

MEMORANDUM

To: Akron Chapter 13 Practitioners
From: Judge Shea-Stonum
Date: April 22, 2010
Subject: Chapter 13 - Review of Proposed Orders

Historically, the Chapter 13 Trustee in Akron has been a signatory on many of the proposed orders submitted to the Court. Until now, the reason the Court looks for the Chapter 13 Trustee as signatory on certain orders has not been clearly or completely articulated to the Akron practitioners. Through this memo the Court hopes to articulate its rationale for directing the Chapter 13 Trustee be a signatory on certain proposed orders.

The Court relies on the Chapter 13 Trustee, in the first instance, to analyze whether a proposed plan meets both the best interests and the best efforts tests. In addition, the Court has relied on the Chapter 13 Trustee, in the first instance, to review compliance with the provisions of the Order Confirming Plan and other Administrative Orders of the Court. The Court has viewed the Chapter 13 Trustee's signature on a proposed order as meaning that the Chapter 13 Trustee has no objection to the relief being sought, and, also, as an indication that the relief sought is consistent with the best interest and best efforts test and is in compliance with the provisions of the Order Confirming Plan, if entered in that particular case, and any applicable Administrative Orders. The presence or absence of the Chapter 13 Trustee's signature does not, however, guarantee that the Court will or will not enter the proposed order.

Although the Trustee's signature is not controlling, it is a useful indicator to the Court of the following:

- 1)the relief requested, if granted, will still satisfy the best interest and best effort tests under the Bankruptcy Code;
- 2)the relief requested is in compliance with the Order Confirming Plan and other applicable Administrative Orders.

Therefore, Akron practitioners should be aware that the Court is likely to set for a hearing motions requesting relief that implicate the economics of a Chapter 13 plan if they are not accompanied by a proposed order bearing the signature of the Chapter 13 Trustee. The type of motion that falls into this category includes, but is not limited to:

- Motion to Incur Debt
- Motion to Complete the Plan Early
- Motion to Sell Property
- Motion to Reinstate Chapter 13 Case
- Motion to Modify Plan
- Motion for Hardship Discharge.

At the hearing on these types of motions, counsel should be prepared to address compliance with the best interest and best efforts tests, with the Order Confirming Plan and any other applicable Administrative Orders.

In addition, the Chapter 13 Trustee is responsible for much of the plan administration process. Certain common motions have a direct impact on plan administration because they request relief which will alter the current flow of payments being made by the Chapter 13 Trustee or the treatment of a particular claim. Typical examples of such motions include Motions to Suspend Plan Payments, Motions to Pay Administrative Expenses, Motions for Adequate Protection Payments, Motions to Pay Claim from Insurance Proceeds, Objections to Confirmation, Objections to Claims, Motions to Value Collateral and Applications for Additional Attorneys' Fees. The Court requests that the Chapter 13 Trustee be a signatory on proposed orders granting such motions in an effort to increase communication and efficiency in the administration of chapter 13 plans in Akron. In the absence of a proposed order bearing the Chapter 13 Trustee's signature, these types of motions and objections are also likely to be set for hearing.