

#### **RULE 4001-1. AUTOMATIC STAY - RELIEF FROM**

Rule 9014 of the Federal Rules of Bankruptcy Procedure mandates that relief from stay be requested by motion. The motion shall be styled in the same manner as the bankruptcy case and not as an adversary proceeding. A request for relief from stay appearing in the context of a complaint commencing an adversary proceeding, or in an answer, counterclaim, cross-claim, intervening complaint or third party complaint filed in such a proceeding, unless also requested by separate motion filed in the related bankruptcy case, shall be deemed as consent for the stay to remain in effect until final disposition of the adversary proceeding.

A motion for relief from stay pursuant to section 362(d) of the Bankruptcy Code with respect to an interest of the movant in property (of the estate or of the debtor) shall conform substantially to Form No. 5, with such alterations as may be appropriate to suit the circumstances. The motion shall be accompanied by --

(1) a proof of claim with supporting documents establishing the perfected security interest or other interest of the movant in property that is the subject of the motion; and

(2) a certificate of service indicating that parties in interest have been served in a manner provided by Rule 7004 of the Federal Rules of Bankruptcy Procedure with a copy of the motion and the documented proof of claim.

In a chapter 7, chapter 12, or chapter 13 case service shall be made upon the debtor, counsel for the debtor, and the trustee. In a chapter 11 case service shall be made upon the debtor in possession, counsel for the debtor in possession, or if a trustee has been appointed, upon the trustee and counsel for the trustee. Service also shall be made upon counsel employed by a committee or alternatively upon each member of the committee. In a chapter 11 case in which a committee has not been appointed service shall be made upon the creditors on the list filed pursuant to Rule 1007(d) of the Federal Rules of Bankruptcy Procedure and the United States Trustee.

A motion for relief from stay pursuant to section 1201 or 1301 of the Bankruptcy Code shall be served upon the codebtor as well as upon the debtor, counsel for the debtor, and the trustee. The motion shall be accompanied by a proof of claim with supporting documents evidencing the signature of the codebtor.

A motion for relief from stay for the purpose of pursuing a cause of action against the debtor, i.e., an action for damages for which an insurance carrier may be liable, shall set out in detail relevant information concerning the action.

An order granting relief from stay may be entered without an actual hearing unless a party in interest responds and requests a hearing within the time fixed in the motion, which shall be not less than 15 days from the date of service of the motion, plus the additional three days allowed by Rule 9006(f) of the Federal Rules of Bankruptcy Procedure when service is by mail. The response and request for a hearing shall state the grounds for opposition to the motion and shall give notice of the place, time and date of the hearing thereon, which unless otherwise agreed by the parties or ordered by the court for cause shown, shall be not later than 30 days after the date the motion for relief from stay was filed with the court. The hearing on the response may be treated as a preliminary hearing on the motion for relief from stay and the stay may be continued in effect for the limited time permitted by title 11 U.S.C. § 362(e) pending conclusion of the final hearing.

An agreed order granting relief from stay will not be entered by the court unless the party to be accorded relief has filed a proof of claim with supporting documents establishing the perfected security interest or other interest of the party in the property that is the subject of the agreed order.