

in the news

Bankruptcy and Financial
Restructuring



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**U.S. Bankruptcy Court in Delaware Makes
Substantive Changes to Local Rules**

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As is customary, on Feb. 1, 2016, the United States Bankruptcy Court for the District of Delaware amended the Local Rules of Bankruptcy Practice and Procedure. This year's amendments, however, are more substantive than in year's past. Particular attention should be paid to:

- Adoption of a new local rule governing combined hearings on approval of disclosure statements and confirmation of plans in liquidating Chapter 11 cases
- Revisions to electronic service rules
- The timing for submission of certificates of no objection to pending pleadings

A more comprehensive memo on the revisions to the Local Rules can be viewed [here](#).

1. Rule 2002-1 Notices to Creditors, Equity Security Holdings, United States and United States Trustee

- a. A new subparagraph was added to (a) Chapter 11 Hearings, (ii) Special and Emergency Hearings. In any chapter 11 case, if an emergency hearing is scheduled, the requesting party shall promptly file a notice of hearing on the docket specifying the date and time of the hearing and the general issues before the Court. The special hearing will be designed strictly for the issues identified in the notice and no party in interest may present any additional matter at the hearing without leave of the Court.
- b. A revision to paragraph (c) Service List, indicating that the service list will be maintained and furnished by the claims agent, including whether such



parties have opted to receive email service. If no claims agent has been appointed in a case, counsel for the debtors shall bear the responsibilities.

- c. A revision to paragraph (d) Entry of Appearance. The reference to completing Local Form 114 Consent to Service of Documents by Receipt of ECF Notice or Email was removed. In order to receive email service only, the Court added an “opt-in to email service” option when docketing the Entry of Appearance. There is no longer a need to complete Local Form 114.
- d. A revision to paragraph (e) Bar Date. Changes were made to this subparagraph in order to reflect the appropriate updates to portions of the Statement of Financial Affairs.

2. Rule 2004-1 Rule 2004 Examinations

- a. A revision to paragraph (a) Conference Required. Some wording was removed and explained in further detail as a new paragraph (see below).
- b. The following new paragraph and subparagraphs were added:

- (c) Examination on Parties’ Agreement

- (i) A motion under Fed. R. Bankr. P. 2004 is not required if the proposed examinee agrees to voluntarily appear or produce documents. A notice setting for the identity of the examinee, and the date, time, place and scope of the examination or production shall be filed and served in accordance with the Local Rule (such notice, and “Examination Notice”).

- (ii) The party seeking or providing discovery under an Examination Notice may move in this Court under the Examination Notice for Relief as provided under Fed. R. Civ. P. 37(a) (1), (3), (4), and (5), as made applicable by Fed. R. Bankr. P. 7037, or for a protective order. For the avoidance of doubt, an attorney, as an officer of the court, may issue subpoena to the party

providing discovery under the Examination Notice as appropriate to obtain documents or examination subject of the Examination Notice.

- (iii) A party in interest may file an objection to the Examination Notice within seven days after the filing and service of the Examination Notice in accordance with this Local Rule. Unless otherwise ordered by the Court, Local Rule 7026-1 shall apply to any such objection, any response thereto, and any hearing on such objection.

- c. A new paragraph was added, (e). The paragraph reads:

- (e) For the avoidance of doubt, consensual discovery can be conducted by agreement and not under the provisions of Fed. R. Bankr. P. 2004 or this Local Rule, as applicable.

3. Rule 2016-2 Motion for Compensation and Reimbursement of Expenses

- a. A new subparagraph was added to (d) Information Requirements Relating to Compensation Requests at (v). It reads: The aggregate amount of fees requested for all activities within a particular time entry.
- b. A revision to (e) Information Requirements Relating to Expense Reimbursement Requests at subparagraph (ii). The revision is in regard to meal reimbursements and travel reimbursements. For meal reimbursements, the itemization must list each meal separately and, for each meal, identify the meal (breakfast, lunch, etc.) and the number of persons attending. For travel



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reimbursements, the itemization must list each trip separately and, for each trip, identify the mode of transportation (air, train, etc.), the departure and destination, and the name of the person travelling.

4. Rule 3017-2 Combined Hearings on Approval of Disclosure Statements and Confirmation of Plans in Liquidating Chapter 11 Cases

a. This is a brand new section, which reads as follows:

Rule 3017-2 Combined Hearings on Approval of Disclosure Statements and Confirmation of Plans in Liquidating Chapter 11 Case.

(a) Applicability. This Local Rule shall be applicable to all cases arising under chapter 11 of the Code where the following requirements are met:

- (i) All or substantially all of the assets of the debtor [s] were or will be liquidated pursuant to a sale under 11 U.S.C. § 363; and
- (ii) The plan of liquidation proposes to comply with section 1129(a)(9) of the Code; and
- (iii) The plan of liquidation does not seek non-consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties; and
- (iv) The debtor's combined assets to be distributed pursuant to the proposed plan of liquidation are estimated, in good faith, to be worth less than \$25 million (excluding causes of action).

(b) Combined Disclosure Statement and Plan of Liquidation. A plan proponent may combine the disclosure statement and plan of liquidation into one document.

(c) Interim Approval of the Disclosure Statement; Approval of Solicitation Procedures and Scheduling Combined Hearing on Approval of the Adequacy of

Disclosure Statement and Confirmation of Plan. In the event that the requirements of subsection (a) above are satisfied, upon the filing of a disclosure statement and proposed plan of liquidation, a plan proponent may file a motion requesting (1) interim approval of the disclosure statement; (2) approving solicitation procedures; and (3) the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of the proposed plan of liquidation. Such motion may be granted without notice and a hearing if:

(i) Notice. The motion provides at least 14 days' notice to the United States Trustee and the creditors' committee (20 largest unsecured creditors, if no creditors' committee is formed), and all parties who have requested service of notices under Fed. R. Bankr. 2002(d). If an objection is timely filed within such notice period, a hearing on the motion will not occur less than seven days after expiration of the notice period; and

(ii) Provisions to be Highlighted. All motions under this rule requesting a joint disclosure statement and confirmation hearing must: (A) recite whether the proposed form of order and/or plan of liquidation contains any provision of the type indicated below and (B) identify the location of any such provision in the proposed form of order and/or plan of liquidation:

(A) Provisions that seek consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties; and



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(B) Provisions that seek to release any claims the debtor[s] may have against non-debtor parties who are insiders of a debtor; and

(C) Any provision that seeks an exemption under section 1146 of the Code.

(iii) The motion identifies the proposed balloting agent, which may include counsel to the plan-proponent; and

(iv) The motion identifies any voting procedures in addition to those required in section (d) of this Local Rule; and

(v) The requested hearing date will not occur earlier than 45 days after entry of an order scheduling the combined hearing to consider the final approval of the adequacy of the disclosure statement and confirmation of the plan of liquidation; and

(vi) The motion is accompanied by a proposed order which, in addition to setting the hearing date, approves: (A) on an interim basis, the disclosure statement; (B) the voting procedures to be utilized; (C) the form of notice to be provided to creditors and interest holders of the debtor[s]; and (D) the form of ballot that will be provided to creditors and interest holders entitled to vote on the proposed plan of liquidation. The proposed order shall further provide that objections not made to the types of relief requested under (B), (C), or (D) of this subparagraph (vi) at the time of the hearing on the motion shall not be considered at the time of the combined hearing on the disclosure statement and plan.

(d) Solicitation and Voting Procedures. The proposed order shall contain, inter alia, the following provisions:

(i) Establishment of a record date pursuant to Fed. R. Bankr. P. 3017(d) and 3018(a); and

(ii) Establishment of a voting deadline not more than 10 days prior to the combined hearing.

(e) Form of Ballots. If a proposed plan of liquidation seeks consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties, then the ballot must inform the creditors of such releases/injunctions and disclose the manner in which to indicate assent or opposition to such consensual releases/injunctions.

(f) Combined Confirmation Hearing. The order approving the voting procedures shall provide for a combined hearing on the final approval of the disclosure statement and confirmation of the plan not less than 45 days from the entry of the order approving the voting procedures and the objection deadline shall be at least 38 days from such date.

5. Rule 5005-4 Electronic Filing

a. Paragraphs and subparagraphs were added to address the procedure for opting for email service when filing an entry of appearance, as previously mentioned above (see 1c). They also indicate which pleadings will still require conventional service in hard copy, even when a party opts-in to email service. Conventional service will be required in the following circumstances:

i) Service of a complaint and summons in an adversary proceeding under Fed. R. Bankr. P. 7004, service of a motion commencing a contested matter under Fed. R. Bankr. P. 9014, or a subpoena issued under Fed. R. Bankr. P. 9016;



- ii) Notice of the meeting of creditors required under Federal R. Bankr. P. 2002(a)(1);
- iii) Where delivery or service upon an agency of the United States – including the United States Attorney and the United States Trustee – or chambers is required by a federal or local rule or order of this Court; and
- iv) Where the debtor or debtor’s attorney is required to serve on the United States Trustee and the trustee assigned to the case – the petition, schedules, statement of financial affairs, other required documents and amendments to any of the aforementioned filings.

6. Rule 8009-1 Record of Appeal

- a. A new paragraph was added, (d), stating that parties shall file designations consistent with the Local Rules and any applicable orders of the District Court and the Bankruptcy Court.

7. Rule 9013-1 Motions

- a. A revision to paragraph (j) Certificate of No Objection, indicating that a CNO may be filed 24 hours after the objection deadline, not 48 hours, which was the previous timeframe.

8. Rule 9019-1 Certificate of Counsel

- a. A revision to paragraph (b). Similar to the new timeframe for filing a CNO, a COC may also be filed 24 hours after the objection deadline, not 48 hours, which was the previous timeframe.

9. Rule 9029-3 Hearing Agenda Required

- a. A revision to paragraph (a) General Requirements of Agenda at subparagraph (ii). It states that, unless otherwise authorized by the Court, matters listed on the agenda as continued must have the consent of all objecting parties.



For More Information

Should you need any guidance regarding the revised Local Rules, please contact the author of this alert:

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To contact another member of our Bankruptcy and Financial Restructuring law team,

click [here](#) or visit our website at

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About Bankruptcy and Financial Restructuring

The Bankruptcy and Financial Restructuring lawyers at Polsinelli understand how to address a client's concerns when facing a distressed situation by applying years of restructuring experience in a cost-efficient manner. Polsinelli's group of professionals utilizes a practical, hands-on approach to handle bankruptcy and financial restructuring issues whether on behalf of a Chapter 11 debtor, an official committee of unsecured creditors, or a party to bankruptcy litigation. Our lawyers have practiced in numerous different jurisdictions across the country, and we have lawyers available to assist clients across the country with lawyers located in such jurisdictions as Delaware, New York, Kansas City, St. Louis, Chicago, Arizona, Dallas, Denver, Los Angeles and San Francisco. We have extensive experience with distressed companies in various industries. This experience includes serving as Delaware bankruptcy counsel and conflicts counsel to Creditors' Committee of Energy Future Holdings Corp., *et al.*, the seventh largest Chapter 11 bankruptcy case ever filed.

About Polsinelli

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Polsinelli is an Am Law 100 firm with more than 750 attorneys in 17 offices, serving corporations, institutions, entrepreneurs and individuals nationally. Ranked in the top five percent of law firms for client service*, the firm has risen more than 100 spots in Am Law's annual firm ranking over the past six years. Polsinelli attorneys provide practical legal counsel infused with business insight, and focus on health care and life sciences, financial services, real estate, technology and biotech, mid-market corporate, and business litigation. Polsinelli attorneys have depth of experience in 100 service areas and 70 industries. The firm can be found online at www.polsinelli.com. Polsinelli PC. In California, Polsinelli LLP.

* 2016 BTI Client Service A-Team Report

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