

in the news

Bankruptcy and Financial Restructuring



March 2014

Amendments to Local Rules for the United States Bankruptcy Court for the District of Delaware

In this Issue:

- 3. Rule 2004-1: Rule 2004 Examinations
- 4. Rule 3007-2: Service of Objections to Claims; Notices in Lieu of Full Objection
- 5. Rule 3022-1: Closing of Chapter 11 Cases
- 6. Rule 5099-2: Closing of Chapter 15 Cases ... 2
- 7. Rule 5011-1: Motions for Withdrawal of Reference from Bankruptcy Court
- 8. Rule 6004-1: Sale and Sale Procedures Motions
- 9. Rule 7004-2: Summons and Notice of Pretrial Conference in an Adversary Meeting
- 10. Rule 7007-1: Briefs: When Required and Schedule
- 11. Rule 7030-1: Depositions
- 12. Rule 8001-1: Appeals from Bankruptcy Court Orders
- 13. Rule 9013-1: Motions 3
- 14. Rule 9018-1: Lodged Exhibits; Documents Under Seal; Confidentiality
- 15. Local Forms
- For More Information 4

On February 1, 2014, the United States Bankruptcy Court for the District of Delaware enacted certain revisions to the Local Rules of Practice and Procedure for the United States Bankruptcy Court for the District of Delaware. The 2014 amendments are more comprehensive than in year’s past and contain a number of revisions including: (i) changes to the time period for calculating the consideration of a motion to approve bidding procedures; (ii) increased requirements for the involvement of Delaware counsel; (iii) a more defined timeframe for the initial pretrial conference in adversary proceedings; and (iv) a notice-only service option for certain claims objections. Given the import of these amendments to restructuring professionals, we have provided the following outline summarizing the major 2014 amendments.

1. General

- a. Added references throughout the Local Rules regarding the filing of certifications, CNOs, etc. – they added “by Delaware Counsel” indicating that they want Delaware Counsel to file such certifications and related filings, and not out-of-town counsel.

2. Rule 2002-1: Notices to Creditors, Equity Security Holders, United States and United States Trustee

- a. Revision to (f) Notice and Claims Clerk - the notice and/or claims clerk shall perform the functions below:



- i) Within 14 days of entry of an order dismissing a case or 30 days of entry of a final decree, the Notice and Claims Clerk shall forward to the Clerk's Office an electronic version of all imaged claims; upload the creditor mailing list into CM/ECF; and docket a Final Claims Register. If a case has jointly-administered entities, one combined register shall be docketed in the lead case containing claims of all cases. Claims agent shall also docket a completed SF-135 Form indicating the accession and location numbers of any archived claims.
- ii) Within 14 days of entry of an Order converting a case, the Claims Agent shall forward to the Clerk's Office an electronic version of all imaged claims; upload the creditor mailing list into CM/ECF; and docket a Final Claims Register. If a case has jointly-administered entities, one combined register shall be docketed in the lead case containing claims of all cases. A Final Claims Register shall also be docketed in each jointly-administered case containing the claims of only that specific case. Claims agent shall send all original claims to the Philadelphia Federal Records Center and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.
- iii) Upon entry of a termination order terminating the service of a claims agent, the claims agent must do everything listed above.

3. Rule 2004-1: Rule 2004 Examinations

- a. Added a provision that a hearing on a 2004 motion must be no less than 10 days from service of the motion.

4. Rule 3007-2: Service of Objections to Claims; Notices in Lieu of Full Objection

- a. Brand new section – In lieu of serving a copy of the entire claim objection on all parties requesting service

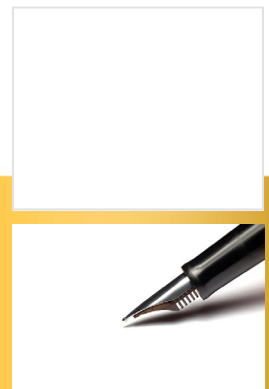
under 2002, the objecting party may elect to serve on any party-in-interest that filed a request for service under 2002 (that is not the holder of a claim objected to in the claim objection, the Debtor, any statutory trustee, any Committee, or the U.S. Trustee) only the exhibits to the claim objection and the notice per Local Rule 3007-1(e).

5. Rule 3022-1: Closing of Chapter 11 Cases

- a. Deleted requirement that a separate proposed order shall be filed closing each jointly administered or consolidated case.

6. Rule 5009-2: Closing of Chapter 15 Cases

- a. Brand new section – Upon written motion, a foreign representative in a proceeding recognized under 1517 of the Code may seek the entry of a final decree when the purpose of the representative's appearance in the Court is completed. Such motion shall describe the nature and results of the representative's activities in the Court and shall include a final decree order that orders the closing of the case and identifies in the caption and in the body of the order the case name and number of each case to be closed.
- b. A motion for entry of a final decree shall be served upon the debtor, the U.S. Trustee, the 2002 list, all persons or bodies authorized to administer foreign





proceedings of the debtor, all parties to litigation pending in the U.S. in which the debtor was a party at the time of the filing of the petition, and such other entities as the Court may direct. Foreign representative must file a COS. If no objection has been filed within 30 days after the COS is filed, there shall be a presumption that the case has been fully administered and the Court may close the case.

7. Rule 5011-1: Motions for Withdrawal of Reference from Bankruptcy Court

- a. Added a reference that all briefing shall comport with the timing **and length** of the rules of the District Court.

8. Rule 6004-1: Sale and Sale Procedures Motions

- a. Added a provision that the Court will only schedule a hearing to consider approval of bidding and sale procedures in accordance with the notice procedures set forth in Local Rule 9006-1 unless the requesting party files a motion to shorten notice which may be heard at the first hearing in the case and presents evidence at that hearing of compelling circumstances [Local Rule 9006-1 provides that all motions be filed and served at least 18 days (21 days if service is by U.S. Mail; 19 days if service is by overnight delivery) prior to the hearing date].

9. Rule 7004-2: Summons and Notice of Pretrial Conference in an Adversary Proceeding

- a. Added a provision that the pretrial conference date shall be at least 35 days and not more than 90 days from the date of service of the summons and complaint.

10. Rule 7007-1: Briefs: When Required and Schedule

- a. Added a provision that Federal Bankruptcy Rule 9006

(f) applies to the calculation of the time period to file any brief, affidavit, or appendix under this rule, such that 3 days shall be added after the prescribed period otherwise would expire when any motion, brief, affidavit, or appendix is served other than by hand delivery.

11. Rule 7030-1: Depositions

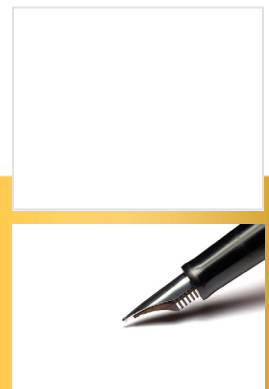
- a. Added a section titled Depositions Upon Oral Examination providing that from the commencement until the conclusion of deposition questioning by an opposing party, including any recesses or continuances thereof of less than 5 calendar days, counsel for the deponent shall not consult or confer with the deponent regarding the substance of the testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order.

12. Rule 8001-1: Appeals from Bankruptcy Court Orders

- a. Added a bold notation that the District Court rules apply to all filings with the District Court.

13. Rule 9013-1: Motions

- a. Added a provision that the notice for a motion shall provide an email or fax number in addition to the





name and address of the parties on whom any objection should be served.

14. Rule 9018-1: Lodged Exhibits; Documents Under Seal; Confidentiality

- a. If the Court grants a motion to file under seal, the revised rule changes the responsibility of electronically docketing the cover sheet from the Clerk to counsel for the movant.

15. Local Forms

- a. Added Local Form 120 – Notice of Corrected Social Security Number
- b. Added Local Form 121 – Certificate of Service: Notice of Corrected Social Security Number



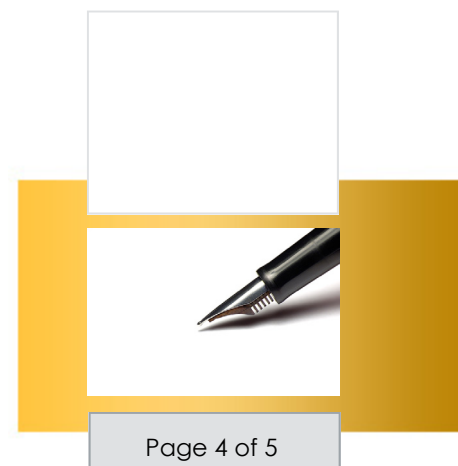
For More Information

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