USE OF CASH COLLATERAL AND OBTAINING POST PETITION CREDIT

(a) **Motions to use cash collateral.**

Motions for use of cash collateral shall set forth the information required by Fed. R. Bankr. P. 4001 and shall contain, at a minimum, the following information:

(1) Identity of the creditor(s) whose cash collateral is to be utilized and the relationship, if any of the creditor(s) to the debtor;

(2) If interim use is requested, the amount of cash collateral to be used until the time of the final hearing on the motion to use cash collateral and the amount of cash collateral to be used thereafter;

(3) A line-item budget listing projected income and expenses for one year. If interim use is requested, the budget must also include projected income and expenses until the time of the final hearing on the motion;

(4) The estimated balance owed to the creditor(s) identified in paragraph (a)(1), as of the date the petition was filed, including any accrued, unpaid interest, cost or fees as provided in the agreement;

(5) If the cash collateral is rent, the amount of the gross and net rent realized each month, a description of the property from which the rent is generated, and an estimate of its fair market value;

(6) If the cash collateral is receivables, a description and itemization of such receivables and, if any accounts receivable aging statement exists, the same must be provided to the affected creditor(s) and any party requesting such statement;

(7) The estimated fair market value, and the basis of the estimate, of the collateral which allegedly secures the creditor's claims;

(8) The estimated value, and the basis of the estimate, of any property offered as adequate protection; and

(9) A statement of whether or not the debtor proposes any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court (under subsection (a) of the Guidelines) and, if so, the provision shall be clearly identified.

(b) **Motions to obtain credit.**

Motions by the debtor in possession or trustee for authorization to obtain postpetition credit or for approval of a postpetition financing agreement shall contain the information required by Fed. R. Bankr. P. 4001 and also shall contain, at a minimum, the following information:

(1) Identity of the lender, vendor or other creditor (hereafter "creditor") and relationship, if any, of the creditor to the debtor;

(2) If funding is to be incremental, timing of funding or method by which funding is to be determined;

(3) A line-item budget listing projected income and expenses for an appropriate period given the request made. If interim financing is requested, the budget shall also include projected income and expenses until the time of the final hearing on the motion;

(4) If the creditor is a pre-petition creditor, the following information:

(A) The balance owed to the creditor, as of the date the petition was filed, including any accrued, unpaid interest, cost or fees provided in the agreement;

(B) If the lender is secured by receivables, an accounts receivable aging statement;

(C) A description of the collateral which allegedly secures the creditor's claims, an estimate of its fair market value, and the basis of the estimate;

(5) A description of the collateral, if any, to secure the postpetition financing, and the current fair market value of that collateral;

(6) If any other entity has, or claims, an interest in the collateral proposed to secure the post-petition credit or financing;

(A) The balance owed that entity;

(B) Whether the interest of that entity is to be subordinated to the post-petition financing; and if so:

(i) Whether the subordinated entity has consented; or

(ii) In the absence of consent, how the interest of that entity is to be adequately protected; and

(7) A statement of whether or not the debtor proposes any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court (under subsection (a) of the Guidelines) and, if so, the provision shall be clearly identified.

(c) **Cash collateral and credit agreements**.

Motions for the approval of an agreement for use of cash collateral and/or for postpetition credit or financing shall set forth in the body of the motion whether or not the agreement includes any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court, (under subsection (a) of the Guidelines) and, if so, the provision shall be clearly identified.

(d) **Motions heard on shortened time.**

(1) If emergency motions for interim relief made under subsections (a), (b), or (c) of this rule are requested to be heard on shortened time, such request shall be served by facsimile or personal delivery to the entities identified in the applicable provision of Fed. R. Bankr. P. 4001, the United States Trustee, the trustee, if any, and any creditor or party whose rights or interests may be directly affected if the requested relief is granted.

(2) All requests for hearings on shortened time shall set forth with specificity:

(A) The immediate and irreparable harm the estate will suffer if relief is not immediately granted;

(B) The extent of the relief required to prevent such immediate and irreparable harm to the estate; and

(C) As much of the information required by subsection (a), (b), or (c) of this rule, as applicable, as may be necessary to establish the necessity of relief to avoid immediate and irreparable harm to the estate pending a final hearing.

(e) **Notice of final hearing.**

Notice of the final hearing on a motion for the use of cash collateral under subsection (a), to obtain credit under subsection (b), or for approval of an agreement under subsection (c) shall be given, together with a copy of the motion or agreement if not previously served, to the persons specified in paragraph (d)(1) and such other persons as the court may direct.

RELATED AUTHORITY

11 U.S.C. §§ 361, 363, 364

Fed. R. Bankr. P. 2002, 4001, 6004, 9006, 9034
LBR 9034-1

Advisory Committee Notes:

The Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same are found in Appendix I of the Local Bankruptcy Rules.