

MAY 9 1995

WESTERN DISTRICT OF NC

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In Re:

PROCEDURES IN AID OF THE
ADMINISTRATION OF
CHAPTER 13 CASES

)
)
) ADMINISTRATIVE ORDER ESTABLISH-
) ING PROCEDURE FOR COMPLIANCE WITH
) REQUIREMENTS FOR SERVICE OF PROCESS
) ON INSURED DEPOSITORY INSTITUTIONS
) IN THE ASHEVILLE AND BRYSON CITY
) DIVISIONS

By elub DEPUTY

The Court having considered this matter and it appearing that as a result of the enactment of the Bankruptcy Reform Act of 1994 (Pub. L. No. 103-394 Section 114) FRBP 7004 was amended by the addition of subdivision (h) to require that "[s]ervice on an insured depository institution (as defined in §3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless--(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service."

And it appearing that Chapter 13 proceedings involve numerous procedural matters that might be deemed contested matters under FRBP 9014 and that those procedural matters require usual first class mail service by the Chapter 13 trustees, the Bankruptcy Clerk's office, debtors, creditors and other parties in interest;

And it further appearing that if a procedure is established whereby the affected depository institutions receive timely written notice of an application, on behalf of the debtor, the Bankruptcy Clerk and the Chapter 13 trustee, to seek entry of a Court order authorizing that service of all items in the case that might be required under Rule 7004(h) upon such entities be by first class mail, and of the right of such entities to respond to the application and request a hearing on the request prior to the entry of any such order, that the procedural due process rights of such entities will be protected while, at the same time, the statutory rule requirements will be satisfied;

And it further appearing that the Bankruptcy Clerk and/or the Chapter 13 trustee may provide compliance with this administrative order by giving the permitted FRBP Rule 7004(h)(2) notice themselves or may designate to the debtor the requirement to make the initial certified mailing; and

And it finally appearing that proper administration of the debtors' cases necessitates a rule that requires that if the debtor is designated the service agent under this Administrative Order, the debtor shall advise the Trustee of compliance with

this order, and that failure of the debtor as designee of the Bankruptcy Clerk and the Chapter 13 Trustee to comply with the procedures established by this administrative order constitutes grounds for dismissal of the case pursuant to 11 U.S.C. § 1325(a)(1).

Based upon the foregoing, IT IS HEREBY ORDERED as follows:

1. Pursuant to Section 114 of the Bankruptcy Reform Act of 1994 amending FRBP Rule 7004 by adding subparagraph (h), notice of the application to invoke the provisions of FRBP 7004(h)(2) shall be mailed to the affected entities by the Chapter 13 Trustee, the Bankruptcy Clerk or, by designation, the debtor within 10 days of the filing of a Chapter 13 petition. Such notice shall advise all affected entities of their right to respond in writing to the application within twenty (20) days of service of the notice, and to request that a hearing be scheduled on the same.

2. Notice of the application shall be served on any affected entities by certified mail, as provided in such Rule.

3. If any affected entity does respond and request a hearing before the Court on the application, a hearing will be scheduled on written notice to the affected entity, and the Court will rule on the application at such hearing.

4. If no affected entity responds to the notice of the application in the manner set forth hereinabove, the application shall be approved and all items filed and noticed in the case shall be served by first class mail to all entities.

5. If the debtor is designated as the service agent, the debtor shall file with the Court a certificate of service of the notice upon affected entities within 5 days of said service and shall serve a copy of the certificate of service upon the Trustee.

6. If the debtor is designated as the service agent, the failure of the debtor to serve affected entities by certified mail with the notice to invoke the provisions of FRBP 7004(h)(2) as provided in this administrative order shall constitute grounds for dismissal of the Chapter 13 proceeding.

Dated: May 8, 1995

George R. Hodges
George R. Hodges
Bankruptcy Judge

Marvin R. Wooten
Marvin R. Wooten
Bankruptcy Judge

J. Craig Whitley
J. Craig Whitley
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE / BRYSON CITY DIVISION

In Re:)	
)	
)	
)	
)	Case No.
Debtor(s))	Chapter

APPLICATION FOR AUTHORITY TO PROVIDE SERVICE OF PROCESS ON
CERTAIN DEPOSITORY INSTITUTIONS BY FIRST CLASS MAIL

The above-named debtor(s), also on behalf of the Clerk of the U.S. Bankruptcy Court and the Chapter 13 Standing Trustee, hereby applies for authority to provide for the service of all process, in all proceedings in this case involving the aforementioned parties, upon insured depository institutions by first class mail. In support of this application, the debtor(s) would show that FRBP 7004(h)(2) authorizes the Court to order that service of process on insured depository institutions, as they are defined in Section 3 of the Federal Deposit Insurance Act, be made by first class mail rather than certified mail if the affected institutions have previously received notice by certified mail of an application to permit service in such manner. The debtor(s) would further show that notice of this application has been or will be timely served upon all affected parties in the manner set forth in such Rule, and that this procedure complies with the requirements of Section 114 of the Bankruptcy Reform Act of 1994 amending Rule 7004 by adding subparagraph (h), more specifically (h)(2). The appropriate service address shall be that designated on the official mailing matrix unless a change is appropriately indicated by the creditor.

Wherefore, the debtor(s), through their attorney, respectfully request that the Court grant the relief requested in this application, and that it grant such further and other relief as may be appropriate.

Dated: _____

Attorney for Debtor(s)
Address
Phone Number
N.C. Bar Number

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE / BRYSON CITY DIVISION

In Re: _____)

Debtor(s) _____)

Case No.
Chapter

NOTICE OF OPPORTUNITY FOR HEARING

To: Creditors of the Debtor(s) or other interested parties to this proceeding which are Insured Depository Institutions (as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813)

PLEASE TAKE NOTICE that the debtor(s) filed an Application for Authority to Provide Service of Process on Certain Insured Depository Institutions by First Class Mail. A copy of said application is attached hereto.

Any response or objection to the Application must be filed in writing with the United States Bankruptcy Court, 401 West Trade Street, Charlotte, NC 28202, and a copy served on the attorney for the debtor(s) and the Chapter 13 Standing Trustee, 81 Central Avenue, Asheville, NC 28801 within 23 days of the date of this notice. If no objections are filed and served in a timely manner, the debtor(s) will submit an order to the Court granting the relief requested.

A hearing on any objections filed and served in a timely manner will be held on Tuesday, the _____ day of _____, 19____ at 9:30 a.m. in the Bankruptcy Courtroom, Federal Courthouse, Otis Street, Asheville, NC 28801.

Dated: _____

Attorney for Debtor(s)
Address
Telephone number
N.C. Bar Number

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE / BRYSON CITY DIVISION

In Re:

Debtor(s)

Case No.
Chapter

ORDER AUTHORIZING SERVICE OF PROCESS ON CERTAIN
DEPOSITORY INSTITUTIONS BY FIRST CLASS MAIL

THIS CAUSE coming on for hearing and being hearing before the undersigned United States Bankruptcy Judge, upon Application by the Debtor(s) for Authority to Provide Service of Process on Certain Depository Institutions by First Class Mail, and it appearing to the Court that FRBP 7004(h)(2) and Administrative Order of the Court authorizes the Court to order that service of process on insured depository institutions, as they are defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813, be made by first class mail rather than certified mail if the affected institutions have previously received notice by certified mail of an application to permit service in such manner, and it further appearing to the Court that notice of the debtor(s) application was timely served upon all affected parties in the manner set forth in such Rule and that no timely response, objection or request for hearing was filed by any affected entity, and it further appearing to the Court that compliance with Rule 7004(h) has been made without prejudice to any party.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. All pleadings in all adversary proceedings and contested matters heretofore or hereafter filed in this proceeding may be served by the debtor(s), the Chapter 13 Standing Trustee, or the Clerk of the U.S. Bankruptcy Court upon insured depository institutions as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813) by first class mail. The appropriate service address shall be that designated on the official mailing matrix unless a change is appropriately indicated by the creditor.

Dated: _____

George R. Hodges
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE / BRYSON CITY DIVISION

In Re:

Debtor(s)

Case No.
Chapter

CERTIFICATE OF SERVICE

This is to certify that I have this day served the creditors or other interested parties listed on the mailing matrix attached hereto with a copy of the debtor(s) Application for Authority to Provide Service of Process on Certain Depository Institutions by First Class Mail, and Notice of Opportunity for Hearing thereon, by depositing in the United States mail a copy of same in a properly addressed envelope with adequate postage thereon, and that the aforesaid documents were mailed to said parties by certified mail.

Dated: _____

Attorney for Debtor(s)
Address
Telephone Number
N.C. Bar Number