

Rule 4001-2 USE OF CASH COLLATERAL AND OBTAINING FINANCING

(a) A preliminary hearing may commence no earlier than forty-eight (48) hours after service of the motion and notice of the hearing. In addition to the CM/ECF System, the movant may use any means reasonably calculated to accomplish expedited notice and service (e.g., hand delivery, facsimile, direct e-mail, or next-day delivery) upon an authorized representative of a party adversely affected by the relief requested, and shall note on the certificate of service the manner in which service was effected.

(b) Except as provided herein and elsewhere in these Local Bankruptcy Rules, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed pursuant to Fed. R. Bankr. P. 2002, 4001, and 9014 (“financing motions”).

(1) All financing motions shall (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below; (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement; and (c) justify the inclusion of such provision:

(A) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);

(B) Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection, or amount of the secured creditor’s prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least (a) one hundred twenty (120) days from the date of the order, or (b) ninety (90) days from the date a committee is formed and retains counsel, to investigate such matters;

(C) Provisions that seek to waive or release, without notice and/or hearing, whatever rights the estate may have under applicable law, including without limitation, Chapter 5 of the United States Bankruptcy Code;

- (D) Provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548, and 549;
- (E) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in U.S.C. § 552(b);
- (F) Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out; and
- (G) Provisions that prime any secured lien without the consent of that lienor.

- (2) All financing motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protections afforded under 11 U.S.C. §§ 363 and 364).

(c) The Court may grant interim relief pending review by interested parties of the proposed debtor in possession financing arrangements. Such interim relief shall include only what is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court shall not approve interim financing orders that include any of the provisions previously identified in W.PA.LBR 4001-2(b)(i)(A)-(G).

(d) A final order shall be entered only after notice and a hearing pursuant to Fed. R. Bankr. P. 4001.