COURTHOUSE BEACON NEWS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

MARCH 2021

CHIEF JUDGE'S CORNER
By: Hon. Laurel M. Isicoff

A new year, and hopefully new beginnings. It is mind-boggling, and yet, now somewhat "normal" that here we are, a year later, still living in a remote world. The court continues to run somewhat smoothly – yes, there is the occasional "bad connection problem" (for those of you who have not yet updated your home and office internet – get with it!), the "zoom bombing" pet or child (the court has set up security protocols that should keep out any other type of "zoom bombing"), the inevitable screen sharing tight spots (so far no embarrassing emails showing up), and the very real feeling that, even though we are together, we are not.

We have all made the effort to connect in some way, whether through patio socially distanced visits, electronic get-togethers, or, after careful precautions, some actual getting together, but that isn't the same as a shared experience, a joyous investiture (when we finally have Judge Russin's shindig it will be a blow-out!), or other in-person celebration or other life cycle event. In our court family, we have had a weekly message, regular electronic get-togethers, and a contest or two. With everything from scavenger hunts to a recent guess whose baby picture contest, we have managed to stay connected even though we are physically apart.

We also have kept the business of the court running. We created an email filing system for pro se filers; to our knowledge, keeping the Clerks offices physically closed has not prevented anyone from getting to the court. We adopted new Local Rules, which, of course, by now, you have all memorized. We are about to adopt a Student Loan Mediation Program thanks to Judge Mark and a remarkable committee he put together. We continue to encourage, coordinate and cheer on our Pro Bono champions. And we have all conducted court, including trials, remotely, assisted by our decision to require all exhibits be uploaded to CM/ECF in advance of trial (you DO remember that new local rule, right?). In sum, the bankruptcy court has not missed a beat during this pandemic.

Our courtroom technology is being modified so that we will be able to conduct court live with virtual attendees. So when we do come back, if there are reasons you cannot be with us, you will still be with us. In the meantime, if you want to let us know anything, good or bad, about your virtual experiences or otherwise, remember to reach out to the Court's Lawyers Advisory Committee.

Be safe, stay well, wear your masks, and socially distance. We look forward to seeing all of you in person as soon as we can, and we will do so as soon as it is safe.

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Bankruptcy Cases Filed From 01/01/2021 to 2/28/21

TOTAL FILED:	2,028
• Chapter 7	1,254
• Chapter 9	0
• Chapter 11	36
• Chapter 12	0
• Chapter 13	737
• Chapter 15	1

Additional filing statistics are available on the court website www.flsb.uscourts.gov under the "Court Information" tab at the top of page.

Select: "Case Filing Statistics"

FROM THE JUDGES' CHAMBERS

BANKRUPTCY CODE AMENDMENTS IN THE CONSOLIDATED APPROPRIATIONS ACT OF 2021*

By: Hon. Robert A. Mark

The Consolidated Appropriations Act, 2021 (the "CAA") was enacted on December 27, 2020. In addition to providing $900 billion in pandemic relief, the CAA amends several sections of the Bankruptcy Code. This article will highlight five of the more significant changes.

1. Paycheck Protection Program ("PPP Loans")

The PPP Loan program was created in the CARES Act, passed on March 27, 2020. Courts have differed over whether debtors are eligible to receive these loans. The CAA addresses the issue, but uncertainty remains. The CAA adds a new paragraph (g) to § 364, allowing chapter 12, chapter 13, and subchapter V business debtors to obtain PPP Loans. But there is a catch. The amendment will only take effect if the SBA Administrator agrees to allow PPP Loans in bankruptcy cases. So stand by.

2. Chapter 13 Discharge

The CAA amends § 1328 to allow the court to issue a discharge to chapter 13 debtors even if the debtor did not pay all mortgage payments due under the plan. This amendment applies if the debtor defaulted on not more than three monthly payments that came due after March 13, 2020, and the default occurred because of a COVID-related financial hardship.

3. Extension of Time Under § 362(d)(3) for Subchapter V Debtors

Section 365(d)(3) requires debtor/lessees under commercial leases to timely pay postpetition rent until the lease is assumed or rejected. Prior to the amendments in the CAA, courts could not extend the time for postpetition performance beyond the 60th-day postpetition. This meant that the debtor had to be current in its postpetition rent on the 60th day after the filing of the petition or face consequences, including entry of an order granting stay relief to the landlord.

The CAA amends § 365(d)(3) to allow the court to grant a subchapter V debtor an extension of up to 120 days from the petition date to be current if "the debtor is experiencing or has experienced a material financial hardship" because of the COVID pandemic.

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*A copy of the bankruptcy provisions in the CAA is attached as a [pdf] to this newsletter. The text of the entire CAA can be found at: https://www.congress.gov/bill/116th-congress/house-bill/133/text/enr

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FROM THE JUDGES' CHAMBERS

BANKRUPTCY CODE AMENDMENTS IN THE CONSOLIDATED APPROPRIATIONS ACT OF 2021 (continued from page 2)

4. Extended Time to Assume or Reject Non-Residential Leases

Prior to the CAA, § 364(d)(4)(A) fixed a 120-day deadline for assumption of commercial leases with authority for the court to grant up to a 90-day extension. The CAA amends this section by striking 120 days and replacing it with 210 days. Therefore, until the amendment sunsets on December 27, 2022, debtors will have 210 days to assume or reject with the court retaining its authority to grant a 90-day extension allowing up to 300 days. The change from 120 to 210 days will apply to subchapter V debtors who file petitions prior to December 27, 2022. For all other debtors, the 210-day period to assume or reject will disappear, like Cinderella's glass slippers, just after midnight, on December 26, 2022, and magically change back to 120 days. As written, this means, for example, that a debtor who files a regular chapter 11 case 121 days before December 27, 2022, will appear to have 210 days to assume or reject if it reads § 364(d)(4) on the date it files. However, its actual deadline will be 121 days because, on that date, the deadline will revert to 120 days.

5. Preferences

Under pre-CAA preference law, trustees and debtors could avoid and recover payments made outside of the ordinary course of business and within 90 days of the petition date. To encourage landlords and vendors to enter into pre-bankruptcy deferral and vendor repayment agreements during the pandemic, Congress has amended § 547 to prohibit a debtor or trustee from avoiding payments for "covered rental arrearages" and "covered supplier arrearages." The amendment applies to agreements to defer payments that were entered into after March 13, 2020. So, landlords and vendors may defer payment under prepetition leases or agreements without fear that these deferred payments, if made within 90 days of a bankruptcy filing, will be avoidable as preferences.

Conclusion

It is gratifying to see that Congress enacted Bankruptcy Code amendments in the CAA that offer additional relief to debtors and additional protection to creditors who assist debtors prior to their bankruptcies. Open issues exist, including whether the amendments apply to cases filed before the CAA became law, so expect some litigation and keep watch for decisions interpreting the new law.

FROM THE JUDGES' CHAMBERS

FOCUS ON THE AMENDED LOCAL RULES

By: Hon. Mindy A. Mora

As most of you know by now, the Local Rules for the Southern District of Florida were amended with an effective date of December 1, 2020, to coincide with the effective date of amendments to the Federal Rules of Bankruptcy Procedure.

In the last issue of the Courthouse Beacon News issued in December 2020, Judge Grossman described the new adversary proceeding procedures (try saying that three times fast!), which are laid out in Local Rules 7016-1, 7026-1, 7090-1, and 9070-1, as well as in the new local forms for the Clerk-issued Summons and Notice of Status Conference in an Adversary Proceeding and Order Setting Status Conference and Establishing Procedures and Deadlines. Judge Grossman also described the new form Order Setting Filing and Disclosure Requirements for Pretrial and Trial (LF-68) which the parties are to present at the status conference as an agreed order with the insertion of agreed-upon dates and deadlines.

In this issue of the Courthouse Beacon News, I am going to highlight a number of procedural changes included in the amended Local Rules. In upcoming issues, we will address changes in the Local Rules affecting consumer cases and also impacting business cases.

- L.R. 2002-1(F) and 9073-1(B): Certificates of Service.

  - Eliminates the obligation to list on a certificate of service any service party who received service via CM/ECF, with respect to any filed document or notice of hearing.

  - Provides that if no certificate of service is filed, it is treated as a representation by the movant that all interested parties were served via CM/ECF.

- L.R. 2090-1: Limits on Pro Hac Vice Appearances.

  - Incorporates the language from District Court Local Rule 4(b)(2), which clarifies that appearing within a 365-day period in more than three separate representations in the Southern District of Florida is presumed to be engaging in general practice within the District.

  - Specifies that a lawyer who is not admitted to practice in the District Court for the Southern District of Florida may not engage in general practice.

  - Permits waiver or modification of prohibition by a court upon written motion and for good cause shown.

- L.R. 2091-1(C): Substitution of Counsel within Same Firm. Requires the use of new L.F. 43 if an attorney within the firm representing a party is substituting in as counsel of record for such party, when an attorney previously named as counsel of record for such party leaves the firm.

- L.R. 3007-1(D)(1): Claim Objections; Service; Cases Involving Pro Se Debtors.

  - Abrogates subsection (A) dealing with service, based upon amendments made to FRBP 7004.

  - Under subsection (D), permits negative notice to be used for a claim objection in a case involving a pro se debtor, as long as the relief sought in the objection does not affect the rights of the debtor and the objection was filed by a party in interest other than the pro se debtor.

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FROM THE JUDGES' CHAMBERS

FOCUS ON THE AMENDED LOCAL RULES (continued from page 4)

- L.R. 5005-1(F): Late-Filed Responses.

  - Must describe with particularity the exceptional circumstance that caused the untimely filing, be provided to the judge's courtroom deputy or law clerk (in the manner required by the judge on the judge's homepage on the court's website), and be sent promptly by email to all parties for whom the respondent has an email address or by fax or express means to all other parties entitled to notice.

  - Applies to any response not filed by 4:30 p.m. at least 2 business days prior to the scheduled hearing, but does not apply to the filing of exhibits or amended chapter 13 plans, schedules or statements filed prior to a scheduled confirmation hearing.

- L.R. 9011-1: Signatures and Document Retention.

  - Sets forth procedures that permit a filing party to rely upon a copy or digitally scanned image of a document containing a wet ink signature;

  - Requires the filing party to obtain the original document containing the wet ink signature within 14 days of receipt of the copy of such document within 14 days;

  - Mandates procedures for the filing party to engage in to validate the copy or digitally scanned image of the document containing the wet ink signature; and

  - Mandates retention of the original document and copy or digitally scanned of such document for a 5-year period measured from the date of discharge, dismissal or resolution of all appeals.

- L.R. 9037-1. Procedures with Redacted Documents.

  - Clarifies the procedure for restricting access to documents with personally identifiable information (PII) in accordance with FRBP 9037.

  - After obtaining a court order authorizing the substitution of a redacted document, movant (rather than the clerk) has the responsibility to file the redacted document as a separate docket entry within 5 business days of entry of the order.

  - Specifies that the motion to redact must be served on debtor's counsel, debtor, the filer of the unredacted document and all other parties listed in FRBP 9037(h)(1)(D).

- L.R. 9074-1: Telephonic Appearances.

  - Updates the procedures for telephonic appearances which are now permitted by all judges within the District;

  - Clarifies there are no geographic limitations on an attorney's request to appear telephonically;

  - Refers attorneys to presiding judge's homepage on court's website for applicable guidelines for telephonic appearances.

- L.R. 9076: Legal Effect of Notices of Electronic Filing (NEF). Clarifies that service to registered users of CM/ECF constitutes a consent to electronic service on debtor's attorney as required under FRBP 7004(g), but does not constitute acceptance of service of the summons and complaint on behalf of a represented party.

FROM THE JUDGES' CHAMBERS

IMPEACHING A WITNESS WITH A PRIOR INCONSISTENT STATEMENT

By: Hon. Scott M. Grossman

Impeaching a witness with a prior inconsistent statement – particularly in bench trials – is quite simple, straightforward, and easy to do. Yet I have been surprised how few attorneys do it correctly.

In theory, impeachment should be done the same way we all learned it in law school, regardless of whether during a jury trial or a bench trial. But in practice, in bench trials lawyers typically do not need all of the dramatic flair and build-up you may have been taught in law school. In other words, you don't need to ask all the questions to establish the solemnity of the witness's deposition testimony: questions about going to a lawyer's office, sitting around a conference room table, all the lawyers there, the court reporter, raising your right hand, etc. Instead – since judges know full well what it means for a witness to testify under oath at a deposition – all you really need to do is establish that the witness previously testified under oath and that the witness gave a different answer.

So here is a short refresher on how to do it. The first step, of course, is to be prepared. When cross-examining a witness, a well-prepared lawyer will have at hand the page and line number from the witness's deposition transcript for any question the lawyer asks the witness. This way, when you ask, "what color was the traffic light as you approached the intersection?" you know that on page x, line y of her deposition transcript, the witness testified, "it was red." Then, when the witness answers at trial, "it was green," you know immediately where to go to impeach her testimony.

And it is quite simple – particularly in a bench trial – to impeach a witness with her prior inconsistent statement. All you have to do is:

1. Ask the witness if she had her deposition taken, was asked questions under oath, and swore to answer truthfully?
2. Then – as required by Federal Rule of Evidence 613(a) – tell (or show) opposing counsel the page and line number of the transcript from which you are about to read.
3. Next, ask the witness if you asked the following question and she gave the following answer?
4. Then read – verbatim – the question and answer from the transcript.
5. And, finally, confirm with the witness that was the testimony she gave.

That's it. You have now successfully impeached the witness with her prior inconsistent statement. You do not need to argue with her or ask the argumentative (and objectionable) question, "were you lying then, or are you lying now?"

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FROM THE JUDGES' CHAMBERS

IMPEACHING A WITNESS WITH A PRIOR INCONSISTENT STATEMENT (continued from page 6)

Notwithstanding the simplicity of this process, I have too often seen attorneys do it wrong. Again, suppose you ask the witness what color the traffic light was, she answers "green," and you know she testified at her deposition that it was red. Here are some examples (many variations of which I have seen) of how **not** to impeach a witness:

Q. Well, that's not what you said at your deposition, was it?

Q. Didn't you tell me it was red during your deposition? Were you lying then, or are you lying now?

Q. Why are you saying it is green when you previously said it was red?

Q. Judge, I have a deposition transcript where she said it was red!

Q. Your Honor, I'd like to offer into evidence the transcript of the witness's deposition, where she said it was red.

As discussed above, none of these questions is proper, appropriate, or effective to impeach a witness's testimony. Rather, here is an example of how to do it properly:

Q. What color was the traffic light when you approached the intersection?

A. It was green.

Q. I took your deposition on [date]?

A. Yes.

Q. At that deposition, you swore to tell the truth?

A. Yes.

Q. And you answered my questions under oath?

A. Yes.

Q. At that deposition, I asked you the following question, and you gave the following answer [give opposing counsel page and line number]: "Q. What color was the traffic light when you approached the intersection? A. Red." Was that the testimony you gave under oath at your deposition?

A. Yes.

That's it. You are done. You have successfully impeached the witness with a prior inconsistent statement, and you can move on to your next question.

FROM THE JUDGES' CHAMBERS

EPK CORNER - MOTION CALENDARS BY ZOOM

By: Hon. Erik P. Kimball

On March 12, 2020, I held my last weekly motion calendar in person in the courtroom. The court closed its doors to in-person traffic on March 16, 2020. Since then, we have had motion calendars by telephone and trials by video conference. Many of you inquired about holding motion calendars by video conference.

On March 10, 2021, after nearly a full year of telephone motion calendars, I will begin conducting weekly motion calendars using Zoom for Government. In the near future, we will transition the monthly chapter 13 calendar to Zoom as well.

There are important advantages of Zoom for Government in addition to the obvious benefits of video. Zoom is free for participants. This is a significant factor in my view as it facilitates access to justice, particularly for those of limited means. Although we have always waived the fee for unrepresented parties to appear by telephone, I fear the need to request free access may itself pose a barrier. Also, in our experience, audio quality through Zoom is better than either of the telephone providers we have employed.

At least at the start, I will not require those appearing at Zoom motion calendars to be on camera. You may participate using only the audio component of the meeting, by computer audio or by telephone. Since my appointment in 2008, I have allowed motion calendar participants to appear by telephone with no geographic limitation. Permitting audio-only Zoom participation replicates that option, except that you will be able to see me and others appearing on camera (assuming you join via internet rather than telephone dial-in). Please note that this is an experiment and I may later require video participation.

My weekly motion calendar, which is currently on Wednesdays, will be a full-day Zoom meeting from 9:30 am to 6:00 pm. While registrants can log into the meeting at any time and as early as 9:15 am, you must be sure to log in at least 5 minutes prior to your scheduled hearing time as designated in the notice of hearing or order. When you log in, please ensure that your audio is muted. It is wise to change the default setting in Zoom so that your audio is always muted at the start of a meeting.

For motion calendar matters set by Zoom, you will receive either the new form notice of hearing by video conference generated via ECF or, in limited circumstances, an order with similar information. You must register for the weekly Zoom motion calendar. There will be a clickable link in the notice of hearing or order, or you can type the link into a browser.

IMPORTANT: When you register, you must input data, including relevant case and client information. If you register more than once for a particular motion day, you must re-enter all previously provided registration data. In other words, the last time you register for any motion calendar (morning or afternoon, as it is one Zoom meeting), you must enter all case and client data for the entire day. Also, please be sure to use the correct attorney's email address when registering, as the meeting link provided by Zoom is unique to the email address provided during registration.

I look forward to seeing all of you in the coming weeks!

FROM THE JUDGES' CHAMBERS

"FUN" FACTS RE EX PARTE MOTIONS FOR ISSUANCE OF A WRIT OF GARNISHMENT

By: Kayla M. Heckman, Law Clerk to the Hon. Laurel M. Isicoff

Local Rule 7069-1 provides:

> **(D) Writs of Garnishment.** Writs of garnishments shall be issued **in accordance with Florida law**.
> **(1) Issuance of Writ. Required Notice to Garnishee.** The party seeking issuance of a writ of garnishment **shall file a motion accompanied by a prepared writ, a certified copy of the judgment, and any bill of costs entered**. If the writ is issued against an individual, the clerk shall attach to the writ a copy of the Local Form "Notice Pursuant to Florida Statute §77.041 to Defendant of Right Against Garnishment of Wages, Money and Other Property" with attached "Claim of Exemption and Request for Hearing" (with the caption of the case filled in on the form "Claim of Exemption and Request for Hearing"). The following notice must accompany service of the writ: **"Under Florida Statutes §77.28, upon issuance of any writ of garnishment, the party applying for it shall pay $100 to the garnishee on the garnishee's demand at any time after the service of the writ, for the payment or part payment of his or her attorney's fees which the garnishee expends or agrees to expend in obtaining representation in response to the writ."** In addition to service of other garnishment papers, a copy of this rule shall be served on the defendant. If the writ is being sought pursuant to Florida Statute §77.0305 (Continuing writ of garnishment against salary or wages) or Florida Statutes §77.031 (Issuance of writ before Judgment), the filing of the writ must be accompanied by a motion **and a proposed order**.

"Fun" Fact #1: Chapter 77 of the Florida Statutes governs all things related to garnishment in the state of Florida. Our Local Rule specifically states that writs of garnishment will be issued in accordance with Florida law, so check out Chapter 77 in its entirety before and after filing your motion for issuance of a writ for important procedural requirements.

"Fun" Fact #2: Upon receipt of a proper motion, the Clerk of Court will issue the writ automatically, without the need for an order. Note that our Local Rule only requires a proposed order to be uploaded when the writ is being sought pursuant to Florida Statute §77.0305 or §77.031. Most commonly, writs are sought after judgment pursuant to §77.03, which does not require a proposed order.

"Fun" Fact #3: A proper motion includes a certified copy of the judgment. Note that this is an additional requirement than that required under Chapter 77 of the Florida Statutes.

FROM THE JUDGES' CHAMBERS

COMPLAINT DRAFTING SIMPLIFIED

By: Tara Trevorrow, Law Clerk to the Hon. Mindy A. Mora

A long time ago, a colleague shared her strategy for creating law school outlines. I was struck by the simplicity of her approach and realized that her process could apply to legal practice. In a nutshell, her outline drafting process amounted to the following:

1) Open up the textbook
2) Type up the entire table of contents
3) Insert class notes into the table of contents

Instead of trying to wrap her arms around the course material at the end of the semester, she started her learning process by creating a "10,000-foot" view of the entire course. Her outline structure guided her understanding as each day unfolded and sharpened her focus.

Unsurprisingly, she graduated near the top of her class.

This approach translates well to complaint drafting. Instead of thinking first about the background story, start with the reason why the story matters: the law itself. The drafting steps are largely the same:

1) Locate the statute or legal standard
2) Type up the exact language of the statute or common law claim
3) Add in the standards developed through case law (i.e., multi-factor test, balancing test, definitional interpretation, equitable consideration, etc.)
4) Insert background facts into the outline, linking a case-specific factual allegation to each element of the legal standard(s)
5) Underneath each element, list the document or testimony that will prove the element

This approach is simple but effective. It clarifies from the beginning which documents or testimony support a specific element. This knowledge will be invaluable for crafting discovery requests. And, if the facts recited in the complaint fail to support an element, that deficiency can be addressed right away prior to filing the complaint.

Structuring the factual allegations in the complaint to track specific elements also reveals which statutory claims pose thorny drafting issues (like 11 U.S.C. § 523(a)(4)). Catching those pitfalls in advance fosters greater precision in allegation drafting and decreases the likelihood of a successful motion to dismiss.

To be clear, the final version of the complaint will follow the usual form, with a brief introductory section, prose linking facts to legal allegations, and wherefore clauses.

This organization, however, is simply a matter of form. Starting your draft with the law (rather than background story) simplifies the necessary analysis and provides structure for the entire litigation process.

FROM THE JUDGES' CHAMBERS

FLORIDA'S THIRD DCA OVERTURNS *SHOP IN THE GROVE*

By: Jacob Isenberg, Law Clerk to the Hon. Scott M. Grossman

At long last, Florida's Third District Court of Appeal (the "Third DCA") has overturned its outlier decision from 1982 in *Shop in the Grove, Ltd. v. Union Fed. Sav. & Loan Ass'n of Miami**, which had held that the automatic stay did not apply to an appeal filed by a debtor from an action in which the debtor was the defendant below. Thus, the Third DCA has now aligned itself with every other Florida DCA – as well as every federal circuit court – in holding that an appeal initiated by a debtor-defendant is a continuation of an action or proceeding against the debtor that is stayed by Section 362(a)(1) of the Bankruptcy Code. **

In *Nat'l Med. Imaging, LLC v. Lyon Fin. Servs., Inc.,* Lyon Financial Services, Inc. ("Lyon Financial Services") had obtained a judgment against National Medical Imaging, LLC ("NMI") and National Medical Imaging Holding Company, LLC ("NMIH") from a Pennsylvania state court, and were seeking to domesticate the judgment in a Miami-Dade County Circuit Court. After the Circuit Court entered judgment in favor of Lyon Financial Services, NMI and NMIH appealed the final order to the Third DCA. Then, two months after NMI and NMIH filed their initial brief, they filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Eastern District of Pennsylvania.

Not wishing to violate the automatic stay, NMI and NMIH filed a motion with the Third DCA to stay the appeal. Judge Scales, writing for a three-judge panel (the "panel opinion"), criticized *Shop in the Grove* as an "outlier" and noted the "confusion and potential mischief" it has caused. He further noted that if they were "writing on a clean slate," they would grant the motion to stay. But because the panel was bound by *Shop in the Grove*, they were powerless to overturn it (only the Florida Supreme Court or the full Third DCA sitting *en banc* could do that).

Soon after, on its own motion, the Third DCA took the issue up *en banc* to determine whether to recede from *Shop in the Grove* (and necessarily, the result reached in the panel opinion). The *en banc* panel found three principal reasons to recede from the long-standing precedent of *Shop in the Grove*.

First, the Court found that the plain language of Section 362(a)(1) was clear and that the automatic stay applied. The filing of a bankruptcy petition stays any action against the debtor, including the continuation of any action. When the debtor is a defendant in a legal action, the debtor-defendant's appeal of an adverse ruling is "plainly a continuation of the legal action against the debtor."

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*425 So. 2d 1138 (Fla. 3d DCA 1982).

**No. 3D20-730, 2021 WL 113382 (Fla. 3d DCA Jan. 13, 2021).

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FROM THE JUDGES' CHAMBERS

FLORIDA'S THIRD DCA OVERTURNS SHOP IN THE GROVE (continued from page 11)

Second, the *en banc* panel noted how the *Shop in the Grove* decision was inconsistent with all other Florida DCAs, as well as all federal circuit courts that have addressed the issue. *Shop in the Grove* also conflicted with guidance from *Collier on Bankruptcy*, a leading bankruptcy treatise.

Third, the Court recognized the ethical dilemma lawyers faced in light of the Court's adherence to *Shop in the Grove*, which was illustrated by the facts of *National Medical Imaging*. Here, the parties were compelled to continue to litigate the appeal at the Third DCA, even though the Bankruptcy Court in Pennsylvania had determined that the continuation of the appeal would be a violation of the automatic stay. "Consequently, *Shop in the Grove* put practitioners, and their clients, in the unenviable position of having to choose whether to violate either (i) the automatic stay imposed by the [Bankruptcy Code] or, alternatively, (ii) orders from this Court denying stay relief."*** Given the severe sanctions bankruptcy attorneys and their clients may face for violations of the automatic stay,**** the outlier *Shop in the Grove* decision presented significant issues – especially for attorneys with multi-jurisdictional practices.

For those reasons, the unanimous *en banc* panel receded from its decision in *Shop in the Grove* and concluded that an appeal initiated by a debtor-defendant is subject to § 362(a)'s automatic stay provision.

Interestingly, Judge Thomas Logue penned a fascinating concurrence in the unanimous majority opinion, in which he noted how their decision adopted almost-verbatim the legal interpretation advocated by Judge Wilkie D. Ferguson (for whom the Miami federal courthouse is named), who was on the 1982 panel of *Shop in the Grove* and dissented from that decision.

****Nat'l Med. Imaging*, 2021 WL 113382, at *5.

****11 USC § 362(k).

PRO BONO CORNER

BY:
STEVEN S. NEWBURGH, ESQ.
(GUEST CONTRIBUTOR)
LAY CHAIR,
PRO BONO COMMITTEE

The Pro Bono Committee of the Bankruptcy Court for the Southern District of Florida held its first regular *Meeting* of 2021 on February 3, 2021. As you may recall from the July 2020 edition of *Pro Bono Corner*, the Committee has been expanding its membership to ensure that our entire District is covered, geographically, and that additional Committee members be representative, collectively, of all of the various pro bono programs and initiatives within our District.

The goal and mission of the Pro Bono Committee are to interface with all of the various legal aid agencies and to have a forum for the exchange of ideas and resources through the formation of subcommittees that will share ideas with one another. The Committee seeks to ensure that pro bono services are available to everyone who needs them by coordinating all of the programs available in the District. Our Committee expects to accomplish that by centralizing our District's collective resources.

Our newest member, Trish Redmond, joins us as the representative of the law school clinic program that is being run by Legal Aid of Miami-Dade's "Put Something Back" initiative. Trish's program pairs law school students with members of our bankruptcy bar who act as mentors. The students are given an opportunity to experience consumer bankruptcy law and practice, hands-on, with their respective mentors by being a part of the process…from intake of a potential consumer bankruptcy client to discharge. Hopefully, the clinic's students won't need to observe adversary proceedings for determination of discharge or dischargeability; at least not just yet!

The Committee has adopted its Bylaws, and these will be posted soon on the Court's website. The Bylaws contemplate creation of various subcommittees. At our recent *Meeting*, the following subcommittees were formed with Committee volunteers and Chairs established for each:

1. Pro Se Clinics - Grace Robson (chair), Steve Newburgh;
2. Pro Se Help Desk – Peter Kelly (chair), Ariel Sagre, Grace Robson, Kristina Gonzalez;
3. Law School Mentor Programs – Patricia Redmond (chair), Eric Silver, Peter Kelly;
4. Court Website Review – Joe Falzone (chair), Grace Robson, Ariel Sagre;
5. Veterans' Programs – James Heaton (chair), Carolyn Fabrizio; and Tom Messana;
6. Pro Bono Week – Karen Ladis (chair), Grace Robson, Kim Enright, Nadine White-Boyd, James Heaton, Tom Messana.

We are very excited about the anticipated progress and success of our subcommittees, and we will keep you posted as each subcommittee begins their work and submits their reports to our Committee at each quarterly meeting of the Committee.

This Article is being reprinted in this newsletter with permission from the ABI Journal.
(Please note: the USTP is planning a virtual brown bag seminar with the BBA on July 21st – more details to follow.)

AMERICAN BANKRUPTCY INSTITUTE
JOURNAL
The Essential Resource for Today's Busy Insolvency Professional

On Our Watch

BY MICHAEL J. BUJOLD, NAN ROBERTS EITEL AND ANDREW R. VARA

Introducing the USTP's New Chapter 11 Periodic Reports

Michael J. Bujold
Executive Office for U.S. Trustees Washington, D.C.

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On Dec. 21, 2020, the U.S. Trustee Program (USTP) promulgated a final rule, "Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11" (hereinafter referred to as the "Final Rule").[1] The Final Rule, which is authorized by 28 U.S.C. § 589b, provides that chapter 11 debtors in possession (DIPs) and trustees — other than small business debtors[2] — file monthly operating reports (MORs) and post-confirmation reports (PCRs) using streamlined, data-embedded, uniform forms in every case in every judicial district where the USTP operates. The Final Rule will become effective for all reports filed on or after June 21, 2021. This article discusses the basis for the Final Rule, the USTP's development of consensus views through robust stakeholder participation during the rule-making process, and tips for implementing the new uniform MOR and PCR forms in practice.

Reporting Requirements in Chapter 11

By longstanding statute and rules, DIPs and trustees must account for the receipt, administration and disposition of all property, provide information concerning the estate and the estate's administration as parties-in-interest request, and file periodic reports and summaries of a DIP's business, including statements of receipts and disbursements and such other information as the U.S. Trustee or the bankruptcy court requires.[3] Moreover, DIPs are obligated to comply with the U.S. Trustee's reasonable requests for information and to timely file all reports required by the Bankruptcy Code and Rules, and the failure to do either can be cause for dismissal or conversion.[4] The U.S. Trustee has the duty to ensure that DIPs and trustees properly and timely file all required reports.[5]

DIPs and chapter 11 trustees currently file MORs and PCRs using more than 150 different forms that developed over time across the USTP's 21 regions according to local practices. MORs serve an essential purpose in helping parties evaluate a case's progress, including compliance with legal requirements and determining whether the case should be converted or dismissed. Much of the information required under the Final Rule is already collected in the various existing local forms, but not in a uniform or consistent way. The Final Rule eliminates this patchwork of forms as Congress intended in streamlining chapter 11 reporting through nationally uniform reports.

Formulating the Final Rule

Congress authorized an enhanced and uniform bankruptcy reporting and data regime "to facilitate compilation of data" and of public access either through physical inspection or electronic means.[6] The objective of uniform financial reporting reflects the broader transparency that stakeholders rightfully expect in the bankruptcy system. Uniformity and consistency in the information collected might also facilitate aggregation of data, which will assist Congress in analyzing bankruptcy trends and making policy decisions, with-

1 85 FR 82905.
2 Small business and subchapter V debtors (including those covered by the temporarily expanded debt limits) file MORs on official forms promulgated by the Judicial Conference of the United States. *See* 11 U.S.C. §§ 308, 1187; Fed. R. Bankr. P. 2015(a)(6); Official Form 425C. Subchapter V trustees do not file MORs unless the debtor is removed from possession. *See* 11 U.S.C. § 1185. Any reference to "chapter 11 trustees" or "trustees" in this article does not include subchapter V trustees.
3 11 U.S.C. §§ 1106(a)(1), 1107(a); Fed. R. Bankr. P. 2015(a)(2), (a)(3).
4 11 U.S.C. § 1112(b)(4)(F), (H).
5 28 U.S.C. § 586(a)(3)(D).
6 28 U.S.C. § 589b(b).

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out imposing significant additional burdens upon chapter 11 DIPs and trustees.

Congress identified seven data elements for inclusion in the uniform periodic reports and empowered the attorney general to include others as a matter of discretion.[7] The seven required informational categories, which served as the baseline for the USTP's rulemaking process, are as follows: (1) information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor; (2) the length of time the case has been pending; (3) the number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed; (4) cash receipts, cash disbursements, and the profitability of the debtor for the most recent period and cumulatively since the date of the order for relief; (5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made; (6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and (7) reorganization plans filed and confirmed and, with respect thereto by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.[8]

Governed by the Administrative Procedure Act (APA), the Final Rule is the end result of the USTP's enhanced rule-making process.[9] The APA provides for publication of a notice of proposed rule-making in the Federal Register, followed by an opportunity for the public "to participate in the rule-making through submission of written data, views, or arguments with or without opportunity for oral presentation."[10] The robust public comment and hearing process yielded an informed exchange of ideas among the various stakeholders and the USTP that improved the Final Rule and developed a consensus among stakeholders.

Even before initiating the formal rule-making process with publication of a notice of proposed rule-making (NPRM), the USTP engaged chapter 11 experts and professional associations, and invited them to review and comment on drafts of proposed forms and instructions for both the MORs and PCRs. The USTP undertook a similar process internally, providing review and comment opportunities for USTP personnel across all 21 regions. After considering all pre-publication input, on Nov. 14, 2014, the USTP published an NPRM, along with draft forms and instructions, already reflective of stakeholder participation.[11] During the 60-day public comment period on the NPRM, the USTP received nine comments expressing views on a range of topics, including a request to meet with USTP representatives. Accordingly, on Nov. 30, 2015, the USTP published a notice announcing a public hearing on Feb. 17, 2016, and a reopening of the public comment period through Feb. 22, 2016.[12]

At the USTP public hearing convened on Feb. 17, 2016, four groups of stakeholders — representatives of the Association of Insolvency and Restructuring Advisors, National Association of Consumer Bankruptcy Attorneys, and the States' Association of Bankruptcy Attorneys/National Association of Attorneys General — and one panel trustee from the Southern District of New York provided testimony and engaged in colloquy with the USTP about the proposed rule.[13] The witnesses provided both technical expertise and policy advice on formulating the Final Rule and forms. The USTP also received three additional or supplemental comments during the second comment period.

The Public Comments and Testimony, and the USTP's Response

As a result of the comments and hearing testimony, the USTP amended the draft rule and forms in several respects before publishing the Final Rule. The comments and testimony largely focused on five areas: (1) the scope of financial information required; (2) the issues unique to individual chapter 11 DIPs; (3) accounting methodology; (4) public access to data; and (5) reporting professional fees.

The USTP acknowledges the valuable contributions and time invested by the commenters and witnesses in crafting the Final Rule and forms. These exchanges enhanced the USTP's understanding of information needed by divergent constituencies. The Final Rule reflects a consensus view among stakeholders in these five key areas, ensures fealty to the statute, and strikes a reasonable balance between requiring necessary information while not overburdening DIPs and chapter 11 trustees. The USTP addresses the five key areas and their resolution in the Final Rule below.

First, in the Final Rule, the USTP exempted individual DIPs from the requirement to provide supplemental documents of any kind unless specifically requested by the U.S. Trustee.[14] Conversely, the Final Rule requires that *nonindividual* DIPs file three basic financial statements with the MOR that every business should reason-

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7 28 U.S.C. § 589b(e).
8 *Id.*
9 *See* 5 U.S.C. § 553.
10 5 U.S.C. § 553(c).
11 *See* 79 FR 66659.
12 *See* 80 FR 74739.
13 *See* Transcript, *available at* regulations.gov/document?D=DOJ-EOUST-2015-0011-0010 (unless otherwise specified, all links in this article were last visited on Jan. 6, 2021).

(Article continues on page 16)

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ably be expected to have: (1) statement of cash receipts and disbursements; (2) balance sheets; and (3) statement of operations (profit or loss statement). By setting a baseline expectation for document production in every nonindividual chapter 11 case, the Final Rule increases predictability for all stakeholders. The Final Rule also retains the USTP's flexibility and discretion to require the production of additional financial information based on the needs of the case, including the DIP's profile and the complexity of issues at stake. Although some stakeholders would require DIPs and chapter 11 trustees to file extensive and detailed information, including in some cases requiring a type of Securities and Exchange Commission reporting and the filing of 10 supplemental financial statements[15] originally proposed to be discretionary, others would limit required information to less than that required by the statute because of concerns about burdens on individual DIPs. With these revisions, the Final Rule strikes a reasonable balance between ensuring that DIPs provide sufficient information for others to ascertain the DIP's financial condition and not overburdening DIPs by remaining adaptable to the circumstances of both individuals and large corporate enterprises.

Second, although the circumstances of individual DIPs can vary between high-wealth individuals with complex finances and middle-class consumers with relatively simple finances, and business debtors likewise can vary in their circumstances, the statute prescribes "*uniform* forms for ... periodic reports by [DIPs]" — both individuals and businesses — "or trustees."[16] In fidelity to the statute, the USTP adopted a single MOR form and PCR form in the Final Rule. In connection with the Final Rule, the USTP also revised the forms and instructions to clarify which sections apply to individual DIPs and modified Part 8 of the MOR form to better reflect the types of disbursements typically made by individual DIPs.

Third, because not all DIPs follow the generally accepted accounting principles (GAAP), requiring GAAP's adoption could be unduly burdensome for many DIPs, including individuals. As a result, the Final Rule provides that DIPs may use the accounting method they used pre-petition in preparing the periodic reports. The USTP further determined that DIPs should disclose their costing method for inventory on the MOR. Although this did not require an amendment to the Final Rule, the USTP did modify the MOR form and instructions to require this disclosure.

Fourth, the Final Rule clarifies that both the MOR and PCR forms must be "smart forms" filed through the bankruptcy courts' case management/electronic case filing system, and adopts the U.S. Courts' read-only, "data-embedded" format. This feature allows data to be extracted from a report and searched. Filing smart forms will also facilitate the USTP's automated receipt and processing of data by eliminating manual report retrieval and data entry. This automation simplifies the intake process and offers DIPs and trustees welcome certainty that the USTP received the required reports.

Fifth, the reporting of court-approved professional fees to understand the true costs of chapter 11 received much attention. Although no change to the Final Rule was required, the USTP modified both the MOR and PCR forms and instructions to add line items for lead counsel, efficiency counsel, co-counsel, local counsel, financial professionals and other professionals. In addition, the statute requires that fees incurred because of the bankruptcy be reported separately from those incurred because of nonbankruptcy matters. Therefore, the USTP added a clarifying definition of "nonbankruptcy matters" in the instructions to ensure uniform reporting of all court-approved fees. Finally, the statute requires reporting professional fees on a court-approved, not incurred, basis, so the provision requiring the reporting of approved fees remains unchanged in the Final Rule.

Practice Guide

Before the Final Rule becomes effective on June 21, 2021, the USTP will engage stakeholders to familiarize them with the forms and to promote compliance with the Final Rule, and will coordinate closely with bankruptcy courts and clerks. Sample uniform forms will appear on the USTP's website, which will be periodically updated.[17] Although the data-embedded "smart" forms will ultimately be available directly on the website at no cost, the USTP will also provide bankruptcy software vendors the underlying technical specifications so that report-filers eventually may have the option to complete the uniform forms using private software products.

In addition to familiarizing themselves with the forms, practitioners should understand potential changes to applicable filing and service requirements. Unless otherwise provided by local rule, each report must be filed with the bankruptcy court no later than the 21st day of the month immediately following the covered reporting period.[18] For MORs, the Final Rule requires service upon the U.S. Trustee, official committees appointed under 11 U.S.C. § 1102, governmental units charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party-in-interest.[19]

Finally, DIPs should confer with local USTP representatives early in the case, whether at the initial debtor interview or some other initial meeting, to discuss the DIP's reporting capabilities and the supplemental documentation that the DIP may be required to file. Before issuing the Final Rule, the USTP modified the MOR instructions to clarify that this initial meeting should occur before both the first MOR due date and the meeting of creditors.

The Final Rule vests the U.S. Trustee with discretion to customize the required documentation consistent with the informational needs of the case.[20] In making these determinations, the USTP will seek to ensure that the

14 This is without prejudice to the rights of a party-in-interest to seek further information through Fed. R. Bankr. P. 2004 or other court order in a particular case.

15 These documents include the following: (1) statement of cash receipts and disbursements; (2) balance sheets; (3) profit and loss statement; (4) aged summary of accounts receivable; (5) aged summary schedule of post-petition liabilities; (6) statement of capital assets; (7) schedule of payments to professionals; (8) schedule of insider payments; (9) bank statements and reconciliations; and (10) descriptions of asset sale transactions.

16 28 U.S.C. § 589b(a)(2) (emphasis added).

17 *See* "Chapter 11 Operating Reports," U.S. Dep't of Justice, *available at* justice.gov/ust/chapter-11-operating-reports.

18 *See* 85 FR 82905 (to be codified at 28 C.F.R. §§ 58.8(e), (g)).

19 *See id.* (to be codified at 28 C.F.R. § 58.8(b)).

20 *See id.* (to be codified at 28 C.F.R. § 58.8(d)).

(Article continues on page 17)

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reports provide sufficient information to ascertain the DIP's financial condition while not overburdening the report-filer.

Conclusion

The USTP's mission is to enhance the efficiency and integrity of the bankruptcy system for the benefit of all stakeholders. This Final Rule requiring uniform periodic reports is another step forward in accomplishing this mission. This Final Rule reflects substantial and valuable stakeholder engagement on achieving a balance between the need for information and the need to minimize burdens. Before the effective date, the USTP encourages bankruptcy professionals to engage with their local USTP offices to learn more about the Final Rule and forms, and to be ready to file data-embedded MORs and PCRs come June 21. abi

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RESUBMIT ORDER REQUEST

By Lorraine Adam

The court's *Guidelines for Preparing, Submitting and Serving Orders* was created to help e-filers with format, content, and the upload of an order. To further assist e-filers, each judge has their own webpage that provides additional information and preferences. All information can be found on this court's website: www.flsb.uscourts.gov

Below is a sample order that contains 10 common issues that result in a resubmit request. See if you can find all 10 issues.

UNITED STATES BANKRUPTCY COURT
Southern District of Florida

In re: Case No. 20-44258

John Doe,
Debtor
----------/

Amended Order

THIS MATTER came before the court without hearing on the Agreed Ex Parte Motion to Approve Stipulation Regarding Relief from Stay to Sunset Credit Union (ECF No. 44). For reasons stated on the record, it is ORDERED:

1. The stay imposed by 11 USC Section 362 is modified to allow Sunset Credit Union to repossess the 2019 Ford Fiesta, VIN No. JK8YA2DN8R9084029.
2. The stay is modified for the purpose of allowing Movant to obtain and sell the vehicle and apply the proceeds of the sale to the debt owed to Movant.
3. Rule 4001(A)(3) of the Federal Rules of Bankruptcy Procedures is not applicable and Movant may immediately enforce and implement this order granting relief from stay.

_____
US Bankruptcy Judge

Copies furnished to counsel for creditor

File No.: C:\Doe\Motions\645

(ANSWERS ON PAGE 19)

ANSWERS TO RESUBMIT ORDER REQUEST QUIZ FROM PAGE 18

①UNITED STATES BANKRUPTCY COURT
Southern District of Florida
www.flsb.uscourts.gov

In re: Case No. 20-44258②

John Doe,
Debtor
----------/

Amended Order③

THIS MATTER came before the court without hearing on the Agreed Ex Parte Motion to Approve Stipulation Regarding Relief from Stay to Sunset Credit Union (ECF No. 44). ④For reasons stated on the record, it is ORDERED:

1. ⑤ The stay imposed by 11 USC Section 362 is modified to allow Sunset Credit Union to repossess the 2019 Ford Fiesta, VIN No. JK8YA2DN8R9084029.
2. The stay is modified for the purpose of allowing Movant to obtain and sell the vehicle and apply the proceeds of the sale to the debt owed to Movant.
3. Rule 4001(A)(3) of the Federal Rules of Bankruptcy Procedures I not applicable and Movant may immediately enforce and implement this order granting relief from stay.

⑥ ⑦ US Bankruptcy Judge

⑧

⑨ Copies furnished to counsel for creditor

⑩ File No.: C:\Doe\Motions\645

1. Order does not allow 4 inches at the top. "The top margin on the first page must be four (4) inches. All other pages of the order will have a top margin of one (1) inch. Page size (and orientation) should be 8.5 x 11, portrait." (Guidelines for Preparing, Submitting and Serving Orders, Part Two (A)(1))
2. Judge's initials and chapter are missing. ". . . the case number shall include the judge's initials and chapter of the case shall appear to the right of the case style." (Refer to Local Rule 9004-2(A))
3. Title of the order. "Include in the title a description of the order." (Guidelines for Preparing, Submitting and Serving Orders, Part Four (I)(A)). Since the order is being amended, a footnote explaining the reason for the amendment shall be included. (Refer to Courthouse Beacon News, November 2018 issue, page 9, 5th bullet)
4. "For reasons stated on the record…" The first line of the order indicates the agreed ex parte motion came before the court without a hearing. Since the matter was not heard by a judge, this language should not be included in the order.
5. The first ordered paragraph does not contain the ruling of the motion (i.e., Granting/Denying/Sustaining). Refer to Guidelines for Preparing, Submitting and Serving Orders, Part Four (I)(D).
6. "# # #" to reflect conclusion of the order is missing. "To assist the court in verifying that the 'entire' body of the submitted order has been properly transmitted, the last line in the order must consist of three (3) pound symbols (###), centered in the middle of the page, to indicate the order is complete. (Guidelines for Preparing, Submitting and Serving Orders, Part Two (A)(2))
7. Judge's signature line. "Do not include a signature section in the proposed order. It will be inserted by the court at the top of the first page." (Guidelines for Preparing, Submitting and Serving Orders, Part Four (I)(G))
8. "Submitted by" section is missing. "All proposed orders must include the name, law firm, mailing address, phone/fax number, and an active hyperlink to the e-mail address of the party who submitted the order." (Guidelines for Preparing, Submitting and Serving Orders, Part Two (A)(4))
9. Service Section. ". . . list all parties who are to receive a conformed copy of the order and if the attorney submitting the proposed order is required to serve the order, include the following statement: '[submitting attorney's name] is directed to serve copies of this order on the parties listed and file a certificate of service.'" (Guidelines for Preparing, Submitting and Serving Orders, Part Two (A)(5))
10. Internal file numbers should not appear anywhere on the proposed order. (Courthouse Beacon News, December 2019 issue, page 8, 9th bullet)

CORONAVIRUS RELATED INFORMATION FOR THE PUBLIC

Our court continues to take whatever steps are necessary to assist in ensuring reduced risk of any potential spread of this virus. In addition to the items posted below, please visit the court website: www.flsb.uscourts.gov for all public notices and administrative orders posted by the court in order to keep current with future updates and new notifications. For U.S. District Court, Southern District of Florida information on this topic, please visit that court's website at www.flsd.uscourts.gov.

The Bankruptcy Court remains closed to in-person visits from the public. Additionally, until further notice or unless directed otherwise, the Court is continuing to ONLY hold telephonic (or, when applicable, video) hearings in all pending cases. See **Administrative Order 2020-07 Re: I) Temporarily Closing Clerk's Office Intake to the Public; and II) Expanding Filing Options for Self- Represented Parties During COVID-19 Outbreak and subsequent Administrative Orders and notices.**

GENERAL PROCEDURES FOR HEARINGS BY VIDEO CONFERENCE :

https://www.flsb.uscourts.gov/sites/flsb/files/documents/judges/General_Procedures_for_Hearings_by_Video_Conference.pdf

Individuals not represented by counsel will be permitted to use court telephonic services FREE of charge. Amended pricing is now available for other users. All attorneys shall advise their clients NOT to appear at the courthouse. Information regarding names of telephonic service providers and contact information for each judge and information regarding pricing in this court is posted in notices on the court website.

The U.S. Trustee Program Extends Telephonic or Video Section 341 Meetings. The U.S. Trustee Program has extended the requirement that section 341 meetings be conducted by telephone or video appearance to all cases filed during the period of the President's "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak" issued March 13, 2020, and ending on the date that is 60 days after such declaration terminates. Click [here] for details.

Please visit the following U.S. Federal and Florida state websites for updated information about Coronavirus:
Center for Disease Control: www.coronavirus.gov

Florida Department of Health websites for Miami-Dade, Broward and Palm Beach counties:

http://miamidade.floridahealth.gov **http://broward.floridahealth.gov** **http://palmbeach.floridahealth.gov**

INFORMATION ABOUT FACE MASKS: The CDC has advised that facemasks/coverings made at home from common materials available, or at low cost, can be used as a public health measure providing the mouth and nose are fully covered. The cover- ing should fit snugly against the sides of the face so there are no gaps and should be washed after each use. Remember to handle your facemask/covering by the ear loops or ties only and wash your hands often. For more information, visit

https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html

NOTICE OF NEW DIRECTOR'S FORM 4100S, "SUPPLEMENTAL PROOF OF CLAIM FOR CARES FORBEARANCE CLAIMS"

Please Take Notice of a new Director's Form 4100S, "Supplemental Proof of Claim for CARES Forbearance Claims." This form was approved by the Advisory Committee on Bankruptcy Rules effective February 5, 2021.

Director's Form 4100S addresses Section 1001(d) of Title X of the Consolidated Appropriations Act (CAA), which creates a new section 501(f) of the Bankruptcy Code. This new section permits an "eligible creditor" to file a supplemental proof of claim for a CARES Act forbearance claim in a Chapter 13 case. This new Supplemental Proof of Claim addressing the forbearance can be filed even if the claim's bar date has passed. The CAA amendments sunset on December 27, 2021, one year after the CAA was enacted, and the Form 4100S will also be retired after that date.

A new CM/ECF dictionary event (Supplemental Proof of Claim for CARES Forbearance Claims) has been created to assist with the implementation of the new Director's Form 4100S. When efiled, the event will require linkage to an existing claim on the claims register and the docket number will display on both the court docket and claims register.

RECENT USBC SDFL ADMINSTRATIVE ORDERS AND CLERK'S NOTICES

For all current Administrative Order, please visit https://www.flsb.uscourts.gov/general-orders

To view Clerk's Notices, visit the home page of the Court's website https://www.flsb.uscourts.gov/ to view "News and Announcements" in the lower left column on the page

AO 2021-01 Procedures for the Filing, Service, and Management of Highly Sensitive Documents

AO 2020-13 1) Clarifying Status of Administrative Order 2020-06; 2) Setting Forth Requirements for Use of Digital Signature Software and 3) Readopting Provisions Establishing Procedures for Admission of Direct Evidence Through Declarations or Affidavits

FLORIDA SOUTHERN BANKRUPTCY MORTGAGE MODIFICATION MEDIATION STATISTICS

(From April 1, 2013 through February 28, 2021)

	MIA	FTL	WPB	TOTAL
MMM Motion (Attorney Rep.)	7760	5213	2975	15948
MMM Motion (*Pro Se*)	96	43	26	165
Total Motions Filed	7856	5256	3001	16113
Order Granting MMM Motion	6888	4535	2533	13956
Final Report of Mediator	5883	3634	1979	11496
Mediation Agreement Reached	2564	1736	936	5236

MMM MOTIONS FILED BY MONTH (Attorney Rep. & *Pro Se*)

MIAMI	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2013				18	82	106	137	130	173	181	169	141	1137
2014	171	157	184	179	170	164	156	126	198	146	123	137	1911
2015	161	168	189	183	142	165	127	122	127	108	93	93	1678
2016	111	124	79	102	119	110	60	92	99	84	78	74	1132
2017	59	49	59	52	59	56	54	44	48	57	63	39	639
2018	40	48	54	64	57	44	59	65	44	52	39	39	605
2019	57	39	48	41	48	35	31	42	45	45	35	23	489
2020	35	38	24	20	31	19	8	14	5	15	9	18	236
2021	18	19											37
												TOTAL =	7864

FT. LAUDERDALE	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2013				49	92	98	116	144	189	118	97	77	980
2014	91	82	69	108	89	89	106	103	99	100	121	95	1152
2015	96	100	109	89	94	96	82	74	93	89	91	79	1092
2016	86	81	58	61	68	63	46	75	59	43	54	50	744
2017	38	25	38	26	47	42	40	34	33	39	29	26	417
2018	20	21	36	24	33	43	47	61	28	33	26	21	393
2019	34	20	31	24	28	20	20	18	25	19	26	19	284
2020	26	13	25	19	22	17	8	12	5	5	6	8	166
2021	9	21											30
												TOTAL =	5258

WEST PALM BEACH	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2013				9	35	56	91	83	147	63	68	67	619
2014	47	43	64	54	66	74	54	43	83	52	49	44	673
2015	51	57	52	41	47	56	48	39	35	35	33	36	530
2016	46	33	33	32	36	29	29	32	18	13	16	25	342
2017	22	18	21	22	20	10	23	27	18	24	17	13	235
2018	19	8	10	15	21	20	26	25	24	25	13	12	218
2019	22	20	13	28	14	20	27	19	10	31	18	10	232
2020	16	14	18	13	10	10	15	5	11	11	7	13	143
2021	4	8											12
												TOTAL =	3004

FREE PRO SE BANKRUPTCY CLINICS RESUME AND ARE NOW VIRTUAL VIA ZOOM

During the COVID-19 pandemic, ALL bankruptcy clinics will be conducted via Zoom. Each clinic will feature a 45-minute video providing an overview of certain procedures for filing bankruptcy, followed by a Question & Answer session staffed by one or more pro bono attorneys who are available to give general advice on bankruptcy matters. Attendees will be advised that the attorneys at these clinics do NOT represent them and will NOT provide them with legal advice regarding their particular circumstances.

Attendees are also advised that if they have already filed their case and it is still pending, they are solely responsible for responding to any pleadings or motions and for compliance with any order issued by the assigned Bankruptcy Judge or to a request for information and documentation from the assigned Bankruptcy Trustee. Attendees are also advised that unless they are represented by a lawyer, they are solely responsible for protecting their own legal rights. Notice is also provided to attendees at the program that this is a FREE service, and the attorneys are not there to attempt to acquire them as clients or ask them for payment for advice or future services.

Any person unable to access zoom due to a lack of equipment (a "smartphone" or suitable tablet), please email Steven Newburgh: snewburgh@mclaughlinstern.com. Assistance may be available.

Visit this link on the court website for additional information and dates scheduled for these clinics.:

https://www.flsb.uscourts.gov/node/231

COURT WEBSITE LINK FOR REPORTING COVID-19 CONCERNS AND ISSUES

The following link has been created on this court's website for the public to use for online reporting of COVID-19 Concerns & Issues :

https://www.flsb.uscourts.gov/node/1246

UPCOMING 2021 COURT HOLIDAY CLOSINGS *

Monday, May 31 - Memorial Day **Monday, July 5 - Independence Day** ** Monday, September 6 - Labor Day**

*Any additions to the court closing schedule are announced by General Order and posted on the court website

http://www.flsb.uscourts.gov/general-orders

COURT MISSION STATEMENT

To promote public trust and confidence in the administration of bankruptcy cases:
• through easy access to comprehensible, accurate information about the court, its procedures, and records;
• by the efficient, respectful, and dignified conduct of business at all levels of the court—clerk's office, chambers and courtroom;
• through adjudication of bankruptcy cases by a fair and impartial tribunal that is designed to provide relief to the honest debtor, equitable distribution of available assets to creditors, and preservation of jobs and value through successful business reorganizations.

CONTACT "COURTHOUSE BEACON NEWS" PUBLICATION STAFF

If you have any comments regarding this issue or want to suggest ideas for future articles, please contact "Courthouse Beacon News" staff at the following email address: Debbie_Lewis@flsb.uscourts.gov.
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