



# PUBLIC NOTICE

## NOTICE OF CHANGE OF PROCEDURE CONCERNING TELEPHONIC INITIAL PREHEARING CONFERENCES

THIS NOTIFICATION AFFECTS ONLY THOSE CASES ASSIGNED TO JUDGE J. PHILIP KLINGEBERGER IN THE HAMMOND DIVISION OF THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF INDIANA; IT DOES NOT AFFECT CASES ASSIGNED TO THE HONORABLE KENT LINDQUIST.

Several years ago, I advised attorneys having their principal offices in other than Lake County and Porter County, Indiana, that it might become necessary to cease conducting certain initial prehearing conferences in cases in which they were involved by telephonic conferences. With the advent of BAPCPA, there has been a significant increase in the number of hearings required to be conducted by the Court in routine cases: that fact, coupled with the Congressionally mandated expediting of certain hearings on the Court's calendar, has resulted in a significantly impaired window for my processing of cases and matters which require intensive review and/or written decisions. As a result, the relative luxury of certain telephonic conferences cannot be accommodated if I am to seek to handle my caseload efficiently and effectively. I sincerely regret this fact, as the practice of telephonic conferences has been a significant factor in limiting the time and expense arising for attorneys on both sides of these cases in handling initial conferences in routine matters. I have also tremendously enjoyed the professional telephone "relationships" that I have developed with the attorneys now affected by this change of procedure.

The matters primarily affected by this procedural change are: (1) a creditor's objection to confirmation of a Chapter 13 plan; (2) motions for stay relief/abandonment in Chapter 13 cases; (3) a debtor's objection to a creditor's proof of claim to which the creditor has responded; and (4) debtors' motions to determine the value of a secured claim or to determine the status or amount of payments to be made to a creditor. Adversary proceedings are not affected by this change of procedure, and initial conferences in adversary proceedings will remain as telephonic conferences as per prior practice. Whether a hearing subsequent to the initial prehearing conference will be conducted telephonically will be determined on a case-by-case, hearing-by-hearing basis. However, as is true with matters in which "local" attorneys are involved, I anticipate that most subsequent hearings other than those scheduled as final evidentiary hearings will be handled on a motion call, rather than telephonically.

Beginning with contested matters initiated on and after January 1, 2007, all initial hearings in routine contested matters – definitely including the four categories delineated above, but not necessarily limited to those categories -- will be conducted in open court, on a motion call. Initially, all such hearings will be scheduled on a Monday motion call. With respect to matters which involve other than "slotted" attorneys, the initial hearing will be scheduled at 1:00 p.m. on a

Monday motion call. The “slotted” debtor’s attorneys are: Ricardo Casas, David Dabertin, Andrew Kopko, Hamilton Carmouche, Seth Buitendorp and Kevin Schmidt. These counsel have traditionally been slotted with a specific time frame on the Monday motion call due to their consistent case volume, and this practice will continue, subject to the following modifications for motion calls affected by this new procedure. The slot for Attorney Terri Long will commence at 2:00 p.m., as necessary. The call for Attorney Casas will commence at 2:15 p.m.; the call for Attorneys Dabertin, Kopko, Buitendorp and Carmouche will commence at 2:45 p.m.; the call for Attorney Schmidt will commence at 3:15 p.m. Hearings pursuant to 11 U.S.C. §362(c)(3) or 11 U.S.C. §362(c)(4) will be scheduled at 3:30 p.m. BAPCPA confirmation hearings will commence at 3:45 p.m., and may be delayed depending on the number of the 11 U.S.C. §362(c)(3) or 11 U.S.C. §362(c)(4) hearings scheduled. It is my hope that all contested matters affected by this procedure can be accommodated on at most two Mondays per month, and I will initially set these matters on the first Monday on which the Chapter 13 motion call is set during a month, with overflow being set on the third Monday on which the Chapter 13 motion call is set during a month. The schedule for hearings on the Mondays not affected by this procedure will be slotted as is presently done.

The sole exceptions to the new procedure are with respect to attorneys for the State of Indiana and for federal agencies and the United States Department of Justice (other than the United States Attorney’s Office). These conferences will be held telephonically as per prior practice, because these entities are captive to budgets which restrict the number of attorneys available to handle their caseloads.

A note on the scheduling of initial and final hearings under 11 U.S.C. §362(e) is in order. Traditionally, most creditors practicing in this venue have waived strict adherence to the 30 day deadline for initial hearings, and the 60 day deadline for final hearings, under 11 U.S.C. §362(e). I sincerely appreciate your doing so, and I hope that this waiver practice continues. If your clients are not willing to continue this waiver practice in light of these new procedures, I would appreciate it if you would send a letter personally to me at my chambers address to advise me of that fact. Absent such a letter, we will continue with our customary practice of seeking to “hit” the §362(e) deadlines but not worrying if we don’t. If waiver isn’t in the cards anymore, I will accommodate strict adherence to the §362(e) deadlines by scheduling the hearings at whatever random slots are available on my calendar, and by scheduling a final evidentiary hearing as the initial hearing on all §362(d) motions. Because of the procedures implemented by Orders of the United States Bankruptcy Court for the Northern District of Indiana which now preclude “direct” payments to secured creditors in BAPCPA cases, and my well publicized position on pre-confirmation stay relief motions by secured creditors who have not obtained an order for pre-confirmation disbursement by the Chapter 13 Trustee, any pre-confirmation §362(d) stay relief motions in Chapter 13 cases filed by secured creditors, other than those which assert that (a) the debtor has failed to insure the collateral as required by the contractual agreement between the debtor and the creditor, or (b) the debtor’s plan abandons or surrenders the collateral; or (c) the creditor has obtained a pre-confirmation disbursement order and the debtor has failed to provide the Trustee with the payments necessary to fulfill that order – will be summarily denied.

Again, I regret this change in procedure, and further refinements may become necessary in light of developing experience. Perhaps some day, if and when BAPCPA is amended to conform to the realities of our bankruptcy practice world, the procedures can return to their former state. Until then, the requirements of even relatively efficient processing of my caseload dictate the foregoing modifications.

Thanks for your understanding and cooperation!

J. PHILIP KLINGEBERGER  
JUDGE, U.S. BANKRUPTCY COURT

Dated: November 21, 2006