

**From:** Alice Whitten  
**Sent:** Wednesday, February 10, 2010 12:38 PM  
**To:**  
**Subject:** FW Chapter 13 Processes\Procedures Update  
**Attachments:** Truman 2009-2010 CALENDAR.XLS WHITTEN 09 10 CALENDAR.pdf Wage Directive Form lkd.doc Wage Directive Form Joint.pdf

Greetings –

This email is intended to provide an update on the various items that were discussed during our December meetings (and subsequent emails) and other items. A copy of the text of this email will also be posted on Tim and my websites for later review.

### **Pre-Hearing Conferences**

The voting did not produce a majority winner – weighting was not needed because the votes were fairly evenly spread over the 3 given options (and the write in votes did not rise to those same levels). As such, **effective Friday, March 28<sup>th</sup>** (for the Nelms' April 1 Ch13 Contested Docket), pre-hearing conferences and docket calls will be held on the **Friday preceding the Court docket day**. Truman offices will begin both at 8:30 a.m. and Whitten offices will begin at 1:00 p.m. Truman dockets will end by 11:00 a.m. and Whitten dockets will end by 3:30 p.m. The docket will be called first – although staff may be available prior to the official start time. Copies of the Pre-Hearing calendars for both offices for the remainder of 2010 are attached to this email (and will be added to the websites). *Please note that Judge Nelms' December docket has been moved to the second week of December in order to accommodate the Thanksgiving holiday PHC issues.* The Trustees reserve the right to flip their times at some point in the future.

Just a reminder about the procedures we put in place following the December meetings:

- No item set for PHC will be passed to the next PHC (or to a future Court docket, as appropriate) unless all parties are present to request the pass or the one party that is present has an email or a letter agreement from the other party(s) confirming the consent to the pass request.
- At PHC docket call, either party, Debtor or Creditor, may be defaulted if they do not appear. This rule does not apply if the Trustee's Office has been advised prior to the docket call that the matter should proceed to the Court's docket by both parties (or by letter agreement).
- At PHC docket call, it is acceptable for one party to appear and announce that both parties have agreed to proceed to the Court's docket.
- Paralegals and Legal Assistants are welcome at PHC and docket call, but someone with authority and capacity to sign off on agreements should be present.

### **Pass Requests**

Judge Nelms has agreed to allow the Trustees a little more discretion in granting pass requests on contested matters. Effective immediately, the Trustee or Staff Attorney may grant a second pass request, at his or her discretion. If appropriate, a request may be made for such pass request to be a 'last pass' and any further requests will be addressed to the Court. All impacted parties must agree that it is the 'last pass' otherwise the matter will remain on the Court's docket. The Trustee and/or Staff Attorney will advise the Court if a matter on the docket for a pass request was previously agreed upon as a 'last pass.' Judge Nelms will review all third time and greater pass requests in chambers and advise which ones he would like to remain on the docket (as Judge Lynn currently handles them). Our hope is that this will reduce the amount of time we are all spending in Court on pass requests.

### **Motions to Waive Wage Directive**

Upon the filing of a motion to waive the wage directive required by General Order 2009-03, Debtors' attorneys should send to the Trustee\Staff attorney (at the [trumanlegal@ch13ftw.com](mailto:trumanlegal@ch13ftw.com) or [whittenlegal@fwch13.com](mailto:whittenlegal@fwch13.com) addresses):

- (1) an affidavit signed by the debtor(s), setting forth the reasons the waiver is needed; and
- (2) a proposed Agreed Order.

If the Trustee does not have any objection to the waiver request, approval on the Agreed Order will be provided via email and the Agreed Order can be submitted to the Court. If the Trustee has an objection, the matter will proceed to the Court's docket. The Debtors' attorneys should continue to notice those items for the appropriate pre-hearing conference.

### **Failure to Provide Wage Directive Form**

Per the terms of General Order 2009-03, if the debtor is a wage or salary employee, the debtor is to submit the 'wage directive information form' to the Trustee's office not later than the initial 341 meeting. To avoid some of the issues with knowing which 'form' the debtor should use, since the Trustee is not known until the case is filed, we have created a joint form – which can be used for either office. A copy of the joint form is attached in both word and pdf form. Failure to provide this document by the initial 341 meeting will result in the Trustee filing a notice of intent to dismiss the case.

### **Conversion of Wage Directives from Truman to Whitten**

As most of you know, we've taken several steps to get the wage directives on the cases transferred from Truman to Whitten updated (by the debtors) and transferred from Truman's lockbox to Whitten's lockbox. We sent our original mailing in mid-September and a second in mid-December. I would estimate that we've covered about 70% of the cases. We are now working with some of the larger employers (Lockheed, US Postal Service, and others) to ensure that they have made the proper changes. We are also sending brightly colored inserts with the Amended Wage Directives in an attempt to catch the employer's attention as to the name and address change. We will re-evaluate the situation in late March and will advise if additional assistance is needed from the Debtor Bar and what, if any, steps will be taken by either the Truman or Whitten office. As has been previously stated, at some point we have to stop the Whitten payments from going to Truman's lockbox, we are just still trying to determine the least painful way to accomplish this goal.

### **Notice of Termination of Stay\Trustee Modification**

Upon receipt of a Notice of Termination of the Automatic Stay, the Trustee will file a Trustee Modification of Plan ("MOD") to stop the payments to the secured creditor giving the notice (but not any ad valorem taxes associated with that property, if any), and reallocate the funds that were going to such creditor to the UCP. The language in the MOD reads as follows:

"To the extent the Base Amount exceeds the amount needed to pay all allowed Secured, Priority, and Administrative Claims in full, such excess shall be paid pro-rata to allowed timely filed non-penalty general unsecured claims up to 100%, with any remaining balance refunded to Debtor(s). The Unsecured Creditors' Pool will be adjusted accordingly."

If the debtor opposes the MOD because either: an agreement has been reached with the secured creditor to retain the property; or some modification of Schedules I & J are needed to show other needs for those funds – then a response to the MOD should be timely filed. If it's the former, the Trustee will agree to pass the matter for 30-60 days to allow the agreement to be worked out. If it's the later, the response must be accompanied by amended Schedules I and J, and the response MAY request allowance of attorney fees, not to exceed what would be paid for a Debtor MOD, which the Trustee will approve in any

Agreed Order on the Trustee MOD. Our hope is that by allowing the attorney fees as part of a response, we will cut down on the number of 'dueling' MODs pending at any given time.

### **Noticing Fees**

Effective October 1, 2009, both Fort Worth Chapter 13 Trustees began taking noticing fees for mailing the Notice of Confirmation Hrg (PreHrg, Deadline to Obj) and the Trustee's Recommendation Concerning Claims (TRCC) and any amendments thereto. The noticing fees are \$0.94 per party receiving notice and are paid to the Chapter 13 Trustee upon the next disbursement in the case. You need to keep these fees in mind when proposing your plan to ensure that you have sufficient base to cover these fees – if you have a large number of creditors in the case. Additionally, if you can resolve your objection to confirmation through a letter agreement, you might want to consider doing that to avoid additional noticing fees being added to the case – if the Trustee has to re-notice confirmation. This change mirrors the current Dallas process.

If you have any questions about these items, please direct your communications to both Tim and Alice.

Thanks  
Alice and Tim

Alice Whitten  
Standing Chapter 13 Trustee  
6100 Western Place Dr., Ste. 1050  
Fort Worth, TX 76107  
Main Line: 817-916-4710  
Fax: 817-916-4770