

FILED
David E. Welch

OCT 14 2005

Clerk, U.S. Bankruptcy Court
Western District of NC//ASW

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In re)
)
PROCEDURES IN AID OF)
THE ADMINISTRATION OF)
CHAPTER 13 CASES)
)
)

ADMINISTRATIVE ORDER
SETTING PROCEDURES TO BE
FOLLOWED IN CHAPTER 13 CASES
FILED ON OR AFTER
OCTOBER 17, 2005

JUDGMENT ENTERED ON OCT 14 2005

The Court has considered this matter and it appears that in order to implement the provisions of the United States Bankruptcy Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109-8) that certain new administrative procedures and changes in certain existing procedures should be adopted by the Court, and based upon the foregoing, It is hereby ordered as follows:

1. PRE-CONFIRMATION ADEQUATE PROTECTION PAYMENTS. All adequate protection payments required by 11 U.S.C. Section 1326(a)(1) shall be paid as follows:

The debtor shall pay directly to the lessor all payments scheduled in a lease of personal property for that portion of the obligation that becomes due after the order for relief. Absent a timely objection to confirmation of the proposed plan, the debtor shall be presumed to have made such payments as required by 11 U.S.C. Section 1326(a).

The Chapter 13 plan shall provide that Section 1326(a)(1) pre-confirmation adequate protection payments to a creditor holding an allowed claim secured by personal property to the extent that the claim is attributable to the purchase of such property by the debtor shall be paid through the Chapter 13 trustee, unless the Court orders otherwise.

The debtor shall list in the Chapter 13 plan the name, address and account number for each secured creditor entitled to receive a Section 1326(a)(1) pre-confirmation payment. For purposes of this provision, the trustee shall make such adequate protection payments to the address duly noted on the sworn proof of claim. The use of such addresses shall be deemed proper notice to the creditors for purposes of the adequate protection payments.

All adequate protection payments paid through the Chapter 13 trustee shall be subject to an administrative fee in favor of the trustee equal to the trustee's statutory percentage commission then in effect, and the trustee shall collect such fee at the time of the distribution of the adequate protection payment to the claimant.

No adequate protection payment shall be paid until a proof of claim is filed and has been deemed allowed pursuant to 11 U.S.C. Section 502(a).

The trustee shall have the authority to make a lump sum disbursement at confirmation on the base attorney fees for the debtor's counsel to the extent that he has funds available that have

678

not otherwise been used for the adequate protection payments or for the payments of the administrative fee in favor of the trustee or other payments as ordered by the Court.

The trustee shall not be required to make pre-confirmation adequate protection payments on account of any claim for which the secured value of said claim is less than \$2,000.00.

All adequate protection payments through the Chapter 13 trustee shall be made in the ordinary course of the trustee's business, according to the trustee's standard monthly distribution schedule, from funds in the case as they become available for distribution to claimants prior to or after entry of the Order Confirming Plan, as appropriate.

Upon the dismissal or conversion of the Chapter 13 case to another chapter prior to confirmation, the Chapter 13 trustee shall make the pre-confirmation adequate protection payments, or such portion thereof, from any funds available for that purpose received on or before the date of the entry of the order of dismissal or conversion, to creditors that have filed proofs of claim that have been deemed allowed pursuant to Section 502(a), prior to the date of the dismissal or conversion.

2. DEBTOR'S FIRST PLAN PAYMENT. In order for the trustee to comply with the procedures for pre-confirmation adequate protection payments as set forth hereinabove, the debtor must remit the first plan payment so that it is received by the trustee within ten (10) days of the Chapter 13 case file date and monthly thereafter.

3. PAYMENT OF DEBTOR'S ATTORNEY'S FEES THROUGH THE CHAPTER 13 PLAN. Local Bankruptcy Rule 2016-1 is modified as follows for Chapter 13 cases filed on or after October 17, 2005:

In addition to the presumptive base fee of \$1,600.00, an attorney may apply for payment of an additional base fee. Any requested base attorney's fee that exceeds the standard \$1,600.00 base fee amount shall be by application with notice of the application and opportunity for hearing served on the debtor, the trustee, and the bankruptcy administrator. The application shall contain a detailed itemized listing and description of the attorney's time and expenses that are the basis for the request.

If counsel for the debtor elects to receive his attorney's fees, or any portion thereof, through the Chapter 13 plan, the trustee shall make monthly disbursements on account of such claim in an amount equal to all funds remaining after payment of those claims as required by 11 U.S.C. Section 1325(a)(5)(B)(iii) and the trustee's commissions on such disbursements. If counsel for the debtor applies for additional base fees in excess of the standard \$1,600.00 fee, and also elects to receive this fee directly from the debtor, then the additional base fee sought in excess of \$1,600.00 must be held in trust pending confirmation of the plan. All such direct fee payments must be received by the attorney prior to the filing of the petition.

After a period of time sufficient to gather empirical data on time required for base services, the court will consider establishing efficient conventions for the payment of base and non-base services.

4. DEBTOR COMPLIANCE WITH CERTAIN FILING REQUIREMENTS OF SECTION 521. The debtor shall be required to comply with the document filing provisions of 11 U.S.C. Section 521(a)(1)(B)(iv) and (f) *only* if formally requested by the trustee or a party in interest. All such requests must be in writing and mailed to the attention of the debtor and any attorney of record for the debtor. If the debtor does not comply with such filing requirements within a period of thirty days following the receipt of such a formal request, the affected party may file a motion for the dismissal of the Chapter 13 case.

5. PROCEDURE FOR PRECONFIRMATION PLAN MODIFICATIONS. If it is determined at the meeting of creditors that a proposed plan must be modified prior to confirmation pursuant to 11 U.S.C. Section 1323, the trustee shall continue the meeting for such reasonable period as is necessary for the debtor to file an amended plan and serve the same on all affected parties in interest. The amended plan shall only be required to identify those particular provisions that are the subject of amendment and shall substantially comply with the prescribed local form for plan amendments. The debtor shall be responsible for the proper service of the plan and any amended plan.

6. CHAPTER 13 PLAN SUMMARY AND AMENDED PLAN SUMMARY FORMS. The Court has prescribed local forms for use by all debtors in filing proposed Chapter 13 plans and amended proposed Chapter 13 plans for all cases filed on or after October 17, 2005. The forms are attached to this order and incorporated by reference herein.

7. APPROPRIATE RATE OF INTEREST FOR TAX CLAIMS. Any tax claimant desiring to invoke the provisions of 11 U.S.C. Section 511(a) for the payment of interest on its claim shall expressly set out the appropriate nonbankruptcy rate of interest in its proof of claim. Otherwise, the trustees are authorized to set the rate of interest not inconsistent with the provisions of the Court's "Administrative Order Regarding Interest Rates in Chapter 13 Cases", entered on January 27, 2005, or the established rates.

8. DEBTOR CERTIFICATION AT MEETING OF CREDITORS. At the meeting of creditors, each debtor shall execute under penalties of perjury a written certification on a form provided by the trustee concerning, among others, the following matters:

(a) That the debtor is current on payment of all post-petition DSO obligations, as required by 11 U.S.C. Section 1325(a)(8),

(b) That the debtor has complied with the tax return filing requirements of 11 U.S.C. Section 1308(a).

(c) That the statement of the debtor's average income for the six month period before the month in which the petition was filed is consistent with the amount as reflected on all payment advices, payroll records, checks, deposits, or other sources of income.

(d) That the debtor has satisfied the credit counseling requirement of 11 U.S.C. Section 109(h).

(e) That confirmation of the plan shall be deemed a finding by the Court that the debtor has so complied with these document and certification requirements.

The trustee shall cause the executed certification form to be filed with the Court.



J. Craig Whitley
Chief United States Bankruptcy Judge



George R. Hodges
United States Bankruptcy Judge



Marvin R. Wooten
United States Bankruptcy Judge

of creditors, and trustee's recommendation for the plan's confirmation. If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter 13 trustee at their addresses as they are listed in the notice of the meeting of creditors. If any objections to confirmation are filed with the Court, the objecting party will provide written notice of the date, time and location of the hearing on the objection. No hearing will be held unless an objection to confirmation is filed.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s), including any motions contained in the plan, and may enter an order confirming the plan and granting the motions.

CHAPTER 13 PLAN SUMMARY

1. The plan proposes payments of \$_____ per month for _____.

2. The plan payments shall commence within ten (10) days of the case file date.

3. Filing of Proofs of Claim

a. The trustee shall only distribute payments, including adequate protection payments, to creditors who have actually filed proofs of claim (including adequate proof of security) with the Court that are deemed allowed pursuant to 11 U.S.C. Section 502(a). However, if a creditor does not file a timely proof of such creditor's claim, then either the debtor or the trustee may file such a claim as provided for by 11 U.S.C. Section 501(c) and in that event such claim shall be deemed the claim for all purposes under the plan.

b. The trustee shall mail payments to the address provided on the proof of claim unless the claimant provides the trustee with another address in writing for payments to be sent. If the claim is assigned or transferred, the trustee shall continue to remit payments to the original claimant until a formal notice of assignment or transfer is filed with the Court.

4. Administrative Costs

a. Attorney's Fees. The attorney for the debtor has received \$_____ of the total base attorney fee of \$_____. The remainder of the base fee shall be paid through the plan by the trustee after making any required set monthly payments to allowed secured claimants.

b. Trustee's Costs. The trustee shall be entitled to reimbursement of fees and costs up to the statutory maximum on each disbursement made by the trustee, regardless of whether it is paid prior to or following confirmation.

5. Priority Claims. All claims entitled to priority under 11 U.S.C. Section 507 and 1322 shall be paid in full in deferred cash payments, except for priority claims under Section 507(a)(1)(B), unless the holder of the particular claim agrees to a different treatment of such claim.

a. Post-Petition Domestic Support Obligations (“DSOs”)

i. None

ii. The names, addresses and phone numbers, including area codes, of the holders of any DSO as defined in 11 U.S.C. Section 101(14A). Pursuant to 11 U.S.C. Section 112, the names of minor children should not be disclosed.

<u>Name</u>	<u>Address (incl. city, state, zip code)</u>	<u>Telephone</u>
-------------	--	------------------

1.

2.

iii. Debtor(s) shall pay all post-petition DSO claims directly to the holder of the claim and not through the Chapter 13 trustee.

b. Pre-Petition Arrearages Owed to DSO Holders Under 11 U.S.C. Section 507(a)(1)(A)

i. None

ii. The names, addresses, phone numbers, including area codes, and the claim amounts of the holders of any DSO arrearage claims. Pursuant to 11 U.S.C. Section 112, the names of minor children should not be disclosed.

<u>Name</u>	<u>Address (incl. city, state, zip code)/Telephone</u>	<u>Claim Amount</u>
-------------	--	---------------------

1.

2.

iii. DSO arrearage claims shall be paid by the trustee in full on a pro rata basis after payment of the attorney’s fee balance and prior to payment of any non-DSO priority claims, unless a different treatment is proposed under the “Special Terms” section of the plan.

c. DSOs Assigned to or Owed to a Governmental Unit Pursuant to 11 U.S.C. Section 507(a)(1)(B)

i. None

<u>Creditor</u>	<u>Collateral</u>	<u>Account Number</u>
-----------------	-------------------	-----------------------

- 1.
- 2.

The trustee shall not be required to make any pre-confirmation adequate protection payments on account of any allowed secured claim with a secured value of less than \$2,000.00.

iii. Post-confirmation payments. The trustee, on behalf of the debtor, will make post-confirmation payments to the following creditors in equal monthly amounts sufficient to pay the value of the secured portion of the claim as set forth herein over the plan term, which shall be deemed to provide adequate protection to each such creditor.

To the extent that the valuation provisions of 11 U.S.C. Section 506 do not apply to any of the claims listed below, the creditor's failure to object to confirmation of the proposed plan shall constitute the creditor's acceptance of the treatment of its claim as proposed, pursuant to 11 U.S.C. Section 1325(a)(5)(A).

<u>Creditor</u>	<u>Claim Amount</u>	<u>Collateral</u>	<u>Collateral Value</u>	<u>Undersecured Amount</u>
-----------------	---------------------	-------------------	-------------------------	----------------------------

- 1.
- 2.

b. Claims Secured by Real Property Which the Debtor Intends to Retain

i. None

ii. Mortgage claims to be paid as long-term debts pursuant to 11 U.S.C. Section 1322(b)(5):

Post-petition payments to be paid directly by the debtor

Post-petition payments to be paid by the trustee

Pre-petition arrearages will be treated as separate secured claims and the value of the claims will be paid by the trustee in equal monthly payments over the term of the plan.

<u>Creditor</u>	<u>Collateral</u>	<u>Regular Monthly Payment</u>	<u>Pre-petition Arrearage Amount</u>
-----------------	-------------------	--------------------------------	--------------------------------------

- 1.
- 2.

iii. Mortgage claims to be paid in full during the term of the plan from the plan payments.

Any pre-petition arrearage amount is included as part of the total amount of the secured claim. The trustee shall pay the value of the claim in equal monthly payments over the term of the plan, which shall be deemed to provide adequate protection to each such creditor.

<u>Creditor</u>	<u>Claim Amount</u>	<u>Collateral</u>	<u>Collateral Value</u>	<u>Undersecured Portion</u>
-----------------	---------------------	-------------------	-------------------------	-----------------------------

- 1.
- 2.

Motion to Value All Liens in Paragraph #6

The debtor(s) hereby moves the Court to value the collateral of each of the above-stated creditors at the collateral value stated. To the extent that the amount of the debt of any such creditor exceeds the stated collateral value, the debtor(s) hereby moves the Court that said difference be treated in the Chapter 13 plan as a general unsecured claim without priority. The debtor(s) further moves the Court that the lien of each creditor listed upon the collateral listed hereinabove be satisfied upon payment of the collateral value and the issuance of the debtor(s) discharge.

c. Surrender of Collateral

The debtor surrenders any interest in the collateral securing the claims of the creditors as set forth below. Upon confirmation, the automatic stay will be deemed lifted for the collateral and the creditor need not file a motion for relief from stay in order to repossess, foreclose upon or sell the collateral. Nothing herein is intended to lift any applicable co-debtor stay, or to abrogate the debtor's state law contract rights.

<u>Creditor</u>	<u>Collateral to be Surrendered</u>
-----------------	-------------------------------------

- 1.
- 2.

7. General Unsecured Claims Not Separately Classified

a. If the plan proposes payment of a set percentage dividend to the general unsecured creditors, the proposed dividend is _____%.

b. If the plan proposes payment of a monthly payment for a set term of months, the estimated dividend to general unsecured creditors is _____%.

c. General unsecured claims shall be paid on a pro rata basis with payments to commence after the payment of all priority unsecured claims in full.

8. Executory Contracts and Unexpired Leases

a. None

b. The following executory contracts and unexpired leases are assumed, and payments due after the filing of the case will be paid directly by the debtor rather than by the trustee.

c. Unless otherwise provided, the debtor proposes to cure any pre-bankruptcy defaults on the assumed leases or contracts in equal monthly payments by the trustee, over a period of _____ months, with said payments to be made at the same time as payments to secured creditors.

<u>Creditor</u>	<u>Nature of Lease or Contract</u>	<u>Periodic Payment to be Made by Debtor</u>
-----------------	------------------------------------	--

- 1.
- 2.

9. Special Terms

a. None

b. Special Classes of Unsecured Claims

c. Other Direct Payments to Creditors Other than Section 6(b)(ii)

d. Other Special Terms

Motion to Avoid Non-Possessory, Non-Purchase Money Security Interests in Household Goods and Personal Items

The debtor is indebted to the following creditors in the amounts stated. As security for the debt, each such creditor insisted upon, and the debtor executed, a waiver of exemption of certain property, and a security agreement granting said creditors a non-possessory, non-purchase money security interest in household goods which is property delineated by 11 U.S.C. Section 522(f)(2) and which is held primarily for the personal, family or household use of the debtor or a dependent of the debtor. The debtor believes that a financing statement may have been properly filed evidencing each such creditor's security interest and liens:

<u>Creditor</u>	<u>Account/I.D.</u>	<u>Debt Amount</u>	<u>Description of Property</u>
-----------------	---------------------	--------------------	--------------------------------

- 1.
- 2.

The debtor's interest in any item of property referred to above does not exceed the value claimed as exempt. The money borrowed from each such creditor does not represent any part of the purchase money of any of the items covered by each such creditor's security agreement. The existence of each such creditor's lien on the debtor's household goods and personal items impairs the exemptions to which the debtor would be entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law. The debtor moves the Court for the cancellation and avoidance of the security interest of each such creditor in the debtor's personal and household goods, effective upon discharge.

Motion to Avoid Judicial Liens

Judgments were obtained by the creditors listed below in cases before the General Court of Justice of the State of North Carolina, and said judgments have been recorded in the Public Registry as follows:

<u>Creditor</u>	<u>Judgment Book And Page</u>	<u>Registry</u>	<u>Judgment Date</u>	<u>Judgment Lien Amount</u>
-----------------	-----------------------------------	-----------------	----------------------	---------------------------------

- 1.
- 2.

The above-stated judgments created liens on the real property in which the debtor has an interest, which real property is more specifically described as _____ . The value of the debtor's interest in this real property is \$ _____. The aforesaid liens constitute judicial liens under 11 U.S.C. Section 522(f)(1). The property which this judicial lien encumbers is property which the debtor is entitled to exempt under 11 U.S.C. Section 522 and the claimed amount of this exemption is \$ _____. The existence of this judicial lien impairs the exemption to which the debtor is entitled under Section 1C-1601 of the North Carolina General Statutes or as otherwise applied under applicable state law.

The debtor respectfully moves the Court to issue an order compelling the above-stated creditors to cancel and avoid their judicial liens upon the real property described herein, effective upon discharge.

General Provisions

1. To receive payment from the trustee, either prior to or following confirmation, a secured creditor must file a proof of claim. Secured claims which are not filed within the time period required by Federal Bankruptcy Rule 3002(c) may be disallowed or subordinated to other claims upon further order of the Court.
2. Confirmation of this plan does not bar a party in interest from objecting to a claim which is not filed in accordance with Federal Bankruptcy Rules 3001 or 3002.

3. Unless otherwise ordered, any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within one-hundred twenty (120) days after the removal of the property from the protection of the automatic stay. For purposes hereof, the removal date shall be the date of the entry of the order confirming the plan, modifying the plan, or granting relief from stay. This also applies to creditors who may claim an interest in, or lien upon, property which is removed from the protection of the automatic stay of another lien holder or release to another lien holder.

4. If a claim is listed in the plan as secured and the creditor files a proof of claim as an unsecured creditor, the creditor shall be treated as unsecured for purposes of distribution and for any other purpose under the plan.

5. Property of the estate includes all of the property specified in 11 U.S.C. Section 541 and all property of the kind specified in such section acquired by the debtor after commencement of the case but before the case is closed, dismissed or likewise converted to one under another chapter of the Code.

6. Confirmation of the plan shall impose a duty on the holders and/or servicers of claims secured by liens on real property to apply the payments received from the trustee on the pre-petition arrearages, if any, only to such arrearages; to deem the pre-petition arrearages as contractually cured by confirmation; to apply the direct mortgage payments, if any, paid by the trustee or by the debtor to the month in which they were made under the plan or directly by the debtor, whether such payments are immediately applied to the loan or placed into some type of suspense account; to notify the trustee, the debtor and the attorney for the debtor of any changes in the interest rate for an adjustable rate mortgage and the effective date of the adjustment; to notify the trustee, the debtor and attorney for the debtor of any change in the taxes and insurance that would either increase or reduce the escrow portion of the monthly mortgage payment; and to otherwise comply with 11 U.S.C. Section 524(i).

I declare under penalty of perjury that the information provided in the Chapter 13 Plan Summary, including Motion(s) for Valuation; Motion(s) to Avoid Certain Liens; and the Assumption and Rejection of Executory Contracts and Unexpired Leases; as to all matters set forth herein are true and correct.

Dated _____

Debtor's Signature

Dated _____

Debtor's Signature

I hereby certify that I have reviewed this document with the debtor(s) and that the debtor(s) have received a copy of this document.

Dated _____

Attorney for the Debtor(s)

Cases filed in the Asheville or Bryson City Divisions:

Clerk, U.S. Bankruptcy Court, Room #112, 100 Otis Street, Asheville, N.C. 28801

Your objection to confirmation and request for hearing must include the specific reasons for your objection, and must be filed with the Court no later than fifteen (15) days following the conclusion of the combined hearing on plan, **continued** meeting of creditors, and Trustee's recommendation for the plan's confirmation. If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter 13 trustee at their addresses as they are listed in the notice of the meeting of creditors. If any objections to confirmation are filed with the Court, the objecting party will provide written notice of the date, time and location of the hearing. No hearing will be held unless an objection to confirmation is filed.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s) as amended, including any motions contained in the amended plan, and may enter an order confirming the amended plan and granting the motions.

I declare under penalty of perjury that the information provided in the **Amendment** to Chapter 13 Plan Summary, including Motion(s) for Valuation; Motion(s) to Avoid Certain Liens; and the Assumption and Rejection of Executory Contracts and Unexpired Leases; as to all matters set forth herein are true and correct.

Dated _____

Debtor's Signature

Dated _____

Debtor's Signature

I hereby certify that I have reviewed this document with the debtor(s) and that the debtor(s) have received a copy of this document.

Dated _____

Attorney for the Debtor(s)