

D.N.J. LBR 4001-3. Use of Cash Collateral; Obtaining Credit

(a) Motion for use of cash collateral. A motion for use of cash collateral must:

- (1) include a detailed 4 week cash flow budget for a motion for interim use of cash collateral and a detailed 12 week budget for a motion for final use of cash collateral; and
- (2) summarize the following provisions, if applicable, and identify the location of each in any relevant document and in the proposed order:
 - (A) the amount of cash collateral sought to be used;
 - (B) the adequate protection to be provided for the use of cash collateral; and
 - (C) any of the provisions in subdivision (c).

(b) Motion to obtain credit. A motion for authority to obtain credit must:

- (1) include the following items:
 - (A) a description of the efforts to obtain credit;
 - (B) the facts demonstrating that the movant has obtained the best available terms for the proposed credit;
 - (C) a detailed budget supporting the proposed credit; and
 - (D) the facts demonstrating that the extension of credit is made in good faith;
- (2) summarize the following provisions, if applicable, and identify the location of each in any relevant document and in the proposed order:
 - (A) the amount of credit sought, including any committed amount, and any borrowing base formula and the estimated availability under the formula;
 - (B) material conditions to closing;
 - (C) pricing and economic terms, including fees and the treatment of costs and expenses of the lender, any agent for the lender, and their respective professionals;
 - (D) the application of credit to pay pre-petition debt or that otherwise has the effect of converting pre-petition debt to post-petition debt, *i.e.*, a rollup;
 - (E) the repayment of post-petition credit in connection with a plan;
 - (F) the waiver of the right to incur liens that prime or that are *pari passu* with liens granted under § 364 of the Code; and
 - (G) any of the provisions in subdivision (c).

(c) Additional provisions. A motion for use of cash collateral or to obtain credit must summarize the following provisions, if applicable, and identify the location of each in any relevant document and in the proposed order:

- (1) the effect of the relief sought on existing liens;
- (2) elevation of pre-petition debt to administrative expense or super-priority status or the grant of a lien on post-petition assets to secure pre-petition debt;
- (3) termination or default provision, including any cross-default provision or provision that the use of cash collateral or credit will cease on:
 - (A) the filing of a challenge to the lender's pre-petition lien or claim;
 - (B) the entry of an order granting relief from the automatic stay;
 - (C) the filing of a motion for the appointment of a trustee or examiner;
 - (D) the entry of an order granting a change of venue;
 - (E) a management change; or
 - (F) the departure of any identified employee;
- (4) establishment of a deadline or a requirement for:
 - (A) the sale of property of the estate or of a non-debtor affiliate; or
 - (B) the filing of a plan;
- (5) limitation of the court's authority, or enhancement or restriction of the rights, powers, or duties of a trustee, examiner, debtor, or committee appointed under the Bankruptcy Code;
- (6) limitation or waiver of rights under § 506(c) of the Code;
- (7) agreement binding the debtor or other parties in interest with respect to the validity, perfection, or amount of the lender's pre-petition claim, or the waiver of claims against the lender;
- (8) grant of an interest on causes of action arising under §§ 544, 547, 548, or 549 of the Code;
- (9) carve-outs from liens or super-priorities;
- (10) change of control;
- (11) cross-collateralization;

(12) funding of a non-debtor affiliate with cash collateral or credit proceeds and the approximate amount of such funding; and

(13) in related debtor cases, a term that affects joint liability of debtors or the allocation of liability among estates.

(d) Modification. A proposed order allowing use of cash collateral or authority to obtain credit may permit the parties to enter into waivers or consents with respect to the use of cash collateral or the credit agreement, or amendments thereto, without the need for further court approval provided that:

(1) the modification is not material;

(2) notice of the proposed modification is filed with the court; and

(3) notice of the proposed modification is provided in advance to counsel for any official committee, any party requesting notice of all proceedings, and the United States trustee.

2015 Comment

This Rule was formerly part of the Appendix to Local Rule 4001-4, which is deleted.