

MEMORANDUM CONTAINING
SUGGESTED PROVISIONS FOR CONFIRMATION ORDERS

A. The following are suggested provisions for all Confirmation Orders/Chapter 13 Plans:

Trustee's Recommendations Concerning Claims:

Notwithstanding any provision herein to the contrary, the deadline for the Trustee to file the Trustee's Recommendation Concerning Claims, as well as the deadline for filing objections to the Trustee's Recommendation Concerning Claims and objections to claims shall be governed by Local Bankruptcy Rule 3015(g).

This provision is necessary in order to reconcile the time deadlines for filing the TRCC and objection to claims as set forth in the standard Chapter 13 Plan and Confirmation Order and the changes in these deadlines as set forth in the revised Local Rules. This provision provides that the changes in the Local Rules control over the time deadlines as set forth in the Plan and Order.

Tax Refunds:

All future tax refunds which Debtor(s) receive during the term of the plan, *starting with the tax refund, if any, to be received for the tax year [insert the applicable year], in excess of \$[insert the amount, if any, pro-rated in the budget; \$0 if none is pro-rated in the budget]* shall be turned over to the Trustee within ten (10) days of receipt of such and shall be added to the plan base. Whether or not a tax refund is due, Debtor(s) shall provide a copy of their tax return to the Trustee within ten (10) days of filing such during the term of the Plan.

Per previous Court rulings, tax refunds are a part of the debtors' projected disposable income. This provision requires the portion of all tax refunds received during the term of the Plan, with the first tax year such is to be turned over to the Trustee noted, that are in excess of the amount of the tax refunds pro-rated in the budget, if any, must be turned over to the Trustee to be added to the plan base.\

Replacement Value Not Set at Confirmation:

Notwithstanding any provision herein to the contrary, the value(s) of the collateral securing the claims, if any, as set forth in Paragraph 6(A)(ii)(b) of the Chapter 13 Plan are not determined upon the entry of this Confirmation Order absent an agreement or previous Court order relating to the collateral's value and such agreement or Court order is incorporated into the provisions of this Confirmation Order.

Per previous Court rulings, notwithstanding language in the plan or the confirmation order, value is not being set at confirmation. If the debtor(s) propose to pay a creditor a cram down value pursuant to the

provisions of Paragraph 6(A)(ii)(b) of the Chapter 13 Plan, the Trustee will request the inclusion of this provision in the confirmation order.

Side Note: if there is an agreement for replacement value of the collateral and/or a previous Court order setting replacement value and if this value is different from the value included in the plan that was noticed to the matrix, the debtor(s) will either need to file an amended plan reflecting this new value with full notice to the Matrix or, if the debtor(s) want to modify the terms of the proposed Chapter 13 plan by including this new value in the confirmation order without further notice to the matrix, the Trustee will place the case on the "Call" docket to allow the Court to make a finding that (a) the modification does not adversely affect any creditors; (b) any adversely affected creditor has consented; or (c) the adverse impact of the modification on creditors is *de minimis*, pursuant to the provisions of Local Rule 3015(f)(1).

Fixed Monthly Payments:

Notwithstanding any provision herein to the contrary, the monthly payment to a particular creditor as set forth herein in Paragraph 6 of the Plan shall constitute fixed monthly payments to that creditor as required under the provisions of 11 U.S.C. 1325(5)(B)(iii)(I), not an average monthly payment.

Bankruptcy Pro is one of the most common bankruptcy software programs used by the debtors' bar in the Eastern District of Texas. In order to show only one monthly payment to a creditor, debtors' attorneys usually pick the option of average monthly payments when preparing the plan. The Bankruptcy Pro plan will then indicate the monthly payment with a notation of "avg" (presumably for average). The purpose of this language is to avoid an objection by a creditor to the reference to "average" monthly payments as opposed to "fixed" monthly payments.

The Trustee is not endorsing or suggesting that the bar should or should not be using Bankruptcy Pro in their filings. The Trustee included this provision to address an issue that appears to arise from the use of this software.

B. The following provisions are suggested provisions for certain confirmation orders as the circumstances of the case may require:

New Employment:

Debtor(s) shall amend their budget with the Court within 30 days of obtaining new employment, in order to reflect the total amount of their income and new expenses, if any, in relation to earning that income for the purpose of allowing the Debtor(s) or the Trustee to modify the plan, if necessary, to permit the dedication of any additional disposable income to the plan for the benefit of the creditors as a result of this new employment.

This provision will be requested in cases where one or more of the debtors are unemployed and there is an indication that such debtor(s) would be returning back to work. This provision will also be requested where one or more of the debtors are drawing unemployment income or other type of temporary income which will eventually end. Such is based upon the assumption that the debtor(s) will go back to work to replace this income.

Litigation Proceeds:

No settlement of any litigation prosecuted by the Debtor(s) shall be consummated without the consent of the Chapter 13 Trustee and, except as otherwise authorized by the Trustee, all funds received by the Debtor(s) or any approved special counsel shall be immediately tendered to the Chapter 13 Trustee for satisfaction of any authorized exemption claim, with the remainder of the funds added to the plan base.

If there is an outstanding lawsuit or claim in favor of the debtor(s), the Trustee will require the non-exempt portion of any settlement or recovery to be turned over to the Trustee and added to plan base. The language as set forth in this paragraph was prepared by Judge Parker to be included in confirmation orders where applicable.

Unsecured claims paid at 100% plus interest:

All timely filed and allowed general unsecured claims shall be paid in full with interest at the rate of ____% APR.

There will be times that the debtor(s) shall be required to pay all of the unsecured claims in full plus interest, whether due to the Means Test or the Best Interests of Creditors Test. At this time, the Trustee will not object to an interest rate of **6% APR or greater**. The Trustee reserves the right to periodically adjust this interest rate as circumstances change with the economy. If your plan already contains an interest rate greater than this amount, you will need to either re-notice your plan at the lower interest rate or confirm at the higher interest rate. I will object to any attempt to amend the plan through the confirmation order to lower the interest rate to the unsecured creditors without notice to the unsecured creditors.

Unsecured claims paid at 100% plus interest with no future modifications:

All timely filed and allowed general unsecured claims shall be paid in full with interest at the rate of ____% APR. There will be no future modifications of this confirmed plan to reduce the dividend to the unsecured creditors.

There will be times that the debtor(s) will be required to pay all general unsecured claims in full plus interest with no future modifications to reduce the dividend to the unsecured creditors. For example, if the debtor(s) propose a plan that dedicates less than their projected disposable income as reflected in their budget while at the same time proposing to pay the unsecured creditors in full plus interest, the risk that the debtor(s) will take for the benefit of keeping the excess projected disposable income each month (as opposed to dedicating it to the plan and having a shorter term) is the addition of this provision preventing any future modifications of the plan to reduce the dividend to the unsecured creditors. Another example would include the case where the debtor(s) are proposing a plan that provides for dedicating all of their disposable income for a term less than their applicable commitment period.

AP Payments Continuing After Confirmation:

Notwithstanding any other provision to the contrary of Debtor(s)' plan or this Order Confirming Chapter 13 Plan And Related Orders, the pre-confirmation adequate protection payments set forth in paragraph 6(A)(i) of Debtor(s)' Chapter 13 Plan for the secured creditors listed in this paragraph shall continue each month in the amount set forth therein after confirmation of Debtor(s)' plan in advance of payment of Debtor(s)' Attorney's Fees set forth in paragraph 4(B) of Debtor(s)' Chapter 13 Plan. Said monthly adequate protection payments referenced herein shall continue to the secured creditors listed in this paragraph until attorneys fees are paid in full at which time the post-confirmation payments set forth in paragraph 6(A)(ii) shall commence. The secured creditor(s) to which this paragraph shall apply are as follows: ___[name(s) of creditor(s)]_____

This is the provision to add where the debtor(s) have reached an agreement to continue to make adequate payments to a particular creditor concurrently with the payment of attorney's fees. Since the agreement may be with only one creditor, the standard paragraph now requires the listing of the name or names of the creditors that will be paid these adequate protection payments. Typically, there may be a letter agreement attached to the confirmation order which can be in addition to this paragraph or in lieu of this paragraph.

Side Note: if this provision was not included in the plan as noticed to the matrix and the debtor(s) want to modify the terms of the confirmed plan by including this agreement in the confirmation order without further notice to the matrix, the Trustee will place the case on the "Call" docket to allow the Court to make a finding that (a) the modification does not adversely affect any creditors; (b) any adversely affected creditor has consented; or (c) the adverse impact of the modification on creditors is de minimis, pursuant to the provisions of Local Rule 3015(f)(1).

Attorney's Fees to be Escrowed until Fee Application is filed:

Attorney Fees are to be held in escrow by the Chapter 13 Trustee pending approval of a fee application by the Court. If the Fee Application is not filed within thirty (30) days after the earlier of the first successful post-confirmation modification of a Chapter 13 plan which occurs subsequent to the filing of the Trustee's Recommendation Concerning Claims or the filing of a certification by the Trustee that all proof of claims have been reconciled with the terms of the confirmed plan without the necessity of a plan modification, the attorney fees will be reduced to the appropriate amount as set forth in Local Rule 2016(h) that requires no formal fee application.

If the debtor(s)' attorney wants to be paid in an amount in excess of the "no-look" fee as set forth in the Court's Local Rule 2016(h), this provision contemplates the filing of a fee application within 30 days of either the first successful post-confirmation modification of the plan which occurs subsequent to the filing of the TRCC or the filing of the Trustee's certification that all claims have been reconciled with the terms of the confirmed plan without the necessity of a plan modification. Generally, the occurrence of one of these two events corresponds with the ending of the time period that is covered by the "no-look" fees as contemplated in the Court's Local Rule 2016(h). Failure to file such a fee application automatically reduces the fees to the "no-look" fee as set forth in the Court's Local Rule 2016(h).

Interest on claims secured by real property:

Under Paragraph 6(B) of the standard plan, the debtor(s) can pay the arrears owed on their mortgage, payment of real property tax claims, etc. The standard plan does not provide for a space for interest (other than a general statement that the Trustee will pay interest on the mortgage arrearage if the creditor requests interest). If you want interest paid on the claim, I would request that you indicate the interest rate with the amount of the estimated arrearage amount or add a special provision indicating the amount of the interest.

Note: Bankruptcy Pro software has already added a column for interest in this Paragraph and nothing further will need to be added for those using that program.

Memorandum revised by the Trustee on 2/16/11.