

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

IN RE: *
* ADMINISTRATIVE ORDER NO. 05-10
ALL PENDING CHAPTER 13 CASES *
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* HONORABLE KAY WOODS
*

**AMENDED ORDER ESTABLISHING PROCEDURES FOR DEBTOR'S PLAN
PAYMENTS AND ADEQUATE PROTECTION PAYMENTS FOR ALLOWED
CLAIMS SECURED BY PERSONAL PROPERTY PURSUANT TO 11 U.S.C.
§ 1326(a)(1)(A) and (C)**

The Court entered an order on December 16, 2005 that contained a clerical error in the order number. The order should be Administrative Order No. 05-10 rather than 05-09. This order amends that earlier order by changing the number only. In all other respects, including the effective date, the original order, as set forth below, remains in effect.

At Youngstown, in said District, this 16th day of December, 2005. This matter came on for Hearing upon the Standing Chapter 13 Trustee's Motion to Establish Procedures for Debtor's Plan Payments and Adequate Protection Payments for Allowed Claims Secured by Personal Property Pursuant to 11 U.S.C. § 1326(a)(1)(C), (the "Motion"), Michael A. Gallo, Standing Chapter 13 Trustee appearing in support of the Motion (attached as Exhibit A hereto) and no notices of said hearing having been given, as none is required; and

IT APPEARING TO THE COURT that it would enable the Standing Chapter 13 Trustee to efficiently monitor debtor's plan payments, promote judicial economy and be in the best interest of the administration of Chapter 13 cases if this Court were to establish a procedure by which debtors may comply with the requirements of § 1326(a)(1)(A) and (C) with respect to


initiating payments to the Standing Trustee, as well as determining adequate protection payments required to be made to creditors holding allowed claims secured by personal property of Chapter 13 debtors. Accordingly, the following procedures shall be applicable to all Chapter 13 cases filed in this Court:

1. The debtor shall commence making payments pursuant to debtor's plan within 10 days of the filing of the petition initiating the case, consistent with this Court's prior Administrative Order.
2. From such payments, the Standing Trustee shall accrue, for the benefit of all scheduled secured creditors entitled to adequate protection, to the extent of available funds, an amount equal to the secured value attributed to the personal property set forth in the debtor's Schedule B, divided by the number of months proposed for the term of debtor's plan.
3. Within 30 days of filing of a proof of claim by the secured creditor, or upon confirmation of debtor's plan, whichever is later, the Trustee shall pay to the secured creditor, consistent with normal administrative procedures, the amount of the adequate protection payments accrued on its allowed claim.
4. In event of dismissal or conversion of the Chapter 13 case prior to confirmation, the funds accrued as the adequate protection payment for the benefit of a creditor shall be paid by the Standing Chapter 13 Trustee, after payment of filing fees, to those creditors who have filed allowed secured claims. Secured creditors, otherwise entitled to adequate protection payments, who have not filed proofs of claim, shall be provided notice of the requirement to file such proofs of claim within 30 days from the date of the notice of

dismissal or conversion of the case, and upon their failure to do so, shall be barred from participating in any distribution of the debtor's funds.

IT IS FURTHER ORDERED that the within provisions with respect to payment to the Trustee and adequate protection payments to secured creditors is without prejudice to the right of any secured creditor or debtor, upon specific Motion, to request an amendment or modification of the within Order as may be deemed necessary and appropriate.

IT IS SO ORDERED.



HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

ALL PENDING CHAPTER 13 CASES

JUDGE KAY WOODS

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**STANDING CHAPTER 13 TRUSTEE'S MOTION TO ESTABLISH PROCEDURE FOR
DEBTOR'S PLAN PAYMENTS AND ADEQUATE PROTECTION PAYMENTS FOR
ALLOWED CLAIMS SECURED
BY PERSONAL PROPERTY PURSUANT TO 11 U.S.C. § 1326(a)(1)(A) and (C)**

MICHAEL A. GALLO, STANDING CHAPTER 13 TRUSTEE, YOUNGSTOWN, OHIO

NOW COMES Michael A. Gallo, Standing Chapter 13 Trustee for Chapter 13 cases filed in the United States Bankruptcy Court Northern District of Ohio, Eastern Division, Youngstown, Ohio and for purposes of establishing a more efficient and uniform method of providing plan payments to the Standing Trustee and adequate protection payments to creditors holding allowed claims secured by personal property of Chapter 13 debtors as required by 11 U.S.C. § 1326(a)(1)(A) and (C), and consistent with this Court's authority pursuant to 11 U.S.C. § 105 to enter Orders to facilitate the implementation of the provisions of the Bankruptcy Code, requests as follows:

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), requires all Chapter 13 debtors, unless ordered otherwise by the Court, to begin payments to the Standing Trustee, and to also make adequate protection payments directly to a creditor holding an allowed claim secured by personal property, within 30 days of filing.

11 U.S.C. § 1326 (a)(1)(A) and (C) provides:

(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order of relief, whichever is earlier, in the amount

(A) proposed by the plan to the trustee;

(B) ...

(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

Although it is not clearly stated in the relevant portion of the statute, the payment of adequate protection payments to the secured creditor presumably would terminate at confirmation of debtor's plan, with all subsequent payments to the secured creditor being made by the Standing Trustee.

The Standing Trustee believes that it would create uniformity in the implementation of the payment requirements of § 1326, reduce unnecessary litigation as to the amounts and timing of adequate protection payments, and enable a more efficient monitoring of Chapter 13 cases if this Court were to enter an order applicable in all Chapter 13 cases, which order would provide a process by which debtor's payment obligations could be met. The Trustee proposes entry of an order which would provide:

1. The Debtor shall commence making payments pursuant to debtor's plan within 10 days of the filing of the petition initiating the case, consistent with the Court's prior Administrative Order.

2. From such payments, the Standing Trustee shall accrue, for the benefit of all scheduled secured creditors entitled to adequate protection, to the extent of available funds, an amount equal to the secured value attributed to the personal property set forth in the debtor's Schedule B, divided by the number of months proposed for the term of debtor's plan.

3. Within 30 days of filing of a proof of claim by the secured creditor, or upon confirmation of debtor's plan, whichever is later, the Trustee shall pay to the secured creditor, consistent with normal administrative procedures, the amount of the adequate protection payments accrued on its allowed claim.

4. In the event of dismissal or conversion of the Chapter 13 case prior to confirmation, the funds accrued as the adequate protection payment for the benefit of a creditor shall be paid by the Standing Chapter 13 Trustee, after payment of filing fees, to those creditors who have filed allowed secured claims. Secured creditors, otherwise entitled to adequate protection payments, who have not filed proofs of claim, shall be provided notice of the requirement to file such proofs of claim within 30 days from the date of the notice of dismissal or conversion of the case, and upon their failure to do so, shall be barred from participating in any distribution of the debtor's funds.

Although adequate protection is a term defined in the Bankruptcy Code, its implementation in each individual case may require specific hearings to establish an amount necessary for payment. The Standing Trustee believes that the entry of a standing order providing for the procedures proposed above will obviate the need for numerous expedited hearings to determine the amount of adequate protection to which a creditor is entitled.

The Trustee believes that in addition to maintaining an orderly Court docket, it will enable the Trustee to more closely monitor debtor's payments in compliance with the provisions of § 1326, while at the same time establishing sufficient assurance to secured creditors that funds may be available as adequate protection for their interest as a secured creditor.

The Standing Trustee would propose that any order entered pursuant to this request be subject to such amendment or modification as may be deemed necessary and appropriate upon specific motion or request of an effected secured creditor or the debtor.

WHEREFORE Standing Chapter 13 Trustee requests a Standing Order of establishing procedures for debtor's payments to the Trustee and adequate protection payments pursuant to § 1326(a)(1) (A) and (C).

Dated: December 16, 2005

/s/ Michael A. Gallo
MICHAEL A. GALLO, TRUSTEE
Standing Chapter 13 Trustee
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