

## CHAPTER 11 PROCEDURES

### 1. First Day Orders.

In this district, we have established procedures to hear the traditional “first day” motions and are willing to accommodate the need for immediate hearings. Please consult Local Bankruptcy Rule 2081-1 at <http://www.cob.uscourts.gov/local-rules>, which sets forth the requirements for such motions. A courtesy call to chambers to alert us that you have filed such a motion would be greatly appreciated.

### 2. U.S. Trustee Reporting Requirements

This Court has previously ruled that a chapter 11 debtor’s failure to submit *timely* reports to the Office of the United States Trustee may be sufficient grounds, *by itself*, for conversion or dismissal of a chapter 11 case. *See In re Whetten*, 473 B.R. 380 (Bankr. D. Colo. 2012).

### 3. Cash Collateral.

This Court takes seriously § 363(c)’s absolute prohibition against the use of cash collateral without either consent of the creditors who have lien rights on the cash or an order approving its use. These lien rights may include involuntary liens, such as tax liens. Failure to obtain consent or a court order prior to use may result in severe sanctions, including the inability to confirm a plan of reorganization (§ 1129(a)(2)), dismissal or conversion (§ 1112(b)(4)(D)), and possibly the imposition of civil liability against the offending principals of the Debtor. *See In re Kelvin Pub., Inc.*, 72 F.3d 129 (6th Cir. 1995).

For two decades, former Judge Matheson’s decision in *In re Morningstar Ranch Resorts, Inc.*, 64 B.R. 818 (Bankr. D. Colo. 1986) has served as a guide on the permitted uses of cash collateral. This Court generally follows this precedent as to the types of expenditures that it will authorize if requested. But to the extent that this decision has been interpreted to obviate the need to request court authority – if the expenses fall within the permitted categories – this Court does not adhere to such an interpretation. Consent or court order are absolutely required regardless of the type of expenditure at issue.

### 4. Executory Contracts & Unexpired Leases.

Motions to assume or reject executory leases or contracts require both notice to all creditors and *service* in accordance with Bankruptcy Rule 7004 on the non-debtor parties to the contract or lease in question. Sometimes debtors seek to assume or reject through their plan of reorganization. To provide due process to the affected non-debtor parties to these contracts and leases, this Court requires the filing and service of a motion and notice in addition to the plan and disclosure statement.

### 5. Retention of Professionals – *See section on Attorneys & Other Professionals.*

### 6. Requesting a Bar Date.

As a general rule, the Court will only approve a bar date that is at least 60 days from the mailing of the notice of bar date. There are Local Bankruptcy Forms for bar date notices and bar date orders. *See* L.B. Forms 3003-1.1, 3003-1.2, 3003-1.3 and 3003-1.4.

## **7. Confirmation Hearing Procedures.**

Ordinarily, this Court will convene a non-evidentiary hearing after the deadline has run for filing objections to confirmation. At this initial hearing, the Court will assess what issues require an evidentiary hearing and the legal issues that parties should be prepared to brief and argue. Thus, it is ordinarily not necessary to bring witnesses to the initial contested confirmation hearing. But counsel should consult with their clients prior to this initial hearing and bring their calendars to court so that the Court may set a further hearing during the initial hearing.

If, however, the exigencies of a particular case require an evidentiary hearing to occur quickly, the parties should inform the Court of the need to vary this practice as soon as possible.