

Cash Collateral

Pursuant to Bankruptcy Rule 4001(b)(2), the Court will hold an emergency hearing on use of cash collateral, when appropriate, to consider authorizing that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Debtors are encouraged to plan a chapter 11 case, if possible, such that an emergency hearing is not needed the same day the case is commenced, or the next day.

In chapter 11 cases, unless the Court directs otherwise, the Debtor should give notice of the emergency cash collateral motion and hearing to any party holding or claiming an interest in cash collateral; the United States Trustee; the official committee of unsecured creditors, or if no such committee has been appointed to the creditors included on the list prepared under Bankruptcy Rule 1007(d); and to counsel who have entered an appearance in the case. Counsel for the Debtor should also call the local office of the United States Trustee and any known bankruptcy counsel for a cash collateral creditor to alert the UST and such counsel that the motion has been filed and of the hearing.

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

Counsel are encouraged to call Chambers staff to obtain a hearing on use of cash collateral before or shortly after the cash collateral motion is filed. If a notice of the motion is given that specifies an objection period, the notice should include notice of the hearing. All cash collateral hearings, except emergency hearings, ordinarily will be final hearings.

The Court will take testimony at an emergency hearing on use of cash collateral, if testimony is proffered. If granting authority to use cash collateral requires consideration of evidence, the Debtor should present evidence.

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

If a motion seeks entry of an order containing any of the above provisions, the notice of the motion should specifically disclose that the motion seeks such relief.

The Court will not approve the above provisions in an emergency cash collateral order absent extraordinary and compelling circumstances.