's domicile, with exemptions provided under other federal laws.

The debtor cannot choose exemptions from both the federal Bankruptcy Code and the state law scheme. The debtor must choose one or the other.

For more information on bankruptcy exemptions, see Practice Note, Bankruptcy Exemptions for Individual Debtors: Overview.

Bankruptcy Rule 4003(a)

The debtor must list all exempt property on Schedule C: The Property You Claim as Exempt (Individuals) (Official Bankruptcy Form B106C). If the debtor fails to timely file a list of exemptions, a dependent of the debtor may file the list within 30 days after the expiration of the time allowed by Federal Rule of Bankruptcy Procedure 1007 (Fed. R. Bankr. P. 4003(a)).

Bankruptcy Rule 4003(b)

A party in interest may object to an exemption claim:

- Within 30 days of the conclusion of the section 341 meeting of creditors.
- If the debtor amends or supplements the list of exemptions, within 30 days of that amendment or supplement.

An extension of time to object to an exemption claim may be granted for cause only if the extension is requested before the expiration of the time to object (Fed. R. Bankr. P. 4003(b)(1)).

The trustee can object to an exemption on the basis that the claim was fraudulent for up to one year after the closing of the case (Fed. R. Bankr. P. 4003(b)(2)).

An objection based on the state homestead exemption under section 522(q) of the Bankruptcy Code must be filed before the closing of the case (Fed. R. Bankr. P. 4003(b)(3)).

Copies of any objection are given to:

- The trustee.
- The debtor.
- The debtor's attorney.
- The person filing the list of exemptions and that person's attorney.

(Fed. R. Bankr. P. 4003(b)(4).)

Bankruptcy Rule 4003(c)

It is the objecting party's initial burden to demonstrate that the exemption is not valid (Fed. R. Bankr. P. 4003(c)).

Bankruptcy Rule 4003(d)

To avoid a lien under section 522(f) of the Bankruptcy Code, the debtor must commence a contested matter, governed by Federal Rule of Bankruptcy Procedure 9014, or serve a Chapter 12 or Chapter 13 plan on an affected creditor in the manner of service of a summons and complaint provided by Federal Rule of Bankruptcy Procedure 1004 (Fed. R. Bankr. P. 4003(d)).

Local Rules

The Mississippi bankruptcy courts have local rules that supplement the requirements of Federal Rule of Bankruptcy Procedure 4003. Mississippi is an opt-out state. Debtors are not allowed to use the federal exemptions of section 522(b) of the Bankruptcy Code. Exemptions granted by the state of Mississippi can be found at Miss. Code Ann. § 85-3-1.

On the schedule of exempt property, the debtor must list a statutory citation for all state and federal exemptions claims (Miss. Bankr. L.R. 4002-1(a)(3)).

Amendment to Claim of Exemptions

The debtor must file any amendment to a claim of exemptions together with a notice of amendment stating that any party in interest may file an objection to the list of exempt property within the later of 30 days after:

- The meeting of creditors is concluded.
- Any amendments to the list or supplemental schedules are filed.

(Miss. Bankr. L.R. 4003-1(a).) The debtor must serve both on the trustee, the US Trustee, and all creditors and file a certificate of service showing that both the amendment and notice were duly served (Miss. Bankr. L.R. 4003-1(a)).

Objecting to a Claim of Exemptions

N.D./S.D. Miss. Local Bankruptcy Court Rule 4003-1(b) provides that:

- If the schedules are amended to add a creditor, the added creditor must have 30 days from the date of service of the amendment to object.
- The debtor must provide notice of the objection period to any affected creditor and file a certificate of service reflecting that notice was given.

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

Contents of the Cash Collateral Motion

In all jurisdictions, a cash collateral motion must be:

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

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

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

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

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

Service of the Cash Collateral Motion

The cash collateral motion must be served on:

- Any entity with an interest in the cash collateral.
- Any committee or its authorized agent formed under:
  - section 705 of the Bankruptcy Code in a Chapter 7 case; or
  - section 1102 of the Bankruptcy Code in a Chapter 11 case (see Practice Notes, Chapter 11 Creditors' Committees 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 to any other entities as the court may direct (Fed. R. Bankr. P. 4001(b)(3) and see Service of the Cash Collateral Motion).

Local Rules

The Mississippi bankruptcy courts have local rules that supplement the requirements of Federal Rule of Bankruptcy Procedure 4001(c).

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(A) provides that:

- Cash collateral and financing requests are financing motions, subject to the same local rules.
- Financing motions should be filed according to Federal Rule of Bankruptcy Procedure 2002, 4001, and 9014.
- All financing motions filed on an expedited or emergency basis, specifically first day motions, must be filed according to N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(f) and N.D./S.D. Miss. Local Bankruptcy Court Rule 9014-1.

Highlighted Provisions

Motions to use cash collateral must:

- Recite whether the relief sought includes certain provisions.
- Identify the provision in the proposed order, stipulation, or loan agreement.
- Justify the inclusion of the provision.

(Miss. Bankr. L.R. 4001-1(b)(1)(B).) In the absence of extraordinary circumstances, the court will not approve an interim cash collateral order that includes provisions identified in N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(B)(i)-(viii) (see Interim Relief). This table summarizes the requirements of N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(B).

Provision	N.D./S.D. Miss. Required Information
Essential terms of the proposed use of cash collateral.	• Maximum borrowing available on a final basis. • Interim borrowing limit. • Borrowing conditions. • Interest rate. • Maturity. • Events of default. • Use of funds limitations and protections afforded under section 363 of the Bankruptcy Code. • All provisions described in Federal Rule of Bankruptcy Procedure 4001(c)(1)(B) and (d)(1)(B). (Miss. Bankr. L.R. 4001-1(b)(1)(C).)

Provision	N.D./S.D. Miss. Required Information
Priming liens.	Provisions that prime any secured lien without the consent of that lienor (Miss. Bankr. L.R. 4001-1(b)(1)(B)(v)).
Cross-collateralization.	Provisions that grant liens on the debtor's property that is unencumbered by consensual liens (Miss. Bankr. L.R. 4001-1(b)(1)(B)(vi) and see Practice Note, Cash Collateral: Overview: Cross-Collateralization).
Liens on avoidance actions.	Provisions that grant liens on the debtor's property that is unencumbered by consensual liens (Miss. Bankr. L.R. 4001-1(b)(1)(B)(vi)).
Court's power and discretion; fiduciary duties.	Provisions or findings of fact that purport to bind a later appointed trustee to the agreement of the debtor (Miss. Bankr. L.R. 4001-1(b)(1)(B)(viii)).
Termination or default.	Provisions that grant the secured creditor the right to exercise remedies on default by the debtor, without notice to the debtor and other parties in interest, a hearing, and further order of the court (Miss. Bankr. L.R. 4001-1(b)(1)(B)(vii)).
Stipulations and investigation period.	Any provisions or findings of fact that bind the estate or other parties in interest concerning the validity, perfection, priority, or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of the formation to investigate these matters (Miss. Bankr. L.R. 4001-1(b)(1)(B)(ii) and see Practice Note, Cash Collateral: Overview: Validation of Prepetition Liens).

Interim Relief

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(D) provides that:

- In the absence of extraordinary circumstances, the court will not approve an interim cash collateral order that includes provisions identified in N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(B)(i)-(viii) (see Highlighted Provisions).
- The court may grant interim relief pending review by interested parties on cash collateral motions filed shortly after the petition date.
- The court will only grant interim relief that is necessary to avoid immediate harm to the estate.

Final Orders

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(E) provides that:

- A final hearing on a cash collateral motion will be ordinarily held five days after the organizational meeting of the creditors' committee.
- Final cash collateral orders may only be entered after notice and a hearing under Federal Rule of Bankruptcy Procedure 4001.

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 N.D./S.D. Miss. does not have any local rules regarding Chapter 15 cases.

Claims Trading

Background/Federal Requirements

Bankruptcy claims trading generally involves the buying and selling of claims against companies seeking relief under the Bankruptcy Code. Estimates of the size of the bankruptcy claims trading market vary widely and range in recent years from over $40 billion in 2018 to an estimated $25 billion in 2016. The vast majority of the claims trading market centers on those claims which are, at least to some degree, liquidated and undisputed. Buyers and sellers trade secured claims, trade claims, and counterparty claims.

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

For more information on claims trading, see Practice Note, Bankruptcy Claims Trading: Basic Concepts.

Bankruptcy Rule 3001(e)(1)

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

Bankruptcy Rule 3001(e)(2)

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

Bankruptcy Rule 3001(e)(3)

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

Bankruptcy Rule 3001(e)(4)

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

Local Rules

Transfer of Claim Other Than for Security After Proof Filed

N.D./S.D. Miss. Local Bankruptcy Court Rule 3001-1(e)(2) provides that:

- Any claim transfer or assignment filed after a proof of claim has already been filed must include the claim number.
- In Chapter 11, if no proof of claim has been filed, the claim transfer or assignment must reference to the scheduled claim including both classification and amount.

Notice Not Required

N.D./S.D. Miss. Local Bankruptcy Court Rule 3001-1(e)(6) provides that:

- If a claim transfer containing the signatures of both the transferor and transferee is filed under Federal Rule of Bankruptcy Procedure 3001(e)(4), the clerk is not required to provide notice of the filing or set an objection deadline.
- The transferor is deemed to have waived any objection and the records of the court will reflect that the claim has been transferred.

Order Not Required

Where notice is required, absent a timely filed objection, the claim must be noted as having been transferred without any further order of the court (Miss. Bankr. L.R. 3001-1(e)(7)).

Closing and Reopening a Chapter 7 Case

Background/Federal Requirements

Closing the Case

The court closes a Chapter 7 bankruptcy case either:

- When the Chapter 7 trustee has fully administered the case.
- If the debtor fails to file a statement of completion of a personal financial management course before the 60th day after the initial date set for the section 341 meeting of creditors.

(Fed. R. Bankr. P. 5009(a), (b).)

A case is fully administered when:

- The Chapter 7 trustee files a final report and account.
- Neither the US Trustee nor a party in interest objects to the final report in 30 days from its filing.
- The Chapter 7 trustee has addressed all administrative claims.

For more information on closing a case, see Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Closing a Fully Administered Chapter 7 Case and Closing a Chapter 7 Case for Failure to File Statement of Completion of Personal Financial Management Course.

The Chapter 7 trustee files a notice of the filing of the final report and account providing:

- The date and time of a hearing to consider:
  - the final report; and
  - requests for allowance of compensation requested by the Chapter 7 trustee and its professionals.
- The total amount of:
  - receipts and disbursements;
  - other paid claims; and
  - allowed general unsecured claims.
- The time and date of any hearing on the abandonment of estate property.

(See Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Final Report and Account.)

Reopening a Chapter 7 Case

The court has discretion to reopen a closed case under section 350(b) of the Bankruptcy Code on a motion by:

- The debtor.
- A party in interest, including the Chapter 7 trustee.

(Fed. R. Bankr. P. 5010.)

The court only appoints a Chapter 7 trustee if the court determines that a trustee is necessary to either:

- Protect the interests of:
  - creditors; and
  - the debtor.
- Insure efficient administration of the estate.

(Fed. R. Bankr. P. 5010.)

For more information on reopening a Chapter 7 case, see Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Reopening a Closed Chapter 7 Case.

Local Rules

The N.D./S.D. Miss. does not have any local rules regarding closing a Chapter 7 case.

A motion to reopen a Chapter 7 case must be in writing and state whether the movant believes a trustee is necessary to protect the interests of creditors and the debtor or to ensure efficient administration of the estate (Miss. Bankr. L.R. 5010-1(a)). The motion must be served on:

- The debtor.
- The case trustee.

- Any affected party.
- The US Trustee.

(Miss. Bankr. L.R. 5010-1(b).) Whether to hold a hearing on the motion or provide additional notice to creditors or parties in interest is within the court's discretion (Miss. Bankr. L.R. 5010-1(c)).

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 5010-1(d), when filing a motion to reopen for filing the debtor's postpetition financial management certification and for entry of a discharge, the movant must provide notice to all parties listed on the most recent CM/ECF creditor mailing matrix of the 21-day objection period.

Complex Chapter 11 Case Procedures

Background/Federal Requirements

Many bankruptcy courts have adopted case management procedures and processes designed to facilitate the filing and administration of complex Chapter 11 cases, or mega cases, to ensure the least possible disruption to the debtor's business and to enhance the chances for success. These procedures make courts more responsive, predictable, and accessible.

Complex Chapter 11 cases are typically defined as those exhibiting a combination of one or more of the following factors, including:

- Debt over a specified amount.
- More than a certain number of creditors or other parties in interest.
- Publicly traded debt or equity.
- The need for simplification of noticing and hearing procedures to reduce delays and expense.

Complex Chapter 11 case procedures provide processes and requirements for certain aspects of the case, including:

- Expedited first day hearings.
- Preset omnibus hearing dates on a weekly, bi-weekly, or monthly basis.
- Operational guidelines for:
  - paying professional fees;
  - selling assets; and
  - obtaining DIP financing.

If counsel believe their case should be classified as a complex Chapter 11 case, they typically must file with the petition a notice, request, or motion to have the case designated as complex. The court, in its discretion, weighs the factors in deciding whether to designate a case as complex. If the court approves the designation, then the case is designated as complex, and the complex Chapter 11 case procedures apply.

Local Rules

There are no local rules governing complex Chapter 11 procedures in the N.D./S.D. Miss.

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 for the objecting lender (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 Is 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

The Mississippi bankruptcy courts have local rules that supplement the requirements of Federal Rule of Bankruptcy Procedure 4001(c).

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(A) provides that:

- Cash collateral and financing requests are financing motions, subject to the same local rules.
- Financing motions should be filed according to Federal Rule of Bankruptcy Procedure 2002, 4001, and 9014.
- All financing motions filed on an expedited or emergency basis, specifically first day motions, must be filed according to N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(f) and N.D./S.D. Miss. Local Bankruptcy Court Rule 9014-1.

Highlighted Provisions

DIP financing motions must:

- Recite whether the relief sought includes certain provisions.
- Identify the provision in the proposed order and loan agreement.
- Justify the inclusion of the provision.

(Miss. Bankr. L.R. 4001-1(b)(1)(B).) In the absence of extraordinary circumstances, the court will not approve an interim DIP financing order that includes provisions identified in N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(B)(i)-(viii) (see Interim Relief). This table summarizes the requirements of N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(B).

Provision	N.D./S.D. Miss. Required Information
Essential terms of the proposed use of DIP financing.	• Maximum borrowing available on a final basis. • Interim borrowing limit. • Borrowing conditions. • Interest rate. • Maturity. • Events of default. • Use of funds limitations and protections afforded under section 364 of the Bankruptcy Code. • All provisions described in Federal Rule of Bankruptcy Procedure 4001(c)(1)(B) and (d)(1)(B). (Miss. Bankr. L.R. 4001-1(b)(1)(C).)
Priming liens.	Provisions that prime any secured lien without the consent of that lienor (Miss. Bankr. L.R. 4001-1(b)(1)(B)(v)).

Provision	N.D./S.D. Miss. Required Information
Cross-collateralization.	Provisions that grant liens on the debtor's property that is unencumbered by consensual liens (Miss. Bankr. L.R. 4001-1(b)(1)(B)(vi) and see Practice Note, DIP Financing: Overview: Increased Collateral Securing Prepetition Debt).
Roll-ups.	Any roll-up provision that either: • Deems prepetition secured debt to be postpetition debt. • Uses postpetition loans from a prepetition secured creditor to pay part of or all that secured creditor's prepetition debt, other than as provided in section 552(b) of the Bankruptcy Code. (Miss. Bankr. L.R. 4001-1(b)(1)(B)(iii) and see Practice Note, Roll-Up DIP Financing.)
Liens on avoidance actions.	Provisions that grant liens on the debtor's property that is unencumbered by consensual liens (Miss. Bankr. L.R. 4001-1(b)(1)(B)(vi)).
Court's power and discretion; fiduciary duties.	Provisions or findings of fact that purport to bind a later appointed trustee to the agreement of the debtor (Miss. Bankr. L.R. 4001-1(b)(1)(B)(viii)).
Termination or default.	Provisions that grant the secured creditor the right to exercise remedies on default by the debtor, without notice to the debtor and other parties in interest, a hearing, and further order of the court (Miss. Bankr. L.R. 4001-1(b)(1)(B)(vii)).
Stipulations and investigation period.	Any provisions or findings of fact that bind the estate or other parties in interest concerning the validity, perfection, priority, or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if formed, at least 60 days from the date of the formation to investigate these matters (Miss. Bankr. L.R. 4001-1(b)(1)(B)(ii) and see Practice Note, DIP Financing: Overview: Validation of Prepetition Liens and Releases).

Interim Relief

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(D) provides that:

- In the absence of extraordinary circumstances, the court will not approve an interim DIP financing order that includes provisions identified in N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(B)(i)-(viii) (see Highlighted Provisions).
- The court may grant interim relief pending review by interested parties on DIP financing motions filed shortly after the petition date.
- The court will only grant interim relief that is necessary to avoid immediate harm to the estate.

Final Orders

N.D./S.D. Miss. Local Bankruptcy Court Rule 4001-1(b)(1)(E) provides that:

- A final hearing on a DIP financing motion will be ordinarily held five days after the organizational meeting of the creditors' committee.
- Final DIP financing orders may only be entered after notice and a hearing under Federal Rule of Bankruptcy Procedure 4001.

Domestic Support Obligations

Background/Federal Requirements

A domestic support obligation, defined in section 101(14A) of the Bankruptcy Code, is a debt that is:

- Owed to or recoverable by:
  - the debtor's spouse (§ 101(14A)(A)(i), Bankruptcy Code);
  - the debtor's former spouse (§ 101(14A)(A)(i), Bankruptcy Code);

  - the debtor's child (§ 101(14A)(A)(i), Bankruptcy Code);
  - the parent, legal guardian, or responsible relative of the debtor's child (§ 101(14A)(A)(i), Bankruptcy Code); or
  - a governmental unit (§ 101(14A)(A)(ii), Bankruptcy Code).
- In the nature of alimony, maintenance, or child support (§ 101(14A)(B), Bankruptcy Code).
- Included in:
  - a separation agreement (§ 101(14A)(C)(i), Bankruptcy Code);
  - a divorce decree (§ 101(14A)(C)(i), Bankruptcy Code);
  - a property settlement agreement (§ 101(14A)(C)(i), Bankruptcy Code);
  - a court order (§ 101(14A)(C)(ii), Bankruptcy Code); or
  - a lawful determination by a governmental unit (§ 101(14A)(C)(iii), Bankruptcy Code).
- Not assigned to any nongovernmental entity except to collect the debt (§ 101(14A)(D), Bankruptcy Code).

A domestic support obligation:

- Can accrue before, on, or after the petition date and can accrue interest under applicable non-bankruptcy law (§ 101(14A), Bankruptcy Code).
- Cannot be discharged under any chapter of the Bankruptcy Code, including Chapters 7, 11, 12, or 13.

(§ 523(a)(5), Bankruptcy Code.)

A Chapter 12 or 13 debtor must remain current on postpetition domestic support obligations to receive a discharge under Chapters 12 and 13 (§§ 1228(a) and 1328(a), Bankruptcy Code). An individual Chapter 11 debtor must remain current on postpetition domestic support obligations as a condition to confirmation of its plan (§ 1129(a)(14), Bankruptcy Code).

Official Bankruptcy Form B2830

Official Bankruptcy Form B2830 is used to certify under section 1328(a) of the Bankruptcy Code that the debtor either:

- Owed no domestic support obligation when the bankruptcy petition was filed and was not required to pay any domestic support obligation since then.
- Was required to pay a domestic support obligation and has paid all amounts:
  - required under the Chapter 13 plan; and
  - that became due between the petition date and the day of the certification.

The debtor must also certify that the debtor has either:

- Not claimed an exemption under section 522(b)(3) of the Bankruptcy Code or state or local law, as specified in section 522(p)(1) and (2) of the Bankruptcy Code:
  - in property that the debtor or a dependent uses as a residence, claims as a homestead, or acquired as a burial plot; and
  - that exceeds $170,350 in value.
- Claimed an exemption under section 522(b)(3) or state or local law, as specified in section 522(p)(1) and (2):
  - in property that the debtor or a dependent uses as a residence, claims as a homestead, or acquired as a burial plot; and
  - that exceeds $170,350 in value.

The Instructions to Official Bankruptcy Form 2830 provide that:

- In a joint case, each debtor must file the certifications.
- The debtor must make the certifications after it has completed the plan payments.

Local Rules

The N.D./S.D. Miss. has no local rules or forms specifically addressing domestic support obligations.

Electronic Court Filing and Transmission of Highly Sensitive Documents

Background/Federal Requirements

Cybersecurity is an important issue for bankruptcy professionals and how they counsel debtor, creditor, and other bankruptcy clients. The debtor and estate professionals collect large amounts of personally identifiable information (PII) and other sensitive data that has significant value to hackers and other cyberattackers.

After the disclosure of widespread cybersecurity breaches of both private sector and government computer systems, in 2021, US federal courts began implementing new security procedures to protect highly sensitive confidential documents (HSDs) filed with the courts. Many US bankruptcy courts have entered orders requiring parties to file HSDs outside of the electronic court filing (CM/ECF) system.

Under the new procedures, HSDs filed with federal courts will be accepted for filing in paper form or by a secure

electronic device, such as a thumb drive, and stored in a secure stand-alone computer system. These sealed HSDs will not be uploaded to CM/ECF. This new practice will not change current policies regarding public access to court records, since sealed records are confidential and currently are not available to the public.

Federal courts, including bankruptcy courts, will issue standing or general orders regarding the new HSD procedures. While the procedures apply to all HSDs filed with a court, not all sealed filings are considered an HSD. The specific bankruptcy court orders will address the type of filings a court does and does not consider to be HSDs.

Local Rules

S.D. Miss. Local Standing Order 2010-06 provides that copies of payment advices or other evidence of payment, addressed in section 521(a)(1)(B)(iv) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 1007(b), received within 60 days before the petition date, must not be filed with the court and instead must be provided to the case trustee at least seven days before the first date set for the meeting of creditors. At the time the pay advices are provided to the trustee, the debtor must file a certificate with the clerk of court evidencing compliance with this Standing Order.

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

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 1007-1(c), if a bankruptcy petition is not accompanied by all preliminary documents, the clerk must notify the debtor or debtor's attorney of the deficiency and requirement to cure the deficiency within 14 days of entry of the order for relief. The court may further extend the 14-day deadline under Federal Rule of Bankruptcy Procedure 9006(b)(1) "for cause shown." The court generally only grants the debtor a single 14-day extension to file preliminary documents. Any request for further extension must demonstrate good cause and may be summarily denied.

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

Expedited or Emergency Matters

N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(f)(1) provides that:

- Any request for hearing set within 14 days of the filing of a motion is classified as "expedited basis" or "emergency basis."
- A party seeking an expedited or emergency hearing, including hearing first day motions, must contact the courtroom deputy and explain the reason the matter should be heard on an expedited basis. Immediately thereafter, counsel for the movant must notify counsel for the respondent, if known, of the emergency hearing setting.

Procedure for First Day Motions in Chapter 11 Cases

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(g)(1), a first day motion is any motion or application filed in a Chapter 11 case before the earlier of the creditors' committee formation meeting or the meeting of creditors

for which the debtor requests a hearing or entry of an order in less than 14 days from the filing of the motion.

N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(g)(2) reserves first day motions for matters of genuine emergency to preserve assets of the estate or maintain ongoing business operations and for other matters the court deems appropriate.

N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(g)(3) provides that:

- After the petition is filed, debtor's counsel must contact the judge's chambers to schedule a hearing on first day motions.
- Debtor's counsel must file a notice of hearing identifying each first day motion and serve, at least 24 hours before the hearing, the notice along with all motions, applications, and proposed orders on:
  - the US Trustee;
  - the 20 largest unsecured creditors; and
  - any party directly affected by the relief sought in a first day motion.
- Debtor's counsel must file a certificate of service within 48 hours.

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(g)(4), within 48 hours of entry of a first day order, debtor's counsel must serve copies of the first day order and any related first day motion on the parties identified in N.D./S.D. Miss. Local Bankruptcy Court Rule 9013-1(g)(3) and anyone else as the court directs. Debtor's counsel must file a certificate of service within 48 hours reflecting this service.

Commencement of Case

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 1002-1(b), absent exigent circumstances, debtor's counsel must contact the US Trustee at least two business days before filing a voluntary Chapter 11 petition and advise the US Trustee of the anticipated filing and the matters on which the debtor intends to seek immediate relief.

While the rules do not require it, counsel should call the court staff a couple days ahead of an anticipated Chapter 11 filing to advise of the matters on which the debtor intends to seek immediate relief and identify a time when the judge's calendar will permit first day motions. The Mississippi bankruptcy judges are assigned based on the division in which the debtor files. One judge is assigned to each division. Once debtor's counsel determine the proper division in which to file, they can contact the assigned judge's chambers and determine the court's availability to hear anticipated first day motions. Appropriate contact information is published on the court's website.

Post-Confirmation Requirements

Background/Federal Requirements

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

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

Local Rules

Motion for Final Decree

N.D./S.D. Miss. Local Bankruptcy Court Rule 3022-1(a)(1) provides that:

- A party in interest can submit a written motion seeking the entry of a final decree closing the case any time after a confirmed Chapter 11 plan has been entered and all fees due under 28 U.S.C. Section 1930 have been paid.
- The motion must include a proposed final order that:
  - orders the closing of the lead case and any jointly administered case; and
  - identifies the case name and number of each case to be closed under the order.

The motion must be served on:

- The debtor.
- The trustee, if any.
- The US Trustee.
- All official committees.
- All creditors filing a request for notice.

(Miss. Bankr. L.R. 3022-1(a)(2).)

Final Report

The debtor or trustee, if any, must file a final report and accounting in the form required by the US Trustee at least 14 days before the hearing on a motion for a final decree (Miss. Bankr. L.R. 3022-1(a)(3)).

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 N.D./S.D. Miss. does not have any local rules or specific guidelines governing prepackaged bankruptcies.

Professional Fee Requests

Background/Federal Requirements

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

- The bankruptcy court must approve the professional's retention on notice to the US Trustee and key creditors. For information on getting retained as a professional to the DIP, see Practice Note, Getting Retained as a Professional to the Debtor-in-Possession.
- 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

N.D./S.D. Miss. Local Bankruptcy Court Rule 2016-1(b) provides that:

- Failure to timely file the statement required by Federal Rule of Bankruptcy Procedure 2016(b) is cause for dismissal.
- The US Trustee reviews the statement of disclosure of compensation during the section 341 meeting to verify that it complies with Federal Rule of Bankruptcy Procedure 2016(b). If the statement does not comply, the US Trustee files a motion to show cause why the case should not be dismissed.

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

Application for and Order of Employment

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 2014-1(a)(1), in a contingency case, an application to employ multiple professionals must include a specific allocation of fees, by percentage.

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 2014-1(a)(2), an order approving employment of a professional does not constitute approval of the professional's fee contract or compensation. Request for approval of the fee contract or compensation must be made by separate application according to Federal Rule of Bankruptcy Procedure 2016 and must be approved by a separate order.

Nunc Pro Tunc Application

N.D./S.D. Miss. Local Bankruptcy Court Rule 2014-1(a)(3) provides that:

- If an employment application seeks authority retroactive to commencement of the case, the application must include an explanation of:
  - why the application was not filed earlier;
  - why the order authorizing employment is required *nunc pro tunc*; and
  - how approval may prejudice any parties in interest.
- All creditors in a case must be served with notice of a *nunc pro tunc* application and it may only be approved after notice and an opportunity for hearing.

Proofs of Claim and Objections to Claims

Background/Federal Rules

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

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

For more information on proofs of claim, see Practice Notes, Filing a Proof of Claim in a Chapter 11 Bankruptcy Case and Filing a Proof of Claim: Pitfalls and Precautions.

For more information on objections to claims, see Practice Note, Objections to Claims: Overview.

Local Rules

Time for Filing

N.D./S.D. Miss. Local Bankruptcy Court Rule 3003-1(c)(3)(i) provides that:

- In a Chapter 9 or Chapter 11 reorganization case, unless otherwise ordered by the court, creditors must file proofs of claim on or before 120 days (or 70 days in a case filed under Subchapter V of Chapter 11) from the date of the order for relief.
- Governmental units must file proofs of claim within 180 days after entry of an order for relief.

As provided in N.D./S.D. Miss. Local Bankruptcy Court Rule 1009-1(a)(1)(B)(iv)(b), in a Chapter 11 case, where the debtor or trustee amends the debtor's schedules to change the amount, nature, classification, or characterization of a debt after a bar date has been set, the debtor or trustee must serve notice of the amendment on the affected creditor within 14 days of its filing and serve notice of the creditor's right to file a proof of claim by the later of:

- The bar date.
- 30 days from the date of the notice.

(Miss. Bankr. L.R. 3003-1(c)(3)(ii).)

Form and Content

A creditor asserting a secured claim must submit, as an attachment, proof that the asserted security interest has been perfected (Miss. Bankr. L.R. 3001-1(a)).

Filing Proof of Claim or Interest

As provided in N.D./S.D. Miss. Local Bankruptcy Court Rule 1009-1(a)(1)(B)(iv)(a), in a Chapter 7, 12, or 13 case, where the debtor amends Schedule D or E/F or the creditor matrix to add any creditors, the debtor must serve on these additional creditors by first class mail notice informing the creditor of its right to file a proof of claim within 70 days from the date of notice (Miss. Bankr. L.R. 3002-1(c)).

Objections to Claims

Any objection to claim must include:

- The name of the claimant.
- The claim number.
- The claim amount.
- The basis for the objection.
- The amount of any claim to which there is no objection.

(Miss. Bankr. L.R. 3007-1(a)(3).)

N.D./S.D. Miss. Local Bankruptcy Court Rule 3007-1(a)(4) provides that:

- An objection to a claim is a contested matter and may be considered after notice of an opportunity for hearing.
- The objecting party must file and serve a copy of the objection with notice of a 30-day response period on the claimant, on the debtor or debtor-in-possession, on the trustee, and as otherwise required by Federal Rule of Bankruptcy Procedure 3007.
- If a timely response to an objection is filed, a hearing on the objection will be conducted according to Federal Rule of Bankruptcy Procedure 3007.

Reaffirmation of Debt

Background/Federal Requirements

A debtor may choose to keep a loan in place rather than discharge the loan in bankruptcy, especially if the debtor wants to retain the property, such as a vehicle or a family home, that is subject to a security interest. To retain property that acts as collateral for a loan, the debtor can enter into a new contract for the loan with the creditor called a reaffirmation agreement. Under a reaffirmation agreement, the debtor:

- Reaffirms personal liability on the debt that would be otherwise discharged under section 524(a)(1) of the Bankruptcy Code.
- Retains the property.
- Continues to make payments on the loan to prevent the creditor from foreclosing on its underlying collateral.

Reaffirmation is governed by section 524 of the Bankruptcy Code. A reaffirmation agreement must strictly comply with the requirements of section 524(c), (d), and (m) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 4004(c)(1)(J), (K), and (c)(2) and 4008 to be valid.

For more information on reaffirmation of debt in bankruptcy, see Practice Note, Reaffirmation of Debt in Chapter 7 Bankruptcy.

Bankruptcy Rule 4004(c)(1)(J)

If a motion to enlarge the time to file a reaffirmation agreement is pending (Fed. R. Bankr. P. 4008(a)), the bankruptcy court will not grant a Chapter 7 discharge, even if the time for filing an objection to discharge has expired (Fed. R. Bankr. P. 4004(c)(1)(J)).

Bankruptcy Rule 4004(c)(1)(K)

If a presumption has arisen that the reaffirmation agreement is an undue hardship on the debtor under section 524(m) of the Bankruptcy Code and the court has not concluded the hearing on this presumption, the bankruptcy court will not grant a Chapter 7 discharge, even if the time for filing an objection to discharge has expired (Fed. R. Bankr. P. 4004(c)(1)(K)).

Bankruptcy Rule 4004(c)(2)

A reaffirmation agreement must be entered into before discharge (§ 524(c)(1), Bankruptcy Code). However, the agreement does not need to be approved by the court before discharge. For this reason, Federal Rule of Bankruptcy Procedure 4004(c)(2) allows a delay in the entry of the discharge order for 30 days on the debtor's motion and for further time on a motion made within the 30-day period.

Bankruptcy Rule 4008(a)

The reaffirmation agreement must be filed with the court no more than 60 days after the first date set for the meeting of creditors (§ 524(c)(3)(A)-(C), Bankruptcy Code; Fed. R. Bankr. P. 4008(a)). The court can, at any time and in its discretion, enlarge the time to file the reaffirmation agreement (Fed. R. Bankr. P. 4008(a)).

When filed, the reaffirmation agreement must be accompanied by:

- The reaffirmation cover sheet (Fed. R. Bankr. P. 4008(a); Official Bankruptcy Form B427).
- If applicable, an attorney declaration.

Bankruptcy Rule 4008(b)

The debtor's signed statement in support of the reaffirmation agreement is accompanied by a statement of the total income and expenses stated on the debtor's Schedules I (Official Bankruptcy Form B106I) and J (Official Bankruptcy Form B106J and Official Bankruptcy Form B106J-2). If there is a difference between the income and expenses stated on the debtor's statement in support of the reaffirmation agreement and Schedules I and J, the debtor's statement in support of the reaffirmation agreement should include an explanation of that difference (Fed. R. Bankr. P. 4008(b)).

Local Rules

N.D./S.D. Miss. Local Bankruptcy Court Rule 4002-1(b)(3) provides that after filing a petition and schedules, debtor's counsel must determine whether:

- The debtor wants to retain any assets subject to a security interest or lien and, if so, must contact each creditor to determine the fair value of the collateral and whether the creditor desires for the debtor to redeem or reaffirm the indebtedness secured by the collateral.
- The collateral is exempt property.
- There is any equity in the property of the estate.
- The property is redeemable.
- A reaffirmation is in the best interest of the debtor.

(Miss. Bankr. L.R. 4002-1(b)(3).)

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

Notice of Removal

Under N.D./S.D. Miss. Local Bankruptcy Court Rule 9027-1(a), a notice of removal must be filed according to N.D./S.D. Miss. Local Civil Rule 5(b).

Under N.D./S.D. Miss. Local Civil Rule 5(b), a party removing a case to bankruptcy court must:

- File a copy of the entire state court record no later than 14 days from the date of removal.
- File as separate docket items any unresolved motions that were filed in state court that they want to advance within 14 days of the case management conference.
- Cite bankruptcy as a jurisdictional basis for removal in the notice of removal and file the notice of removal with the US District Court Clerk's Office in the appropriate district and division.
- Promptly file a motion to transfer the case from district court to the bankruptcy court.

Procedure After Removal

If a statement filed by a party concerning the removed action states that the proceeding or any part of it is core, the party must also state that the party does or does not consent to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment (Miss. Bankr. L.R. 9027-1(e)).

When docketing the motion to transfer, counsel will be directed to docket the motion under an event entry on CM/ECF that will generate an immediate notice to the bankruptcy court that this motion has been filed in the district court. If the movant wants the motion to transfer to be heard immediately, the movant must style the motion "URGENT AND NECESSITOUS" and immediately contact the district judge's chambers according to N.D./S.D. Miss. Local Civil Rule 7(b)(8).

If the motion to transfer is filed under the wrong event, notice to the bankruptcy court will not be generated. If

the moving party fails to style the motion "URGENT AND NECESSITOUS" and contact the judge's chambers, the case similarly will be treated as any other newly filed or removed federal case. The district court will issue a Rule 16 Initial Order and set the matter for a Case Management Conference. Failure to follow the local rules could result in a delay of weeks before an adversary proceeding is opened. If a case removed to bankruptcy court appears to be moving forward in district court rather than being promptly transferred to the bankruptcy court, call the clerks of both the bankruptcy and district courts, explain the procedural posture, and they will help get the matter to the correct docket.

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 N.D./S.D. Miss. does not have any published local 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

N.D./S.D. Miss. Local Bankruptcy Court Rule 9019-1 provides that:

- The retention of local counsel is expressly required for attorneys not admitted in Mississippi.
- No restrictions are imposed on attorneys admitted in Mississippi who reside out of the Northern or Southern District.

Non-resident attorneys are not required to be admitted *pro hac vice* to:

- File an entry or notice of appearance. Even though not admitted to practice, filing this notice entitles the attorney to receive these notices, as they must be served on all creditors and parties in interest under Federal

Rule of Bankruptcy Procedure 2002. The filing attorney must serve notice of the appearance on:

  - the debtor;
  - the trustee;
  - the US Trustee; and
  - any entity having previously filed a notice of appearance.

- File a proof of claim.
- Attend the section 341 meeting.
- File a ballot in a Chapter 11 case.

(Miss. Bankr. L.R. 9010-1(b)(2)(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). They must, however, 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 *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010); *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, but whether to proceed by public or private sale is within the sound discretion of the trustee or debtor (see *Berg v. Scanlon (In re Alisa P'ship)*, 15 B.R. 802, 802 (Bankr. D. Del. 1981)). 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 *Newco Energy v. Energytec, Inc. (In re Energytec, Inc.)*, 739 F.3d 215, 218-19 (5th Cir. 2013); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 (3d Cir. 1986)).
- Have a legitimate business justification (see *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011); *Comm. 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 (Fed. R. Bankr. P. 6006(c); see Section 365 Requirements);
  - 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);
  - 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); and

- the Committee on Foreign Investment in the US if the sale implicates the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (for more information on FIRRMA, see Legal Update, FIRRMA Signed into Law, Expanding Scope of CFIUS Review).

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

The N.D./S.D. Miss. does not have any published local rules regarding section 363 sales.

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 N.D./S.D. Miss. Local Bankruptcy Court Rules impose an automatic bar date in Chapter 11 cases, unless the court orders otherwise. In a Chapter 9 or Chapter 11 reorganization case, unless otherwise ordered by the court, general proofs of claim must be filed on or before 120 days from the date of the order for relief (Miss. Bankr. L.R. 3003-1(c)(3)(i)).

The governmental bar date is 180 days after entry of an order for relief, unless otherwise ordered by the court (Miss. Bankr. L.R. 3003-1(c)(3)(i)).

The N.D./S.D. Miss. does not have local rules regarding bar date notices to mass tort claimants.

Subchapter V of Chapter 11

Background/Federal Requirements

Congress enacted the Small Business Reorganization Act (SBRA), which added a new Subchapter V to Chapter 11 of the Bankruptcy Code (Subchapter V), effective February 19, 2020. Subchapter V provides small businesses with aggregate liabilities of up to $3,024,725 (or $7,500,000 under the Bankruptcy Threshold Adjustment and Technical Corrections Act until June 21, 2024) with an opportunity to resolve outstanding liabilities in a streamlined cost-effective Chapter 11 bankruptcy proceeding.

The SBRA amends the definition of small business debtor in section 101(51D) of the Bankruptcy Code, changing the requirements for an individual or entity to qualify as a small business debtor. The amendments to the definition apply to both Subchapter V and small business cases as defined under section 101(51C) of the Bankruptcy Code.

An individual or entity that qualifies as a small business debtor as defined in section 101(51D) may now:

- Elect to proceed under new Subchapter V of Chapter 11 under new section 103(i) of the Bankruptcy Code.
- Elect to proceed as a small business case under the existing small business case provisions and requirements under section 101(51C) of the Bankruptcy Code, which was amended to specifically exclude a Subchapter V case from the definition of small business case.
- File a traditional (non-small business debtor) Chapter 11 case.

In a voluntary Chapter 11 case, the small business debtor must make its election on the bankruptcy petition. (Fed. R. Bankr. P. 1020(a).) In an involuntary Chapter 11 case, the debtor must file a statement with the bankruptcy court within 14 days of entry of the order for relief that it qualifies as a small business debtor and whether it elects to have Subchapter V apply (Fed. R. Bankr. P. 1020(a)). A debtor's Chapter 11 case becomes a small business case or a case under Subchapter V by virtue of the debtor's election unless and until the bankruptcy court enters a finding that the debtor's designation is not correct (Fed. R. Bankr. P. 1020(a)). Federal Rule of Bankruptcy Procedure 1009 provides that any voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor must give notice of the amendment to the trustee and to any affected entity.

All parties in interest, including the US Trustee, may object to the debtor's small business debtor or Subchapter V designation. However, the objection must be filed no later than 30 days after:

- The conclusion of the section 341 meeting.
- Any amendment to the debtor's designation.

(Fed. R. Bankr. P. 1020(b).)

The local rules of the bankruptcy court where the bankruptcy case is filed may provide specific guidance for Subchapter V cases. For more information on small business bankruptcy, see Practice Note, Small Business Bankruptcy Under the SBRA: Overview.

Local Rules

In Subchapter V cases, creditors must file proofs of claim on or before 70 days from the date of the order for relief (Miss. Bankr. L.R. 3003-1(c)(3)(ii)).

Unclaimed Funds

Background/Federal Requirements

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

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

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

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

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

For more information on unclaimed funds in bankruptcy cases, see Practice Note, Unclaimed Property in Bankruptcy.

Local Rules

The N.D./S.D. Miss. does not have a local rule that addresses unclaimed funds, but the S.D. Miss. has Instructions for Application for Payment of Unclaimed Funds (Instructions) and an official form of Application for Payment of Unclaimed Funds (Application) and Order Granting Application for Payment of Unclaimed Funds (Order).

The Instructions provide that any party seeking payment of unclaimed funds must file an Application using S.D. Miss. Local Bankruptcy Form MSSB-1340 and serve it on the US Attorney for the S.D. Miss. The party filing the Application is the applicant, and the party entitled to the unclaimed funds is the claimant. The applicant and claimant may be the same.

Regarding Applications:

- All Applications must include the claimant's tax identification number (TIN) on a certification form signed by the claimant.
- Claimants who are US persons must use either the AO 213(P) or W-9 certification form.
- For payment by electronic funds transfer (EFT), the claimant must submit form AO 213P.
- Claimants who are foreign persons must submit a W-8 certification form and the AO-215 form.
- The applicant must submit a proposed order using S.D. Miss. Local Bankruptcy Form MSSB-1340.

Additional Supporting Documentation

Depending on the type of claimant and whether the claimant is represented, additional supporting documentation is required. Each claimant must provide sufficient documentation to establish the claimant's identity and entitlement to the funds. The proof of identify must be unredacted and contain the claimant's current address.

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

A motion to withdraw the reference must be:

- Filed under the style and number of the bankruptcy case or adversary proceeding in which reference is sought to be withdrawn.
- Filed with the clerk of the bankruptcy court.
- Accompanied by the filing fee.

(Miss. Bankr. L.R. 5011-1(a)(1).)

The motion must:

- Conspicuously state on the face of the motion "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE."
- Refer to 28 U.S.C. Section 157(d) and Federal Rule of Bankruptcy Procedure 5011(a).
- List all pleadings that may be relevant to the disposition of the motion, including docket entry numbers.

(Miss. Bankr. L.R. 5011-1(a)(3).)

Any response or objection to a motion to withdraw the reference must be filed within 14 days of the date of service of the motion (Miss. Bankr. L.R. 5011-1(a)(4)).

The bankruptcy judge may, sua sponte, at any time, request withdrawal of the reference (Miss. Bankr. L.R. 5011-1(a)(2)).

After the 14-day response period expires, the clerk must promptly transmit the motion, any responses, and attached exhibits to the clerk of the district court (Miss. Bankr. L.R. 5011-1(a)(5)).

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 5 serves the federal bankruptcy courts located in:

- The Northern and Southern Districts of Mississippi.
- The Eastern, Middle, and Western Districts of Louisiana.

This Note discusses the general operating guidelines and procedural requirements enacted by the US Trustee for Region 5 (Region 5 Guidelines) as they apply to Chapter 11 cases filed in the N.D./S.D. Miss.

The US Trustee's operating guidelines covering cases filed in the N.D./S.D. Miss. are publicly available and can be obtained from the website for the US Trustee's office for Region 5 (see US Trustee Operating Guidelines, Region 5).

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.

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 N.D./S.D. Miss. 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).

US Trustee Operating Requirements	N.D./S.D. Miss. Bankruptcy Court Requirements
Bank Accounts	The debtor must: • Close any prepetition bank account over which the debtor has possession or control. • Open a new debtor in possession account in a UST-authorized depository for estate funds and certify compliance. • Deposit receipts and disburse estate funds by check or electronic fund transfers through these accounts. Disbursements should include notes explaining reasons for the disbursement. • Write the name of the debtor on all postpetition checks and ensure that signature cards indicate "Chapter 11 Debtor in Possession." • Print this information on all temporary checks. • Provide a voided original, pre-printed check for each account to the US Trustee with its Initial Debtor Interview Financial Report (see Initial Debtor Interview). • Maintain funds not needed for current operations in an interest-bearing debtor-in-possession account. If a trustee is appointed to succeed a debtor-in-possession, the trustee may continue any debtor-in-possession accounts but should have their name and title added to the checks and should ensure the debtor is removed as a signatory. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Bank Accounts.)

US Trustee Operating Requirements	N.D./S.D. Miss. Bankruptcy Court Requirements
Insurance	The debtor must: • Make all insurance premium payments when due. • Maintain: – casualty insurance on any tangible assets subject to casualty loss of at least the asset's value; – workers' compensation (see Practice Note, Workers' Compensation: Common Questions) and unemployment insurance for all employees; – general liability insurance for any business operations and, if applicable, product liability insurance; and – any other insurance customary to debtor's business. • Notify all insurance carriers that they must notify the US Trustee of any changes to insurance and ensure that the US Trustee is sent a copy of this notice. • Instruct insurance companies to send a copy of the declaration page or certificate of proof of insurance to the US Trustee indicating that the US Trustee has been added for notification. • Immediately notify the US Trustee when coverage expires, ends, or is renewed and provide evidence of replacement coverage. • Show proof of all required insurance at the initial debtor interview (see Initial Debtor Interview). (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Insurance.)
Taxes	The debtor must: • File all required tax returns but must obtain court order for payment of prepetition taxes. • Deposit and pay postpetition taxes. • For individual Chapter 11 debtors, comply with Notice 2006-83. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Taxes.)

Initial Debtor Interview

The US Trustee Program's general guidelines require that an employee of the US Trustee conduct a personal interview with the debtor and the debtor's counsel, commonly referred to as the initial debtor interview (IDI). This initial debtor interview:

- Provides the US Trustee with crucial information so that the US Trustee can assess the accuracy of the debtor's schedules and statements and the debtor's financial ability to confirm a plan.
- Informs the debtor of its new fiduciary obligations and of the US Trustee's role in the administration of Chapter 11 cases.

(See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Initial Debtor Interview.)

In the N.D./S.D. Miss., the debtor and its attorney must:

- Attend an IDI.
- No less than two days before the IDI, deliver certain documents as an Initial Operating Report, including:
  - the latest fiscal year financial statements;
  - a balance sheet as of the month immediately preceding filing;
  - a profit and loss statement for the month immediately preceding filing;

- proof of insurance coverage;
- a receipt and certification of understanding operating guidelines and reporting requirements for Chapter 11 Cases;
- a completed Information for Initial Debtor Interview;
- a completed Declaration of Pre-Petition Account Closings;
- proof of establishment of debtor-in-possession bank accounts, with a voided original preprinted check and a copy of the signature card;
- the most recently filed federal income tax return with all schedules and attachments;
- a delinquent quarterly fee notice;
- authority for direct communication; and
- six-month cash flow projections in small business cases.

On or before the debtor's IDI, the debtor or its authorized officer and the debtor's counsel must sign and submit a Receipt and Certification to the US Trustee certifying that they have reviewed and understand the Region 5 Guidelines and agree to comply.

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).

Effective June 21, 2021, all debtors except those who are small businesses or who under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) elect relief under Subchapter V of Chapter 11 must use streamlined, data-embedded, uniform forms for filing monthly operating reports and must file these monthly operating reports no later than the 21st day of the month immediately following the reporting period covered by the monthly operating report. These forms have been updated, effective November 30, 2021.

Post-Confirmation Reporting

After confirmation of a plan, a debtor is no longer required to file operating reports on a monthly basis. Rather, the debtor must file a post-confirmation operating report on a fiscal quarterly basis (see Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Post-Confirmation Reports). After a final decree is entered and the case is closed, dismissed, or converted, operating reports are no longer required.

Effective June 21, 2021, all debtors except those who are small businesses or who under the CARES Act elect relief under Subchapter V of Chapter 11 must use streamlined, data-embedded, uniform forms for filing post-confirmation reports and must file these quarterly post-confirmation reports no later than the 21st day of the month immediately following the reporting period covered by the post-confirmation report. These forms have been updated, effective November 30, 2021.

US Trustee 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 fiscal quarterly schedule and are paid on the last day of the calendar month following the end of each calendar quarter for which the fee is incurred. For example, fees for the first fiscal quarter ending March 31 are due on April 30. The amount of the fee depends on disbursements made during the calendar quarter, according to a fee schedule. 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 Region 5 Guidelines provide that:

- Failure to pay quarterly fees may result in conversion or dismissal of the case.
- Quarterly fees will continue to accrue until entry of the final decree or until the case is closed, converted, or dismissed.
- A statement will be sent regarding the fee for each calendar quarter before the payment due date. A check for the quarterly fee, made payable to the "United States Trustee," should be mailed with the tear-off portion of the statement form. Alternatively, the fee may be paid online.

Communication with US Trustee

US Trustee personnel cannot communicate directly with debtors represented by an attorney unless written permission is provided before the communication. If the debtor and its counsel want to allow the debtor to communicate directly the US Trustee personnel, both the debtor and its counsel must sign and submit a Statement of Debtor's Attorney Concerning Direct Contact. Unless the debtor and its counsel submit this form, debtor's counsel should advise the debtor not to attempt to contact the US Trustee's office directly.