

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF PROCEDURES
FOR SECTION 1112(b)(1) MOTIONS TO DISMISS
OR CONVERT CHAPTER 11 CASES

GENERAL PROCEDURE ORDER NUMBER 2007-1

Whereas, 11 U.S.C. §1112(b)(3) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) requires the court to commence a hearing on a motion to dismiss or convert a Chapter 11 case pursuant to section 1112(b)(1)¹ (“Motion”) not later than 30 days after filing of the motion, and to decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by section 1112(b).

Whereas, the Court determines that it is necessary to implement a procedure to meet the requirements of section 1112(b)(3) to achieve timely disposition of section 1112(b) motions to dismiss or convert. In furtherance thereof, the following procedures shall apply:

A. Select a Hearing Date. The party intending to file a motion to dismiss or convert under section 1112(b)(3) shall select a date and time for a hearing from the available dates for hearings on motions for relief from stay of the judge to whom the debtor’s case is assigned. Available dates may be found on the Court’s web page at www.cob.uscourts.gov under Calendar/Relief from Stay.

The party intending to file such a Motion shall select the latest hearing date from the relief from stay calendar of the judge to whom the debtor’s case is assigned that is not more than thirty (30) days from the date the motion to dismiss or convert is filed.

B. Service, Form of Notice and Objection Date. The party filing the motion to dismiss or convert (“Movant”) shall serve: (1) the Motion, (2) a Notice in substantial conformity to Exhibit A attached to this General Procedure Order, and (3) a proposed order on all creditors and parties in interest in accordance with applicable rules either before or at the time of filing the Motion.

¹This procedure **DOES NOT APPLY** to motions to convert filed by debtors under 11 U.S.C. § 1112(a).

For purposes of meeting the requirements of F.R.Bankr.P. 2002(a) and 2002(g) to serve all creditors and parties in interest at their address of record, the Movant should use the “Mailing Matrix” as of the date of service of the Notice and Motion in the Court’s electronic data base for the case found on PACER. Movant may access that data base from PACER under “Reports” and “Mailing Matrix” and shall attach the printed copy of that list to the certificate of mailing filed with the Court.

The Notice shall advise that an objection must be filed with the Court no later than five (5) court days prior to the hearing date in the Notice and shall be served on the Movant, the United States Trustee and the Creditors’ Committee (or 20 largest unsecured creditors if no committee has been formed). The Movant shall file a certificate of service with the Court at the time of filing the Motion and Notice.

C. Procedure for Hearing if Objection Filed. If objections to the Motion are filed, the Court will commence the hearing and the following procedures shall apply:

1. No witnesses will be examined and no testimony will be taken. Proffers of evidence will be presented in the manner hereinafter specified.
2. In lieu of testimony, a party intending or desiring to present evidence shall do so by way of counsel’s oral declaration of facts. Such declaration shall be limited to proffers of the evidence which the party would submit in sufficient detail to enable the court to make specific findings based thereon, and shall include the identity of the witnesses who would be available at an evidentiary hearing to present such testimony. Written summaries of witnesses’ testimony are not required but may be submitted.
3. Prior to the hearing, parties shall exchange all exhibits they intend to use, or may reasonably anticipate using (Movant’s exhibits must be numbered and the objector’s must be lettered). The exhibits shall be tendered to the court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.
4. Objections to tendered declarations or exhibits shall be made at the conclusion of each party’s declaration. Any objections made shall identify the evidence objected to and specify the legal ground therefor.
5. After considering the declarations, exhibits and arguments presented and if disputed issues of fact require that an evidentiary hearing be held, the court will decide:

- (a) whether to set the matter over for further evidentiary hearing within 15 days of the date the hearing was commenced; or
- (b) whether compelling circumstances prevent the court from meeting the time limits established by 11 U.S.C. §1112(b)(3); and/or
- (c) whether the Movant expressly consents to a continuance for a specific period of time.

D. Procedure to Obtain an Order when No Objections are Filed.

1. Motion Requests Dismissal or Conversion in the Alternative. If no objections are filed in response to the Motion and the Motion has requested alternative relief, i.e. either dismissal *or* conversion of the case, the moving party shall appear at the time of the hearing and present proffers of evidence in the manner described above to permit the Court to determine whether conversion or dismissal is in the best interests of the creditors and the estate.

2. Motion Specifically Requests Dismissal or Conversion. If the moving party has specifically requested dismissal of the case or conversion of the case, but not relief in the alternative, and no objections are filed, the hearing may be vacated and the moving party may submit a certificate of noncontested matter three (3) court days after the date on which objections are due.

E. Movant's Election to Proceed Under § 1112(b) Without Expedited Schedule. Movant may elect to prosecute a motion to dismiss or convert under 11 U.S.C. § 1112(b) without using the expedited procedures established by this General Procedure Order by instead prosecuting the Motion in the manner prescribed by Local Bankruptcy Rule 202. If Movant prosecutes the Motion pursuant to L.B.R. 202, this will be deemed an explicit waiver of the requirements of 11 U.S.C. §1112(b)(3).

F. Noncompliance with this Procedure. If the Movant has utilized the procedures provided for in this General Procedure Order but fails to comply fully with the procedures established, such failure will be deemed a waiver of the time limits established by 11 U.S.C. §1112(b)(3).

Dated: January 29, 2007

BY THE COURT:

Howard R. Tallman, Chief Judge
Sidney B. Brooks, Judge
A. Bruce Campbell, Judge
Elizabeth E. Brown, Judge
Michael E. Romero, Judge

EXHIBIT A
TO GENERAL PROCEDURE ORDER 2007-1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
)	Case No.
SSN:)	Chapter 11
)	
Debtor.)	

NOTICE OF HEARING ON MOTION TO DISMISS OR CONVERT
AND OPPORTUNITY TO OBJECT

_____ (“Movant”) has filed a Motion to Dismiss or Convert (“Motion”) this Chapter 11 case pursuant to 11 U.S.C. §1112(b). A copy of the Motion is being served upon you with this Notice.

YOU ARE HEREBY NOTIFIED that a hearing on the Motion and any objection to the Motion is set for _____ at _____ o’clock ____ .m. in Courtroom _____, located at 721 19th Street, U.S. Custom House, Denver, Colorado 80202-2508. The hearing will be conducted in accordance with the procedure established in General Procedure Order 2007-1¹ found at this Court’s website at www.cob.uscourts.gov under the heading Rules,

¹**Procedure for Hearing if Objection Filed.** If objections to the Motion are filed, the Court will commence the hearing and the following procedures shall apply:

1. No witnesses will be examined and no testimony will be taken. Proffers of evidence will be presented in the manner hereinafter specified.
2. In lieu of testimony, a party intending or desiring to present evidence shall do so by way of counsel’s oral declaration of facts. Such declaration shall be limited to proffers of the evidence which the party would submit in sufficient detail to enable the court to make specific findings based thereon, and shall include the identity of the witnesses who would be available at an evidentiary hearing to present such testimony. Written summaries of witnesses’ testimony are not required but may be submitted.
3. Prior to the hearing, parties shall exchange all exhibits they intend to use, or may reasonably anticipate using (Movant’s exhibits must be numbered and the objector’s must be lettered). The exhibits shall be tendered to the court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.
4. Objections to tendered declarations or exhibits shall be made at the conclusion of each party’s declaration. Any objections made shall identify the evidence objected to and specify the legal ground therefor.

EXHIBIT A
TO GENERAL PROCEDURE ORDER 2007-1

Procedures, Orders, Opinions.

IF YOU OPPOSE THE RELIEF SOUGHT IN THE MOTION, you must file a written response with the Court and serve the attorney for Movant named below at the address below or, if Movant is not represented by an attorney, serve the Movant at the address below on or before **FIVE (5) COURT DAYS PRIOR TO THE HEARING DATE ABOVE**.

Dated: _____

Movant

Attorney for Movant

5. After considering the declarations, exhibits and arguments presented and if disputed issues of fact require that an evidentiary hearing be held, the court will decide:

- (a) whether to set the matter over for further evidentiary hearing within 15 days of the date the hearing was commenced; or
- (b) whether compelling circumstances prevent the court from meeting the time limits established by 11 U.S.C. §1112(b)(3); and/or
- (c) whether the Movant expressly consents to a continuance for a specific period of time.