

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

In re)
)
Adoption of) Standing Order No. 20-3
Interim Procedures)

ORDER ADOPTING INTERIM PROCEDURES GOVERNING PRACTICE AND
PROCEDURE UNDER THE SMALL BUSINESS REORGANIZATION ACT OF 2019

On August 23, 2019, the Small Business Reorganization Act of 2019 (the “Act”) was enacted into law;

The Act takes effect on February 19, 2020; and

The impending effective date of the Act and need to review the Interim Bankruptcy Rules (the “Interim Rules”), which were released in late December 2019, in addition to other considerations, having not provided sufficient time to promulgate local bankruptcy rules after appropriate public notice and an opportunity for comment; and

A review having been undertaken of the Court’s Local Bankruptcy Rules to identify and implement interim changes to those procedures that the Court determines should be revised to meet the requirements set forth in the Act and in the Interim Rules adopted by the Court through the entry of Standing Order No. 20-2;

NOW, THEREFORE, IT IS ORDERED that:

1. The Interim Procedures Governing Practice and Procedure under the Small Business Reorganization Act of 2019 (the “Interim Procedures”), attached as an Exhibit to this order, are hereby adopted by the Court.
2. For cases and proceedings not governed by the Act, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court, other than the Interim Rules and the Interim Procedures, shall apply.
3. The Interim Procedures shall remain in effect until further order of the Court.
4. Amendments to this order may be entered from time to time in keeping with the needs of the Court.

5. This order shall take effect on February 19, 2020.

Attachment

FOR THE COURT:

/s/ Frank J. Santoro
FRANK J. SANTORO
Chief United States Bankruptcy Judge

Date: February 6, 2020

UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF VIRGINIA

**INTERIM PROCEDURES GOVERNING PRACTICE AND
PROCEDURE UNDER THE SMALL BUSINESS
REORGANIZATION ACT OF 2019
EXHIBIT TO STANDING ORDER NO. 20-3**



Effective February 19, 2020

(Ver. 02/05/20)

INTERIM PROCEDURES

1. INTERIM PROCEDURE 1017-1: CONVERSION

(C) *Filing of Official Form 122A-1, 122B or 122C-1 Upon Conversion of Case:* Unless otherwise ordered by the Court, in a case converted from chapter 11, 12 or 13 to chapter 7, the debtor shall file Official Form 122A-1 “**Chapter 7 Statement of Your Current Monthly Income,**” within 14 days after conversion. In a case of an individual debtor converted to chapter 11 (unless under subchapter V of chapter 11), the debtor shall file Official Form 122, “**Chapter 11 Statement of Your Current Monthly Income,**” within 14 days after entry of the conversion order. In a case of an individual debtor converted to chapter 13, the debtor shall file Official Form 122C-1, “**Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period,**” within 14 days after entry of the conversion order.

2. INTERIM PROCEDURE 2014-1: SERVICE OF MOTION FOR AN ORDER AUTHORIZING EMPLOYMENT IN A CHAPTER 11 CASE

The motion, declaration and any proposed order shall be served on the parties listed below. Any party moving for an order authorizing employment in a proceeding under chapter 11 of the Bankruptcy Code shall, in plain language, inform all such parties of the filing of the motion, disclosing in full and complete detail any actual or potential conflicts of interest, and shall specify the method for objecting to the proposed order. Any objections to the proposed employment shall be made in writing, filed with the Court, with a copy served on the movant and the parties listed below, within 14 days from the date of service of the motion.

The motion, declaration and proposed order shall be served on:

1. the United States trustee;
2. any trustee appointed under 11 U.S.C. §1104 or 11 U.S.C. §1183;
3. any committee of unsecured creditors appointed pursuant to 11 U.S.C. §1102 or, if no committee is appointed, the creditors included on the list filed under FRBP 1007(d);
4. all secured creditors; and
5. any other entity as the Court may direct.

3. INTERIM PROCEDURE 3003-1: CLAIMS IN CHAPTER 11 CASES

(A) *Claims Bar Date:* The last date for the filing of claims, other than a claim of a governmental unit in a chapter 11 case, shall be 90 days after the first date set for the meeting of creditors. The last date for a governmental unit to file a proof of claim shall be 180 days after the petition is filed in a voluntary chapter 11 case or an order for relief is entered in an involuntary chapter 11 case. In a chapter 11 case under subchapter V of chapter 11, other than a claim of a governmental

unit, a proof of claim is timely if filed not later than 70 days after the date of the entry of the order for relief, unless a different date is fixed by the Court. The Clerk shall give notice of the date in a separate notice of bar date mailed with the notice for the meeting of creditors.

**4. INTERIM PROCEDURE 3014-1:
ELECTION UNDER 11 U.S.C. § 1111(B)
BY SECURED CREDITOR IN SUBCHAPTER V CHAPTER 11 CASE**

In a case under subchapter V of chapter 11 in which 11 U.S.C. § 1125 does not apply, an election of 11 U.S.C. § 1111(b)(2) by a class of secured creditors shall be made not later than 10 days following the filing of the plan, or such other date as the Court may direct.

**5. INTERIM PROCEDURE 3016-1:
CHAPTER 11 PLAN REQUIREMENTS**

(A) **Chapter 11 Plan Filed in a Subchapter V Case:** In a case under subchapter V of chapter 11, the debtor may file a plan with the petition. If a plan is not filed with the petition, it shall be filed within 90 days thereafter unless the Court, pursuant to 11 U.S.C. § 1189, extends the time for filing. Any motion for extension of time to file a plan shall be filed prior to the expiration of the deadline for which the debtor seeks an extension. Unless otherwise ordered in specific cases, the only acceptable form for such a plan shall be Official Form 425A, Plan of Reorganization for Small Business Under Chapter 11, which is available from the Clerk upon request or from the Court's Internet web site, www.vaeb.uscourts.gov.

(1) **Service of Chapter 11 Plan in a Subchapter V Case in Which There Is No Disclosure Statement:** In a case under subchapter V of chapter 11 in which 11 U.S.C. § 1125 does not apply, the debtor shall serve the plan and notice of the confirmation hearing date on the trustee, all creditors, equity security holders, indentured trustees, parties in interest and the United States trustee not later than 35 days prior to the confirmation hearing date.

(2) **Acceptance or Rejection of Chapter 11 Plan in a Subchapter V Case in Which There Is No Disclosure Statement:** In a case under subchapter V of chapter 11 in which 11 U.S.C. § 1125 does not apply, the debtor shall serve notice of the time within which holders of claims or interests may accept or reject the plan not later than 35 days prior to the confirmation hearing date. Ballots accepting or rejecting the plan shall be cast not later than 7 days prior to the date set for the initial hearing on confirmation. An equity security holder or creditor whose claim is based on a security must be the holder of record on the date the ballot is cast.

(3) **Possible Dismissal of Case; Order:** In cases under subchapter V of chapter 11, the Clerk shall monitor the filing of the plan. If the debtor does not timely file a

subchapter V chapter 11 plan, the Clerk shall issue an order directing the debtor to appear at a hearing to explain why the case should not be dismissed.

(B) ***Transmission of Notice of Hearing on Disclosure Statement:*** The proponent seeking approval of the disclosure statement shall transmit notice of the hearing on the disclosure statement and other materials as required by FRBP 2002(b) and 3017(a). The court-approved notices, other materials and proof of service shall be filed with the Court.

(C) ***Objections to Disclosure Statement:*** Objections to the disclosure statement shall be filed with the Court not later than 7 days prior to the date set for hearing on the disclosure statement.

(D) ***Transmission and Notice to Creditors and Equity Security Holders:*** Upon approval of the disclosure statement, the proponent of the plan shall transmit to all required parties such notices and materials as required by FRBP 2002(b) and FRBP 3017(d) and shall file with the Court the court-approved notices, other materials transmitted and proof of service.

(E) ***Summary of Ballots:*** Any proponent of a plan in a reorganization case shall file a summary of ballots (acceptances and rejections) with the Clerk prior to the hearing on confirmation in the form approved by the Court. The ballots are not to be filed with the Clerk unless the Court so orders.

(F) ***Objection to Confirmation:*** Any objection to confirmation of the plan shall be filed with the Court not later than 7 days prior to the date set for the initial hearing on confirmation. The objecting party shall serve a copy of the objection on the United States trustee and the parties designated in FRBP 3020(b)(1).

**6. INTERIM PROCEDURE 3070-1:
PAYMENTS IN SUBCHAPTER V CHAPTER 11,
CHAPTER 12 AND CHAPTER 13 CASES**

(A) ***Payments to Creditors by Trustee:*** In subchapter V chapter 11, chapter 12 and chapter 13 cases, no payment in an amount less than \$25 shall be distributed by the trustee to any creditor. Funds not distributed because of this Local Bankruptcy Rule shall be paid whenever the accumulation totals at least \$25. Any funds remaining shall be distributed with the final payment.

(B) ***Distribution of Estate Funds Upon Dismissal of Case Prior to Confirmation of Plan***

(1) ***Distribution of Estate Funds Upon Dismissal of Chapter 12 or Chapter 13 Case:***

(a) ***Noticing Fees Payable to Clerk of Court:*** The trustee shall pay all noticing fees due the Clerk out of estate funds before returning any funds to the debtor. If, pending dismissal, the funds on hand are not sufficient to pay all administrative expenses, the trustee shall pay to the Clerk the pro rata portion of the fees due.

(b) **Notice of Proposed Distribution:** The trustee may file a notice of proposed distribution of estate assets on hand, with copies to the debtor and debtor's counsel. The proposed distribution may include payment to the trustee for compensation as allowed by law and reimbursement of the trustee's out-of-pocket expenses incurred in the case. The notice shall state that if no objection to the proposed distribution is filed within 14 days, the trustee is authorized to proceed with distribution.

(2) **Distribution of Estate Funds Upon Dismissal of Subchapter V Chapter 11 Case:** Pursuant to 11 U.S.C. § 1194, the trustee shall return estate funds to the debtor after deducting:

- (a) any unpaid claim allowed under 11 U.S.C. § 503(b);
- (b) any adequate protection payment due to the holder of a secured claim; and
- (c) any fee owing the trustee.

(F) **Subchapter V Chapter 11 Pre-Confirmation Adequate Protection Payments:** Pre-confirmation adequate protection payments governed by 11 U.S.C. § 1194(c) shall be made by the debtor to the subchapter V trustee as part of the total payment to the trustee, and the trustee shall pay the amount authorized by the Court to the secured creditor before confirmation.