

**STATEMENT CONCERNING NOTICE OF EXPEDITED RELIEF AND
FIRST-DAY MOTIONS IN REORGANIZATION CASES
BEFORE JUDGE HERREN**

This statement applies primarily to cases filed under Chapter 11 and 12, and to the extent a first-day motion type of relief is sought in a Chapter 13 case (e.g. use of cash collateral) as occasionally happens, it is equally applicable to Chapter 13. To insure that debtors have the opportunity to seek first-day relief (cash collateral, post-petition financing, or other use, sale or lease of estate property) while insuring that creditors and other interested parties have appropriate notice of expedited interim hearings and are accorded due process, I review the quality of notice given to such creditors as a preliminary matter at all such hearings. If I conclude that notice has been insufficient, I only allow first-day relief to the extent it is demonstrated that immediate and irreparable harm will result to the estate without it. In that event, I will be unlikely to grant any relief that cannot be undone in subsequent proceedings (e.g., granting a post-petition lien, a quick sale, or a roll-up). The same policy and notice requirements below apply to creditors who are seeking expedited relief in a reorganization case, such as a motion for relief from stay, motion for adequate protection, motion to prohibit use, sale or lease of property, and motion regarding utility service.

Requesting Expedited Relief: A matter to be heard on an expedited basis should be presented to the Court by written motion, together with a Motion for Expedited Hearing and a proposed Order on the request for expedited hearing. *See* Fed. R. Bankr. P. 9006(d). The Court will not consider a request for expedited hearing without the written substantive motion for relief and a written motion for expedited hearing. Prior to filing the motions, counsel for the movant should contact one of the court's courtroom deputies to advise them that expedited relief is sought and informally request a hearing date when the motion could or needs to be heard, in order for the court's staff to communicate the request to me, and schedule the hearing for expedited relief. Please also include in any proposed expedited hearing order that is presented to the Court for approval, not only space for the date and time of the hearing requested (the Court will fill in), but also language directing the movant's counsel to give notice consistent with the following to any and all affected parties, or as the Court directs.

Giving Notice: In my experience, counsel generally do what they can to contact their counterparts and advise them of hearings. I also recognize that some creditors use multiple counsel and that debtors cannot always ascertain who the appropriate lawyer contact is. In these situations and those where the creditor's counsel is simply unknown, counsel should make every effort to communicate via e-mail, telephone or fax with an officer or principal of the affected creditor or interested party (and an officer or principal in the creditor's local office or branch if it is a

national creditor), advising that individual of the time and place of the expedited interim hearing and the relief being sought and obtaining information from that individual for sending the pleadings via e-mail or fax. In short, debtor's counsel should attempt to directly communicate with the creditor and comply with the notice and service requirement in Fed. R. Bankr. P. 7004 and 9014. Bear in mind, too, that the rights of unsecured creditors may also be significantly affected. Direct contact with members of the "20 Largest" in the same fashion is in order. Finally, be sure to serve the United States Trustee and, if applicable, the Chapter 12 or 13 trustee. After executing service, counsel should file a certificate of service indicating the date of the service and to whom and how it was accomplished, in advance of the hearing if possible. Simply mailing a notice of an expedited hearing by first class mail to the creditor or the creditor's attorney will no longer suffice unless the creditor or other interested party is represented by counsel at the expedited hearing. The movant's counsel should be prepared to address the Court regarding the efforts and manner in which notice of the expedited hearing and expedited relief sought was given or attempted to be given to the parties in interest.

Review the Code/Rules: As always, carefully consider the applicable provisions of the Bankruptcy Rules: Fed. R. Bankr. P. 4001 (cash collateral, relief from stay, prohibiting use, sale, or lease of property, and obtaining credit), Fed. R. Bankr. P. 6004 (use, sale, or lease property other than cash collateral), Fed. R. Bankr. P. 6003 (limitations on interim and final relief), Fed. R. Bankr. P. 2002 (notice and content of notice), Fed. R. Bankr. P. 7004 (service), Fed. R. Bankr. P. 9014 (contested matters), and Fed. R. Bankr. P. 9006(c) (shortening notice/exceptions) as well as the applicable statutory authority for the first-day relief (*i.e.* 11 U.S.C. §§ 363 [cash collateral], 364 [obtaining credit], 366 [utility service]). D. Kan. L.B.R. 4070.1 also authorizes expedited relief where an uninsured motor vehicle secures a creditor's claim.

Proper and *effective* notice of first-day and expedited relief at the outset avoids problems down the road. Thank you for your attention to these important matters.

/s/ Mitchell L. Herren
UNITED STATES BANKRUPTCY JUDGE
DISTRICT OF KANSAS

September 10, 2020