STATEMENT CONCERNING NOTICE OF EXPEDITED MOTIONS IN CHAPTER 7 AND 13 CASES BEFORE JUDGE NUGENT

There are occasions when urgent relief is necessary and settings to the Court's regular monthly dockets may be inadequate. We will make every effort to accommodate emergency or expedited motions, subject to the Court's availability. Before filing an expedited motion, please consider whether it is necessary to have the matter heard and determined promptly and whether you, as counsel for the movant, have proceeded in a timely manner in seeking expedited relief.

Remember that some types of relief are only available for limited periods of time. *See e.g.,* 11 U.S.C. § 362(c)(3) and (c)(4); D. Kan. L.B.R. 4001(a).3 (motion to extend the automatic stay beyond 30 days and motion to impose the automatic stay). Other types of relief are necessary to enable the debtor to work and fund a chapter 13 plan, such as a motion for turnover of vehicle that was repossessed prepetition. *See e.g.,* § 1306 and § 542. Sometimes a creditor has urgent need for relief to protect its collateral securing the claim. *See e.g.,* § 362(d)(1) (relief from the automatic stay for cause, including lack of adequate protection); D. Kan. L.B.R. 4070.1(d) (failure to provide proof of insurance on motor vehicle). Sometime sale motions under § 363 are subject to closing deadlines.

Whatever the underlying basis for the relief sought, noticing the necessary parties adequately is a primary concern. To insure that the non-moving interested parties have appropriate notice of expedited hearings and are accorded due process, I usually review the quality of notice given to them as a preliminary matter at all such hearings. If I conclude that notice has been insufficient, I may limit or deny the relief sought.

Requesting Expedited Relief: Please present any matter to be heard on an expedited basis on written motion, together with a Motion for Expedited Hearing and a proposed Expedited Hearing Order. *See* Fed. R. Bankr. P. 9006(d). I will not consider a request for expedited hearing without the written substantive motion for relief and a written motion for expedited hearing. The motion for expedited hearing should explain why the matter needs to be expedited. Before filing the motions, counsel for movant should contact one of the court's courtroom deputies to advise them that expedited relief is sought and to informally request a hearing date when the motion could or needs to be heard. This way, the court's staff can communicate the request to me and schedule the hearing. Any proposed expedited hearing order that is presented to the Court for approval should include space for the date and time of the hearing requested (the Court will fill in) and 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 parties' attorneys cannot always be ascertained. In these situations, counsel should make every effort to communicate via e-mail, telephone or fax with an officer or principal of the affected creditor or non-moving interested parties (or 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 hearing and the relief being sought and obtaining information from that individual for sending the pleadings via e-mail or fax. In short, movant's counsel should attempt to directly communicate with the affected creditor or parties in interest and comply with the notice and service requirement in Fed. R. Bankr. P. 7004 and 9014. In addition to the affected party, be sure to serve all parties requesting notice, and the chapter 7 or 13 trustee. Simply mailing a notice of an expedited hearing by regular first class mail to the affected or interested parties will no longer suffice unless the interested party is represented by counsel at the expedited hearing. 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. 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: Be sure to consider the applicable provisions of the Bankruptcy Code, Title 11, and the Fed. R. Bankr. P. for the expedited relief sought. *See* Rule 4001 (relief from stay, prohibiting use, sale, or lease of property, and obtaining credit), Rule 6004 (use, sale, or lease property other than cash collateral), Rule 6003 (limitations on interim and final relief), Rule 2002 (notice and content of notice), Rule 7004 (service), Rule 9014 (contested matters), Rule 9006(c) (shortening notice/exceptions), § 362 (stay relief, extension and imposition of stay); § 542 (turnover), § 364 (obtaining credit). Also, remember that local rules may govern the expedited relief, *see e.g.* D. Kan. L.B.R. 4070.1 (stay relief for uninsured motor vehicle) and D. Kan. L.B.R. 4001(a).3 (extending and imposing the automatic stay). Counsel is responsible for complying with any time requirements for the relief sought and otherwise responsible for bringing this matter to the Court in a timely fashion to be heard within the period of time required, if any.

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

/s/ Robert E. Nugent III
UNITED STATES BANKRUPTCY JUDGE
DISTRICT OF KANSAS

August 26, 2016