



The Cramdown

The Newsletter of the Tampa Bay Bankruptcy Bar Association

Editor-in-Chief, Adam Lawton Alpert, Esq., Bush Ross, P.A.

Spring 2009



PRESIDENT'S MESSAGE

by Donald R. Kirk, Esq.
Fowler White Boggs

With the economy slumping, everyone is looking for ways to make ends meet. Families are clipping coupons. Businesses are cutting costs. People are trying to keep their homes out of foreclosure. It is a very difficult time, and signs of continuing problems are abound.

Individuals, particularly those with low or no income, often rely on charities for assistance. This is even more true now. Those who have recently lost their jobs, had dramatic and unexpected health costs, or are otherwise caught in dire financial circumstances often look to not-for-profit placement agencies to find jobs and food banks to feed their families. Unfortunately, these charities are now more stressed than ever. The demand for their services is soaring, yet their revenue stream, namely corporate and individual donations, are at all time lows.

Charities face a daunting revenue challenge. People and businesses simply do not have the disposable income they had 2-3 years ago. In the competitive fundraising world, that can spell disaster. While some charities have planned for this "rainy day" by budgeting wisely or by creating cash reserves, others have not. I have heard of several charities

that may go under due to these cash shortages.

As bankruptcy practitioners, we can help. The Southern District of Florida recently added local rule 3011-1(B)(2) to allow Chapter 11 plans to give "unclaimed" plan disbursements in a liquidating case to 501(c)(3) entities. Specifically, the rule states: "A Chapter 11 liquidating plan may provide that any unclaimed funds may be donated to a not-for-profit, non-religious organization identified in the plan or disclosure statement accompanying the plan." Local Rule 3011-1(C) has similar language as to "undistributable funds." While such amounts may seem insignificant, they are not. These funds add up dramatically over time. Such planning seems like a no-brainer. Instead of sitting in a clerk's office, these unused funds can now be put to immediate and good use. They can be committed to any eligible charity – food banks, indigent services, pro bono programs, and job placement agencies.

You can also ask for such treatment after a liquidating plan has been confirmed even if the plan did not provide for such use of the funds. Years ago, we represented a Liquidating Agent for a confirmed Chapter 11 case. We filed a motion to provide that "unclaimed funds" be donated to a local pro bono charity. Judge Glenn approved the motion. As a result, we gave over \$1,000.00 to the local charity. It was not a lot, but it certainly helped.

Many of our judges are proponents of such use of these funds. It is an easy provision to include. They can only help our community. Please consider doing this in cases you are involved with now.

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Florida Credit Agreements and Their Application in the Current Economy

*by David W. Barrett, Esq.
Fowler White Boggs P.A.*

With the current state of the economy continually stacking the deck against borrowers in default, commercial borrowers across the nation including those in Florida have invoked creative but common affirmative defenses and claims in attempts to fight off loan enforcement and foreclosure suits. In some cases, the goal of these affirmative defenses and claims is to reduce the borrower's outstanding liability on the loan by arguing against the terms of the loan documents and delaying judgment. Commercial borrowers, by their nature, are not risk averse and given the outstanding balance on their loans and personal exposure, have their backs against the wall. Commercial borrowers in today's climate are therefore increasingly likely to argue everything and anything against their lenders.

One of the most ubiquitous lines of affirmative defenses and claims against a lender is that the lender changed the terms of the loan documents or agreement during discussions with the borrower after the loan documents were signed. Fortunately for lenders, the Florida legislature looked to its Minnesota brethren in an attempt to solve this problem. Florida enacted a statute that limits certain arguments borrowers can make against lenders. Specifically, Florida Statute Section 687.0304 provides that, "a debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." Fla. Stat. § 687.0304(3) (2008). A credit agreement is an agreement to lend or forbear repayment of money, goods, or things in action. Courts have ruled that this statute negates any "action" brought by the debtor pertaining to oral modifications of loan documents. *Eboni Beauty Academy v. Amsouth Bank of Florida, et al.*, 761 So.2d 481, 482 (Fla. Dist. Ct. App. 5th, 2000) (barring the debtors complaint against the lender for oral funding promises after the loan documents were executed because the alleged lender promises were not in writing). The statute carves out certain actions

that lenders may take that do not give rise to credit agreements; rendering financial advice, consultation with the borrower, agreeing to enter into a new credit agreement, forbearance agreement, or extending installments. Fla. Stat. § 687.0304 (3)(a) (2008).

However, § 687.0304 does not encompass all of the borrower's potential arguments. Florida courts have reasoned that this statute does not apply to the borrower's affirmative defenses because affirmative defenses are not "actions". *Larry P. Brenowitz et al. v. Central National Bank*, 597 So.2d 340, 343 (Fla. Dist. Ct. App. 2nd, 1992) (disallowing the application of the credit agreement statute to borrower's affirmative defenses of waiver, estoppel, and bad faith despite their foundation stemming from discussions with the lender because affirmative defenses are not "actions" contemplated by the statute). The result of this decision, and similar decisions by other courts, is that borrowers may still delay judgment by asserting affirmative defenses and may reduce liability if their defenses are successful, but they cannot bring an action in a complaint or counterclaim on unwritten and unsigned credit agreements and ask for damages on such a claim or action.

The effect of the credit agreement statute is that it provides lenders with a shield but not a sword to use in litigation against borrowers. Accordingly, when speak with borrowers during loan workout or forbearance discussions, lenders can derive some comfort from the credit agreement statute which provides some protection from actions brought by borrowers for engaging in such discussions unless the terms of the discussions are put into writing, setting forth the specific terms, and are signed by both the lender and the borrower. The credit agreement statute however, falls short of providing lenders with a sword to strike the same arguments raised by borrowers in their affirmative defenses and therefore fails to provide lenders with complete relief from borrowers' defenses.

Handy Guide To Relevant Deadlines In Small Business Chapter 11 Cases

by Patrick M. Mosley, Esq.

1. Duties of Trustee or Debtor in Possession in Small Business Cases (11 U.S.C. § 1116):

- a. Pursuant to 11 U.S.C. § 1116(1)(A), (B), a trustee or the debtor in possession shall append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief:
 - i. its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or
 - ii. a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed.
- b. Pursuant to 11 U.S.C. § 1116(3), all schedules and statements of financial affairs must be timely filed, unless the court, after notice and a hearing, grants an extension, **which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances.**

2. Who May File a Plan in a Small Business Cases (11 U.S.C. § 1121(e)):

Pursuant to 11 U.S.C. § 1121(e)(1), in a small business case, **only the debtor may file a plan until after 180 days after the date of the order for relief;**

3. Filing of the Plan and Disclosure Statement in a Small Business Cases (11 U.S.C. § 1121(e)):

Pursuant to 11 U.S.C. § 1121(e)(2), **the plan and disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief.**

4. Postpetition Disclosure and Solicitation in Small Business Cases (11 U.S.C. § 1125(f)(3)(B)):

Acceptance and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but **a conditionally approved disclosure statement shall be mailed not later than 25 days before the date of the hearing on confirmation of the plan.**

5. Confirmation of the Plan in a Small Business Case (11 U.S.C. § 1129(e)):

In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with 11 U.S.C. § 1121(e) **not later than 45 days after the plan is filed** unless the time for confirmation is extended in accordance with 11 U.S.C. § 1121(e)(3). *See In re Caring Heart Home Health Corp.* 380 B.R. 908, 910 (Bankr. S.D. Fla. 2008) (holding that an extension of the 11 U.S.C. § 1129(e) deadline may only be granted if all of the requirements of 11 U.S.C. § 1121(e)(3) are satisfied).

Artwork in Attorney Resource Room

by Carrie Beth Lesser, Esq.

On your next visit to the Attorney Resource Room in the federal courthouse, make sure to enjoy the recently added artwork commissioned by the Tampa Bay Bankruptcy Bar Association in honor of Don M. Stichter's 50 years of practice and service to the legal community. Mr. Stichter is a founding member of the TBBBA, and served as the Association's first president.

The beautiful artwork is by local artist Margaret B. Riedel (the mother of Harley Riedel). Mrs. Riedel, an award winning artist, received her Bachelor of Fine Arts degree from the University of Iowa and taught art in public schools in Iowa and Illinois. Her paintings, known for their vivid colors, have sold in galleries from Nantucket to Tampa and are on display in homes and offices throughout the world. Mrs. Riedel contributed her time in preparing these paintings without charge to the Association for which we are very appreciative.

Pro Se Bankruptcy Video (Information)

by Francis F. Szczebak

This winter, the Bankruptcy Judges Division, the Office of Public Affairs, and the Federal Judicial Center released a new bankruptcy video based on a Florida public service program produced by the Tampa Bay Bankruptcy Bar Association, with support from The Florida Bar Foundation, Bay Area Legal Services, and the Bankruptcy Court for the Middle District of Florida. This video was designed to help educate the public about the bankruptcy process.

This 30-minute video provides an overview of the different types of bankruptcy and related filing procedures. Now available on both the Judiciary's public website, uscourts.gov, and the J-Net, the program is divided into seven short segments for desktop viewing at convenient intervals.

DVD copies may be ordered by contacting Connie Gibson in the Office of Public Affairs at: connie_r_gibson@ao.uscourts.gov, or (202)502-1695.

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American Bankruptcy Institute and Stetson University College of Law Sign on to Host March 2010 Alexander L. Paskay Bankruptcy Seminar

The American Bankruptcy Institute and Stetson University College of Law have signed an agreement to partner as the providers of the **Judge Alexander L. Paskay Bankruptcy Seminar**.

The ABI was formed in the summer of 1982 in Washington, D.C. Judge Paskay was one of the first members of the Board of Directors. The ABI has grown to become the most prominent educational institute devoted entirely to the practice of bankruptcy with over 12,000 members. The ABI already sponsors CLE programs with several top law schools, such as Georgetown, St. John's, Tulane, Pepperdine and Missouri-KC, so they look forward to the new tradition with Stetson as well.

The next Paskay Seminar will be the 34th annual, and the Judge will again serve as the Judicial Chair of the program. However, there will be some changes in the time, structure and format of the program. It will be held in Tampa on **March 4-6, 2010** (away from the former early December date) at a first-rate conference hotel, soon to be announced. The CLE program will offer a mix of plenary sessions and workshops to facilitate participation by those attending. As with other ABI regional programs, concurrent sessions will allow attendees to customize their learning experience from among several timely business and consumer topics. Faculty members will be national practitioners and prominent bankruptcy judges. There will be a breakout track on fundamentals for those new to bankruptcy or for younger professionals. The three half-day format of the Seminar will include optional events for networking and business development, including a golf outing and/or a spring training game of either the Yankees or the Rays. They intend to make the event a premier attraction to many practitioners from outside the Middle District and the rest of Florida, reaching the high levels of

attendance from many years ago. At the same time, the Seminar will be affordable and provide high content value as has been customary.

An advisory board of leading practitioners from the top insolvency firms in the Middle District of Florida will serve on the Seminar Advisory Board. As with other ABI regional conferences, this board of about a dozen helps to identify panel topics, suggest speakers and sponsors and promote attendance. Those serving on the board will be listed prominently in the program brochure, sent to thousands of ABI members and prospects in the region, listed on the ABI website, and listed in other announcements and acknowledgements.

Firms serving on the Advisory Board will be asked for a \$1,000 contribution, which includes two complimentary registrations to the 2010 Seminar for use by any member of the firm. Advisory Board members will also be invited to attend a speaker/sponsor dinner on the opening night of the program.

Feel free to contact either Judge Paskay at (813) 301-5146, Sam Gerdano at (703) 739-0800, or Stetson University College of Law Office of Conferences & Events (727) 562-7898 if you have any questions.

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welcomes the following attorneys who will specialize in debtor's rights and commercial litigation:

Terri L. Bryson, former law clerk for the Honorable Douglas A. Wallace of the Second District Court of Appeal

M. David Linton, an attorney with 14 years of civil litigation experience

James-Allen McPheeters, recent graduate of Stetson University College of Law and former intern for the Honorable Catherine Peek McEwen

Observations On Our Faltering Economy

by John D. Emmanuel, Esq.
Fowler White Boggs, P.A.

During the last several months, we have had the privilege of counseling both lenders and debtors as the economy has soured. Businesses that were thriving eighteen months ago are now facing several hardships. Lenders have seen their loan portfolios shift from relationship managers to special asset officers. Based on our client meetings we have made a number of observations:

1. Cash is King.

Cash and cash management are now the key to a business' viability. It does not matter if your client has a strong balance sheet if they do not have the cash to make the next payroll or the next loan payment. Clients have to focus on cash management including doing whatever is necessary to keep existing lines of credit in good standing.

2. Banks are still lending – to some.

I am not aware of any local banks currently interested in making real estate investment loans. Valuations are

simply too uncertain for them to get comfortable with the proposed collateral. On the other hand, banks are still making loans to finance business operations secured by receivables and inventory. Of course, the bank will only lend if the borrower has proven cash flow (see #1 above).

3. Where is the bottom?

Most clients that we have met with do not believe that we have seen the bottom yet and most do not expect to see any recovery until the first quarter of 2010 (at the earliest). What will some of the signals of recovery be? A decrease in unemployment, the stabilization of housing prices, and an increased availability of credit should indicate that the economy is leveling out.

4. No one is immune.

Some very established local and regional businesses are two steps away from Chapter 11. Your clients (and all professionals) need to closely monitor their billing and collection efforts. Deposits should be requested for significant new projects.

5. Toys are cheap.

For those lucky enough to have funds available for discretionary spending, this is a great time to buy. Boats, recreational vehicles, sports cars, motorcycles and the

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Observations On Faltering Economy

continued from p. 8

like are all selling at significant discounts. The price of renting or buying a vacation home at the beach or in the mountains has also fallen dramatically.

6. Florida will come back.

The days of Florida attracting 1,000 new residents a day are over, at least for now. We are also seeing fewer winter guests. However, most believe that our great state will be back as the recovery occurs. I cannot say the same for some other locales such as Michigan or Ohio.

7. Collateral damage.

We already know that charities and religious organizations have seen donations decline as the economy has slowed down. I suspect that private universities will see a decline in applications and admissions, while public universities will see the opposite. Summer jobs for students will be hard to come by.

8. Litigation will rise.

As projects fail and loans go into default, litigation claims against third parties will rise. Clients are considering claims against title companies, brokers, attorneys, accounting firms, surveyors and others.

9. It is good to be a bankruptcy attorney.

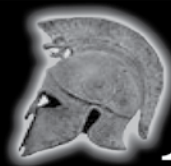
Our practice has always been counter-cyclical and as a result we have all become busy. Filings typically lag the economy by roughly 6 to 9 months, and we therefore anticipate that we will continue to see a rise in filings for at least the next 18 months. While bankruptcy practitioners tend to do well in poor economic times such as this, our friends and neighbors do not want to hear about our thriving practice. A little discretion is in order.

Hearings Scheduled in Ft. Myers Division Cases – Updated Information

by Chas. G. Kilcoyne
Deputy-in-Charge

Until further notice attorneys appearing for hearings in Ft. Myers Division cases scheduled to be heard in Ft. Myers Courthouse can appear in courtroom 9A in Tampa.

The exception, however, is no Tampa appearance at any hearing in Chapter 11 cases. Further, no Tampa appearance in Chapter 7 and 13 cases if a party will be presenting documentary evidence, live testimony, oral argument or case law at such hearing.



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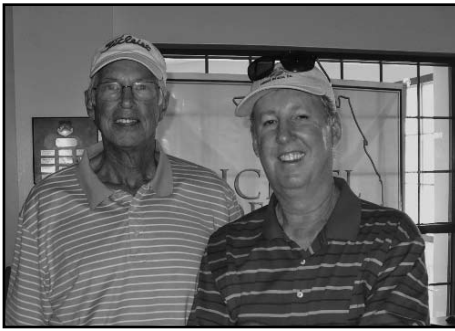
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Golf Tournament

On April 24, 2009, the TBBBA held its annual golf tournament at the Bay Palms Golf Club on MacDill Air Force Base.



Golf Tournament cont.



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February Luncheon

On February 10, 2009, the TBBA was delighted to have Charles Throckmorton, Esq. speak at the monthly CLE luncheon program on developments related to section 363 sales in bankruptcy.



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and during other academic year holidays and breaks.
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March Luncheon

Professor Jeffery Davis spoke at the March 10, 2009 monthly CLE luncheon program on issues related to unbinding representations of consumer debtors.



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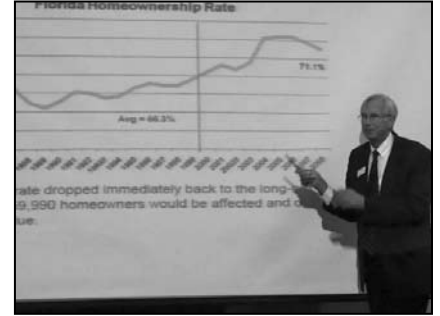
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April Half-Day Seminar

The TBBBA hosted a half-day seminar on April 14, 2009. Featuring a lunch presentation by Chief Judge Paul M. Glenn.



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At Your Service: A Guide To Local Service Requirements

by *Patrick M. Mosely, Esq.*
Stephanie Crane Lieb, Esq.

KEY:²

D = Debtor
T = Trustee
COM = Committee
AP = Affected Party⁴
NOA = Parties who have entered a notice of appearance

DA = Debtor's Attorney
UST = United States Trustee³
L20 = 20 Largest Unsecured Creditors
All = All creditors on the matrix

PLEADING	CHAPTER	CODE/RULE	PARTIES TO SERVE
** Motion to Abandon Property (20 days)	All Chapters	6007(a)	D, DA, T, UST, COM, All
Motion to Accept/Reject Executory Contract	7, 11, 12, 13	6006(a), (c)	D, DA, T, UST, AP, L20 or COM
Motion to Accept/Reject Lease	7, 11, 12, 13	6006(a), (c)	D, DA, T, UST, AP, L20 or COM
Motion to Require Trustee or Debtor in Possession to Accept/Reject Lease or Executory Contract	9, 11, 12, 13	6006(b), (c)	D, DA, T, UST, AP, L20 or COM
Amendments of Schedules	7, 11, 12, 13	1009 and LBR 1009-1	AP, T, UST (UST need not be served when amending 13 schedules).
** Motion to Avoid Lien under § 522(f)	All Chapters	4003(d)	UST, T, AP
Cash Collateral: Motion to Use; Creditor's Motion to Prohibit	11, 12	4001 and 9034(f)	D, DA, T, UST, AP, L20 or COM
Application for Compensation and Expenses	All	11 U.S.C. § 330, Rules 2002(a)(6) and 9034(e)	* D, DA, T, UST, All
** Motion to Compromise (20 days)	All Chapters	9019, 2002(a)(3), and 9034(b)	* D, DA, T, UST, AP, ALL
Debtor Motion to Convert from Chapter 7 to 11	7	1017(f)(2), 2002(a)(4), and 9034(c)	UST, T, All
Creditor Motion to Convert from Chapter 7 to 11	7	1017(f)(1), 2002(a)(4), and 9034(c)	D, DA, T, UST, All
Debtor in Possession Motion to Convert from Chapter 11 to 7	11	1017(f)(2), 2002(a)(4), and 9034(c)	UST, COM, All
Creditor Motion to Convert from Chapter 11 to 7	11	1017(f)(1), 2002(a)(4), and 9034(c)	D, DA, UST, COM, All
Debtor Motion to Convert from Chapter 7 to 13	7	1017(f)(2), 2002(a)(4), and 9034(c)	T, UST, All

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PLEADING	CHAPTER	CODE/RULE	PARTIES TO SERVE
Debtor Notice/Motion to Dismiss Chapter 7, 11, or 12	7, 11, 12	1017(a), 2002(a)(4), and 9034(c)	T, UST, All
Creditor Motion to Dismiss Chapter 7, 11, or 12	7, 11, 12	1017(f)(1), 2002(a)(4), and 9034(c)	D, DA, T, UST, All
Application to Employ Professional Persons	7, 11, 12	2014 and 9034(d)	D, DA, T, UST, L20 or COM, NOA ⁵
Application to Appoint Trustee or Examiner	11	11 U.S.C. § 1104, and Rules 2007.1 and 9034(g)	D, DA, UST, All
Motion for Examination Under Rule 2004	All	2004 and 9013	D, DA, UST, T, AP
Motion to Extend Deadline to File a Complaint Under § 523 and/or § 727	7, 11	4004, 4006, 9013	D, DA, T, UST
Motion to Extend Exclusivity Period for Filing Plan of Reorganization	11	11 U.S.C. §§ 1121(d) and 102(1)	D, DA, UST, L20 or COM, NOA
Motion to Extend Exclusivity Period for Filing Plan of Reorganization in Small Business Case	11	11 U.S.C. § 1121(e)(3)	D, DA, UST, L20 or COM, NOA
Motion to Obtain Post Petition Financing (15 days)	11	4001(c) and 9034(f)	UST, AP, L20 or COM, NOA
Motion to Modify Plan of Reorganization Before Confirmation	11	3019(a)	D, DA, UST, T, All
Motion to Modify Plan of Reorganization After Confirmation in Individual Debtor Case	11	3019(b)	D, DA, T, UST, All
** Objection to Claim (30 days)	All	3007 and LBR 3007-1	D, DA, T, AP
Objection to Claim of Exemption	All	4003	D, DA, T, UST, AP
Objection to Disclosure Statement	11	3017(a) and 3017.1	D, DA, T, UST, COM
Objection to Chapter 13 Plan	13	3015(f)	D, DA, T, UST
Objection to Chapter 12 Plan	12	3015(f)	D, DA, T, UST
Objection to Motion to Modify Confirmed Plan	12, 13	3015(g)	D, DA, T, UST

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Local Service Requirements

continued from p. 17

PLEADING	CHAPTER	CODE/RULE	PARTIES TO SERVE
** Objection to Claim (30 days)	All	3007 and LBR 3007-1	D, DA, T, AP
Objection to Claim of Exemption	All	4003	D, DA, T, UST, AP
Objection to Disclosure Statement	11	3017(a) and 3017.1	D, DA, T, UST, COM
Objection to Chapter 13 Plan	13	3015(f)	D, DA, T, UST
Objection to Chapter 12 Plan	12	3015(f)	D, DA, T, UST
Objection to Motion to Modify Confirmed Plan	12, 13	3015(g)	D, DA, T, UST
Objection to Chapter 11 Plan	11	3017(a)	D, DA, T, UST, COM
Motion to Determine Whether Debtor is a Health Care Business	7, 9, 11	1021	D, DA, T, UST, COM or L20
Motion to Re-Open Case	All	5010 and 9024	D, DA, T, UST, AP, ALL (if the motion to re-open does <u>not</u> affect all creditors, notice need <u>only</u> be made on the affected party)
Motion to Reconsider or Vacate Order	All	3008 and 9013	D, DA, T, UST, AP
Motion for Relief From the Automatic Stay (20 days) (Motion for Relief From Stay may be served by negative notice in Chapter 7 cases only)	All	4001(a)	D, DA, T, UST, AP, COM or L20
** Motion for Relief From Co-Debtor Stay	13	11 U.S.C. § 1301	D, DA, T, Co-Debtor
Motion to Sell Free and Clear of Liens	7, 11, 12	6004(c) and 2002(a)(2)	* D, DA, T, UST, AP, All
Motion for Valuation of Collateral	All	3012, 3012-1 ⁶	D, DA, T, UST, AP
Application for Administrative Expense	All	11 U.S.C. § 503 and Rule 9034(e)	D, DA, T, UST, AP
** Motion/Notice of Proposed Abandonment or Disposition of Property (20 days)	All	6007(b)	D, DA, T, UST, COM, ALL
** Application for the Sale of Real Property	All	6004, 2002(a)(2), and 9034(a)	* D, DA, T, UST, AP, ALL

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Local Service Requirements

continued from p. 18

PLEADING	CHAPTER	CODE/RULE	PARTIES TO SERVE
** Motion/Notice of Proposed Abandonment or Disposition of Property (20 days)	All	6007(b)	D, DA, T, UST, COM, ALL
** Application for the Sale of Real Property	All	6004, 2002(a)(2), and 9034(a)	* D, DA, T, UST, AP, ALL

* Pursuant to LBR 2002-1, the notice requirements of Fed. R. Bankr. P. 2002(a)(2), (3) and (6) may be delivered only to the parties on the LBR 1007-2 Parties in Interest List. When serving the parties reflected on the LBR 1007-2 list, you are serving the Committee and 20 Largest Unsecured Creditors; however, you must still serve the Committee's counsel and co-counsel, if applicable.

** Pursuant to LBR 2002-4, this item may be served by negative notice.

1 Thanks to Chuck Kilcoyne and the Tampa Division Clerk's Office Staff for their help in reviewing and approving this article and its contents.

2 Pursuant to LBR 7005-3, "[a] party may make service under Rule 5(b)(2)(D) of the Federal rules of Civil Procedure through the Court's electronic transmission facilities if the party being served is a Filing User or otherwise consents in writing to electronic service"

3 Pursuant to Fed. R. Bankr. P. 9034, "[u]nless the United States Trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objections or similar paper ... shall transmit a copy thereof to the United States Trustee within the time required by these rules for service of the paper." In the Middle District of Florida, Tampa Division, the United States Trustee must be served with a copy of any paper in the following manner: (i) in a Chapter 11 or 12 case all papers must be served on the UST; (ii) in a Chapter 7 case (a) the petition and any amendments, (b) any matter related to the disposition of assets of the estate, (c) trustee's reports, and (d) orders concluding the case and discharging the trustee must be served on the UST; and (iii) in a Chapter 13 case service on the UST is not required.

4 If an affected party is represented by counsel, both counsel and the affected party must be served.

5 While Fed. R. Bankr. P. 2014(a) only requires service on the United States Trustee, the United States Bankruptcy Judges for the Middle District of Florida, Tampa Division require applications to employ professionals to be serviced on the creditors committee or the twenty largest unsecured creditors and all parties who have filed a notice of appearance.

6 Local Rule 3012-1 requires service on the Affected Party pursuant to (1) 3007-1, as if it were a claims objection, thus requiring service on (a) the affected creditor to the person who signed the proof of claim (to the extent that such name can be determined from the proof of claim), and (b) any attorney who has filed an appearance for the affected creditor; and (2) Fed. R. Bankr. P. 7004, requiring service on officer of the affected creditor by certified mail (if the affected creditor is an insured depository institution), or by service on an officer, managing agent, or general agent authorized to receive service of process if not an insured depository institution.



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Our growth continues with the addition of Richard Johnston, Jr. to our Fort Myers office. He is a shareholder and will practice in the firm's Business, Banking and Insolvency Practice Group.

Richard Johnston Jr., has specialized in bankruptcy, creditors' rights, commercial litigation and commercial landlord/tenant litigation for the last 20 years. Mr. Johnston has taught law courses at Edison Community College and at Florida Gulf Coast University. He is a board certified business civil trial attorney and serves as an elder of the St. Michael Lutheran Church. He is involved in a number of civic and charitable organizations throughout the state.

Prior to joining Fowler White Boggs, Mr. Johnston was a partner in the office of Kiesel, Hughes & Johnston in Fort Myers since 1995. Mr. Johnston received his B.A. from the University of Florida, and his J.D. from the University of Florida Levin College of Law.



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