

## Chapter 11 Guidelines

The following guidelines are provided to facilitate the drafting of orders appointing a noticing agent. **Please be advised that no professional shall seek indemnification from the debtor at any time and for any reason in relation to the work undertaken pursuant to an order appointing a noticing agent. It is not the practice in this district to allow such indemnification agreements.** These guidelines supplement the Federal and Local Rules of this District. In the event of conflict, the Federal Rules of Bankruptcy Procedure shall control.

### Suggested Standard Paragraphs for Orders Appointing a Noticing Agent

**A. There shall be a Caption of the Order followed by a standard introductory paragraph.**

**B. First Paragraph after ORDERED THAT:**

1. The Motion is GRANTED in that:

**C. Language Appointing the Agent**

1. Any professional, including a noticing agent, who files an Application To Be Employed shall have such Application approved provisionally or on an interim basis until a hearing on such Application takes place and an adjudication of the Application is made.
2. This instruction satisfies the requirements of Federal Rule of Bankruptcy Procedure 6003 and adheres to the Supreme Court's ruling in Roman Catholic Archdiocese of San Juan v. Feliciano.

**D. General Administrative Duties**

1. The noticing agent shall:
  - a. maintain a copy of the Debtors' schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules"), listing the Debtors; known creditors, and the amounts owed thereto;
  - b. maintain (i) a list of all potential creditors, equity holders, and other parties in interest, and (ii) a "core" mailing list consisting of all parties

described in Bankruptcy Rule 2002(i), (j), and (k), and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; and file with the Court an updated creditor matrix along with a memorandum describing any change(s) thereto, in accordance with Rule 1009 of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri, and pay any requisite fee;

- c. identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- d. assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- e. monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed, and make necessary notations on and/or changes to the Claims Register(s) and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- f. comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders, and other requirements.

## E. Noticing Functions

1. [Name of noticing agent] is authorized and directed to perform notice services as set forth below, and in this Order, and any non-conflicting provisions of the Application:
  - a. Assist the Debtors with the preparation and distribution of all required notices and documents in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including: (i) notice of any claims bar date; (ii) notice of any proposed sale of the Debtors' assets; (iii) notices of objections to claims and objections to transfers of claims; (iv) notices of hearings on motions filed by the Office of the United States Trustee for the Eastern District of Missouri; (v) notices of any hearings on a disclosure statement and confirmation of any plan or plans of reorganization, including under Bankruptcy Rule 3017(d); (vi) notice of the effective date of any plan; and (vii) all other notices, orders, pleadings,

publications, and other documents as the Clerk may deem necessary or appropriate for an orderly administration of these chapter 11 cases;

- b. Serve notice of the commencement of these cases and the initial 11 U.S.C. § 341 meeting of the creditors using the current Official Form 309F notice as modified by the Court. [Name of noticing agent] shall obtain this form notice from the Clerk and shall not modify the form notice it receives from the Clerk without the Clerk's consent. Any claims bar date notice and customized proof of claim form, if any, must be approved by the Court prior to being issued by [Name of noticing agent];
- c. Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Clerk of the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be affected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- d. For all notices, motions, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk a certificate of service within twenty-four (24) hours of service, which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- e. If these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's Office immediately upon notice to [Name of noticing agent] of entry of the order converting the cases;
- f. Any contrary provision in the Application notwithstanding, and unless otherwise ordered by the Court, serve any document that [Name of noticing agent] is required to serve pursuant to this Order, the Application, and/or the Engagement Agreement within [number] business days of the document being entered on the Court's docket. [Name of noticing agent] shall file a certificate of service for any such document within [number] business days of the document being served. Notice of any hearing that [Name of noticing agent] is required to serve pursuant to this Order must be served within [number] business days

of the hearing being set. [Name of noticing agent] shall file a certificate of service for any such notice within [number] days of notice being served.

#### **F. Responsibilities Retained by the Clerk of Court**

1. The Clerk of the Bankruptcy Court shall:
  - a. Be the official record keeper of all information related to this case;
  - b. Pursuant to 28 U.S.C. § 156(e), perform her normal function as the custodian of Court records and shall maintain the official case docket and claims register for each of these Debtors. [Name of noticing agent] shall work cooperatively with, assist, and support the Clerk in any way consistent with this Order. If [Name of noticing agent] is unclear as to the application or applicability of any rule or procedure, it is to seek guidance from the Clerk;
  - c. provide [Name of noticing agent] with Electronic Case Filing (“ECF”) credentials that allow [Name of noticing agent] to receive ECF notifications and file certificates of service.

#### **G. Case Closing**

1. Thirty (30) days prior to the close of these chapter 11 cases, to the extent practicable, [Name of noticing agent] shall request that the Debtors submit to the Court a proposed order dismissing [Name of noticing agent] as Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
2. Once these cases have been closed, [Name of noticing agent] shall seek permission of the Clerk to destroy any paper proofs of claim still in its possession that it has received in these cases and that have previously been filed with the Court. [Name of noticing agent] shall file with the Court a certificate of destruction specifying the method of destruction, the date of destruction, and any reference number or other relevant information for the destruction of the paper proofs of claim.

#### **H. Compensation**

1. The Debtors are authorized to compensate [Name of noticing agent] in accordance with the terms of the Engagement Agreement upon the receipt of

reasonably detailed invoices setting forth the services provided by [Name of noticing agent] and the rates charged for each, and to reimburse [Name of noticing agent] for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for [Name of noticing agent] to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses;

2. [Name of noticing agent] shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the Office of the United States Trustee, counsel for the Debtors, the Clerk of the Court, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest who specifically requests service of the monthly invoices;
3. The parties shall meet and confer in an attempt to resolve any dispute that might arise relating to the Engagement Agreement or monthly invoices. If the parties, after meeting and conferring, are unable to resolve their dispute, they may seek resolution of the matter from the Court;
4. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of [Name of noticing agent] under this Order shall be an administrative expense of the Debtors' estates;
5. [Name of noticing agent] may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, [Name of noticing agent] may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

#### **I. Procedures and Compliance**

1. In the event of any inconsistency between the Engagement Agreement, the Application, and the Order, the Order shall govern;
2. Notwithstanding any term in the Engagement Agreement to the contrary, this Court will retain jurisdiction over all matters arising from or related to the implementation or interpretation of this order;
3. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry;

4. All time periods set forth in this Order shall be calculated in accordance with Fed. R. Bankr. P. 9006(a);
5. No later than [number] business days after entry of this Order, the Debtors shall serve a copy of this Order on the Notice Parties and shall file a certificate of service no later than [number] business days after service.

#### **J. Duration of Services**

1. If [Name of noticing agent] is unable to provide the services set out in this order, [Name of noticing agent] will immediately notify the Clerk and Debtors' counsel and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another noticing agent with the advice and consent of the Clerk and Debtors' counsel, or to the Court directly;
2. [Name of noticing agent] shall not cease providing claims processing services during these chapter 11 cases for any reason, including nonpayment, without prior order of the Court. If these cases convert to cases under chapter 7 of the Bankruptcy Code, [Name of noticing agent] shall cooperate with the Clerk to turn over to the Clerk or another agent any materials that the Clerk requests unless [Name of noticing agent] continues as Noticing Agent following the conversion.

#### **K. Indemnification**

1. No professional shall seek indemnification from the debtor at any time and for any reason in relation to the work undertaken in this case.

#### **L. There shall be a judge's signature block to complete the Order**