

REVIEW OF DELAWARE BANKRUPTCY COURT 2014 LOCAL RULE AMENDMENTS

On February 1, 2014, the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”) released the 2014 version of the Local Rules for the United States Bankruptcy Court District of Delaware (Effective February 1, 2014) (the “Local Rules”). As a courtesy to our clients and friends, Morris Nichols’ Business Reorganization and Restructuring Group has summarized the most significant additions and changes to the Local Rules relevant to the business bankruptcy practice in the Delaware Bankruptcy Court. For your reference, we also provide *links* to the **updated 2014 Local Rules** and a **redline version of the 2014 Local Rules marked to show changes against the 2013 Local Rules**.

Pursuant to Local Rule 1001-1(e), the 2014 version of the Local Rules governs all cases or proceedings filed after the effective date and also applies to proceedings pending on the effective date, except to the extent that the Court finds that it would not be feasible or would work an injustice.

Amendments Applicable to Multiple Local Rules

Local Conforming Changes to Reference “Delaware Counsel”

Local Rules 1003-1, 2004-1(b), 3023-1(b)(ii)(O), 7026-1(c), 7026-2(b)(ii), 9013-1(b), (j) & (k), 9022-1, and 9029-3(a) (i) & (iii) each have been amended to expressly reference “Delaware Counsel” as defined in Local Rule 9010-1(c). Local Rule 9010-1(c) defines “Delaware Counsel” as “an attorney who is a member of the Bar of the District Court and who maintains an office in the District of Delaware for the regular transaction of business.” Previously, each of these local rules either referenced the undefined term “local

counsel” or did not identify which person was required to act.¹

Matters to Be Decided by the District Court Now Expressly Governed By District Court Local Rules

Local Rules 5011-1 (addressing motions to withdraw the reference) and 8001-1 (addressing bankruptcy appeals to the District Court) have been amended to state expressly that such proceedings are governed by the District Court’s Local Rules of Civil Practice and Procedure (the “Local Civil Rules”), including those rules governing timing and length of briefs. Notably, Local Civil Rule 7.1.3 limits opening and answering briefs filed in the District Court to twenty (20) pages each and reply briefs to ten (10) pages. *Compare* Local Rule 7007-2(a)(iv) (allowing forty (40) pages each for opening and answering briefs and twenty (20) pages for reply briefs in adversary proceedings pending before the Delaware Bankruptcy Court).

Amendments Applicable to Individual Local Rules

Local Rule 2002-1: Notices to Creditors, Equity Security Holders, United States and United States Trustee

Local Rule 2002-1(f) has been revised to modify the responsibilities of the notice and/or claims clerk in connection with (i) the dismissal or conversion of a bankruptcy case and (ii) the termination of the notice and/or claims clerk’s engagement:

- a. Local Rule 2002-1(f)(ix) now provides that within fourteen (14) days of entry of an Order dismissing a case or within thirty (30) days of entry of a Final Decree,² the claims agent shall (a) forward the Clerk an electronic

¹ “District Court” is defined in Local Rule 1001-1(b) as the “United States District Court for the District of Delaware.”

² The term “Final Decree” is capitalized in certain places in the Local Rules, including Local Rule 2002-1(f), but is not defined in the Local Rules.

version of all imaged claims; (b) upload the creditor mailing list into CM/ECF and (c) docket a Final Claims Register. In jointly-administered cases, one combined register containing claims of all cases shall be docketed in the lead case. Further, in addition to boxing and transporting all original claims to the Philadelphia Federal Records Center, the claims agent now must docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

b. Consistent with revised Local Rule 2002-1(f)(ix), subsection (f)(x) now requires the claims agent, within fourteen (14) days of entry of an Order converting a chapter 11 case, to (a) forward the Clerk an electronic version of all imaged claims; (b) upload the creditor mailing list into CM/ECF and (c) docket a Final Claims Register. In contrast to the requirements of revised subsection (f)(ix), upon conversion of jointly-administered cases, a Final Claims Register must be docketed in each case containing the claims of the specific case. Moreover, the claims agent is now required to box and transport all original claims to the Philadelphia Federal Records Center and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

c. New Local Rule 2002-1(f)(xii) lists the required functions of a claims agent upon entry of a termination order terminating the service of the claims agent. Consistent with revised subsections (ix) and (x), the claims agent must (a) forward the Clerk an electronic version of all imaged claims; (b) upload the creditor mailing list into CM/ECF and (c) docket a Final Claims Register. If cases are jointly-administered, one combined claims register shall be docketed in the lead case and a Final Claims Register shall also be docketed in each case containing the claims of the specific case. Further, the claims agent must box and transport all original claims to the Philadelphia Federal Records Center and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

Local Rule 2004-1: Rule 2004 Examinations

Subsection (c) of Local Rule 2004-1, concerning the service requirements for motions for or notices of examination or

production of documents under Fed. R. Bankr. P. 2004, now provides that the service requirements provided therein apply in lieu of any other rules of service that generally apply. Subsection (c) has been further revised to require that a notice of motion for a Rule 2004 motion must provide the date, time and place of the hearing that is no less than ten (10) days from the date of service of the motion. Nothing in Local Rule 2004-1 precludes the Court from shortening the notice period upon an appropriate showing of cause.

Local Rule 3007-2: Service of Objections to Claims; Notices in Lieu of Full Objection

New Local Rule 3007-2 permits an objecting party, in its discretion, to serve only the exhibits to a claim objection and the notice of the claim objection, in lieu of serving a copy of the entire claim objection, on any party-in-interest that has filed a request for service of notices under Bankruptcy Rule 2002(i) so long as the party-in-interest is not (i) the holder of a claim that is objected to in the claim objection, (ii) the debtor or debtor-in-possession, (iii) any statutory trustee, (iv) any official committee, or (v) the U.S. Trustee (the "Core Objection Service Parties"). The objecting party shall serve the claim objection upon the Core Objection Service Parties in the manner prescribed by Bankruptcy Rule 3007(a). This change may help reduce copying and postage costs in larger bankruptcy cases.

Local Rule 3022-1: Closing of Chapter 11 Cases

Local Rule 3022-1(a) has been revised to remove the requirement (added in the 2013 version of the Local Rules) that a party in interest filing a motion seeking the entry of a final decree must file a separate proposed order closing each jointly-administered or consolidated case. Rather, revised subsection (a) requires a motion seeking the entry of a final decree to include a proposed final decree order that (i) orders the closing of the case and (ii) identifies the case name and case number of each case to be closed in the caption and in the body of the order.

Local Rule 5009-2: Closing of Chapter 15 Cases

New Local Rule 5009-2 provides the procedures for closing a chapter 15 case.

First, subsection (a) provides that a foreign representative in a foreign proceeding recognized under § 1517 of the Bankruptcy Code may file a motion seeking the entry of a final decree when the purpose of the representative's appearance in the Delaware Bankruptcy Court is completed. Such a motion must describe the nature and results of the foreign representative's activities and include a final decree order that (i) orders the closing of the case and (ii) identifies the case name and case number of each case to be closed in the caption and in the body of the order.

Second, subsection (b) provides that a motion for entry of a final decree shall be served upon (i) the debtor, (ii) the United States Trustee, (iii) all creditors who filed a request for notices under Fed. R. Bankr. P. 2002 and Local Rule 9013-1, (iv) all persons or bodies authorized to administer foreign proceedings of the debtor, (v) parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and (vi) such other entities as the Delaware Bankruptcy Court may direct. If no objection is filed by the United States Trustee or a party in interest within thirty (30) days after the foreign representative files a certificate of service, there shall be a presumption that the case has been fully administered and the Delaware Bankruptcy Court may close the case.

Local Rule 6004-1: Sale and Sale Procedures Motions

Subsection (c) of Local Rule 6004-1 now provides that the Delaware Bankruptcy Court will only schedule a hearing to consider approval of bidding and sale procedures in accordance with the notice procedures of Local Rule 9006-1, unless the requesting party files a motion to shorten notice which may be heard at the first hearing in the case and presents evidence of compelling circumstances at the hearing on the motion to shorten notice. Local Rule 9006-1(c)(i) provides as to most motions that "all motion papers shall be filed and served in accordance with Local Rule 2002-1(b) at least eighteen (18) days (twenty-one (21) days if service is by first class mail; nineteen (19) days if service is by overnight delivery) prior to the hearing date." Significantly, under revised Local Rule 6004-1(c), parties may still seek to schedule a bidding and sale procedures hearing on shorter notice at the outset of a chapter 11 case, but the movant will be

subject to an evidentiary burden to demonstrate compelling circumstances for such relief.

Local Rule 7004-2: Summons and Notice of Pretrial Conference in an Adversary Proceeding

Local Rule 7004-2 now provides that a pretrial conference date in an adversary proceeding shall be no more than ninety (90) days from the date of service of the summons and complaint. The 2013 version of Local Rule 7004-2 already required that a pretrial conference date shall be a date at least thirty-five (35) days from the date of service and complaint.

Local Rule 7007-1: Briefs: When Required and Schedule

New subsection (iv) of Local Rule 7007-1 clarifies that Fed. R. Bankr. P. 9006(f) applies to the calculation of the time period to file any brief, affidavit or appendix under Local Rule 7007-1, such that three (3) days shall be added after the prescribed period would otherwise expire when any motion, brief, affidavit or appendix is served other than by hand delivery.

Local Rule 7016-2: Pretrial Conference

Local Rule 7016-2(d) has been revised to clarify that at least seven (7) days prior to the "final" pretrial conference (as opposed to the "initial" pretrial conference addressed in Local Rule 7004-2) the plaintiff's attorney shall file an original and one (1) copy of a proposed pretrial order, signed by an attorney for each party and including the items listed in subsection (d).

Local Rule 7030-1: Depositions Upon Oral Examination

New subsection (d) of Local Rule 7030-1 prohibits counsel for a deponent from consulting or conferring with a deponent, regarding the substance of testimony already given or anticipated to be given, for the duration of deposition questioning by an opposing party, including any recesses or continuances thereof of less than five (5) calendar days. Local Rule 7030-1 includes an exception permitting counsel for the deponent to confer with the deponent on whether to

assert a privilege against testifying or on how to comply with a court order. Subsection (d) largely parallels the District Court's Local Civil Rule 30.6, except that Local Civil Rule 30.6 contains no time limit on the rule's applicability during any recesses or continuances.

Local Rule 9013-1: Motions

Subsection (e)(iv) of Local Rule 9013-1 now provides that a notice of motion must include the email or fax number of the parties on whom any objection shall be served, in addition to including the name and address.

Local Rule 9018-1: Lodged Exhibits; Documents under Seal; Confidentiality

Local Rule 9018-1 now requires counsel for the movant, rather than the Clerk, to electronically docket the cover sheet for a document filed under seal, whether (i) after the Court

grants the motion to file under seal (Local Rule 9018-1(b)) or (ii) pursuant to a previously entered Order of the Court authorizing the filing of future documents under seal (Local Rule 9018-1(c)).

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This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. The information presented is not legal advice, is not to be acted on as such, may not be current and is subject to change without notice. Unless otherwise noted, the views expressed in this memorandum are the views of its authors and should not be attributed to Morris, Nichols, Arsht & Tunnell LLP or its clients.

Business Reorganization and Restructuring Group

Robert J. Dehney
Practice Group Coordinator
(302) 351-9353
rdehney@mnat.com

Derek C. Abbott
(302) 351-9357
dabbott@mnat.com

Donna L. Culver
(302) 351-9208
dculver@mnat.com

Eric D. Schwartz
(302) 351-9308
eschwartz@mnat.com

Gregory W. Werkheiser
(302) 351-9229
gwerkheiser@mnat.com

Curtis Miller
(302) 351-9412
cmiller@mnat.com