

## PROCEDURES FOR TRUSTEE (OR DEBTOR IN POSSESSION)<sup>1</sup> TO OBTAIN COURT APPROVAL OF COMPROMISES

Bankruptcy Rule 9019 states that on motion by the trustee (which includes a debtor in possession according to Rule 9001) and after notice and a hearing, the court may approve a compromise or settlement. The Rule further states that Notice shall be given as provided in Rule 2002. Rule 2002(a)(3) provides a 21-day notice for approval of settlements or compromises, “unless the court for cause shown directs that notice not be sent.”

In Chapter 7 cases, the court generally will require notice of proposed compromises to be given to all creditors before the court will enter an order approving the compromise. In Chapter 11 cases, Rule 2002(i) provides that the court may order that notices of compromise are sent only to the creditors’ committee and those creditors and parties in interest requesting notice.

For trustees (but not for debtors in possession), the court will send the notice of the proposed compromise on behalf of the trustee, using the Bankruptcy Noticing Center (BNC). However, generally the BNC will send only the notice of the compromise, and *not* the motion to approve the compromise. Moreover, the list of creditors to whom the notice is sent is found in the main bankruptcy case (not the adversary proceeding). Due to these constraints and in accordance with the Rules, the following procedures should be used to obtain approval of a compromise.

1. Stipulation: File a Stipulation in the adversary proceeding describing the settlement between the trustee (or debtor in possession) and the other party. Use the adversary proceeding caption. Do not upload an Order approving the Stipulation until the compromise has been approved in the main case.

2. Motion: File a Motion to Approve the Compromise in the main case. Use the main case caption. Generally describe the settlement, e.g., “the Defendant will pay the Trustee the sum of \$4,500 to compromise the preference claim.” If the terms of the compromise are long and complex, it would be appropriate to attach the Stipulation as an exhibit to the Motion. However, it is not acceptable to merely re-file the Stipulation in the main case. In addition to a description of the compromise, the Motion should contain the reasons why the trustee believes the compromise should be approved, e.g., cost of litigation, collectibility, risks involved in litigating.

2.1 Amending the Motion: If something changes, an error was made, or another reason causes an amended Motion, file an Amended Motion and state specifically why the Motion is being amended.

3. Notice: File a Notice of Motion to Approve the Compromise in the main case. Use the main case caption. Trustees must use the “Trustee Notices” event in CM/ECF. In drafting the Notice, see Official Form B20A for guidance. Give a brief description of the settlement and state why the trustee supports approval of the settlement. It is appropriate to refer to the Motion, but not to

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<sup>1</sup> The procedures for approval of Debtor in Possession compromises may be governed by a case management order or confirmed plan. For example, the confirmed plan may allow the Debtor to compromise with notice only to the creditors’ committee.

suggest that the Motion is being sent to creditors, as it is not.<sup>2</sup> For example, it would be appropriate to state: “A copy of the Trustee’s motion may be requested from the undersigned or viewed at the office of the Bankruptcy Clerk.”

3.1 Amending the Notice: If a material amendment has been made to a Motion, an Amended Notice, with a new deadline, should be filed (unless upon separate motion, the Court reduces the notice period). The Amended Notice should clearly indicate that it is an Amended Notice and explain the reason for the amendment.

4. Objection period: Under Rule 2002, the objection period is 21 days, and at least two methods are acceptable to describe the objection period in the Notice. The Notice could state: “Objections must be filed with the Court within 21 days of the date of this Notice.” If using this procedure, it is critical that the Notice be dated the same date as it is filed. Or, a date for objections could be supplied. Choose a business day around 25 days from the date of the Notice. For example, if the Notice is filed March 22, 2012, the Notice could provide that Objections must be filed no later than April 16, 2012. The Notice should state that a hearing will be held only if an Objection is filed by the deadline.

5. Service of the Notice on the creditors: After filing the Notice, best practice would be to check in a few days for the BNC Certificate of Service. If the Notice has not been served by the BNC within 3 days of the filing of the Notice, contact Chambers or the Clerk’s office to determine why. Debtors in possession who are serving their own Notices should file an Affidavit of Mailing.

6. No objections filed: After the objection period runs with no objection, file an Affidavit of No Objection and upload an Order approving the compromise in the main case. Use the main case caption. The Affidavit should state that the deadline for objections has passed, and that no objections were filed or received by the trustee. The Order should state that notice of the trustee’s motion to compromise was duly served on all creditors, and that no objections were filed. The Order should further recite that the compromise is in the best interest of the estate and that the trustee’s motion is granted.

7. Concluding the adversary proceeding: After the Order approving the compromise is entered, upload an Order approving the Stipulation in the adversary proceeding. Use the adversary proceeding caption. This Order should state that the compromise has been approved, and that the trustee is authorized to perform under the Stipulation. The Order should *not* state that the Stipulation is approved (or incorporated) “as the Order of the Court.” If the Stipulation contemplates dismissal of the adversary proceeding, the Order should so state.

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<sup>2</sup> The exception to this rule is that the Notice and Motion may be combined into one short document which will be sent by BNC to all creditors (if the Trustee uses the “Trustee Notices” event), but only if the document is less than 8 pages total. While this procedure is fine for Trustee Motions to Dismiss, it can create confusion in other circumstances, and is not preferred for obtaining approval of a compromise.