

LBR 4001-1. MOTION FOR EX PARTE RELIEF FROM STAY

(a) Generally. Except in Chapter 11 cases, if collateral securing a claim, including property which is the subject of a lease, is an over-the-road vehicle, such as an automobile, motorcycle, trailer, or a boat or an airplane, and if the same is not insured with full collision and comprehensive insurance, then the holder of such claim may file with the Bankruptcy Court a motion for ex parte relief from the stay of 11 U.S.C. s 362(a) pursuant to 11 U.S.C.s 362(f) to obtain possession of the collateral or leased property.

(b) Chapter 11 Cases. The Bankruptcy Court may, in its discretion, apply this rule to a Chapter 11 case.

(c) Content of Motion. Any motion for ex parte relief from the stay under this rule shall be verified and shall:

_____ (1) Include a description of the collateral or leased property, a statement of the amount of the claim and the basis on which the claim is secured, a statement of the basis on which the moving party believes that the collateral or leased property is not insured with full comprehensive insurance; and a statement that the moving party or its attorney has given or attempted to give oral notice to the debtor's attorney or the debtor, if the debtor is not represented by counsel, that the motion is being filed.

_____ (2) Be accompanied by a proposed order which shall provide that:

_____ (A) The debtor or Trustee is prohibited from using the collateral or leased property unless and until adequate evidence of full collision and comprehensive insurance is presented to the holder of the claim;

_____ (B) The debtor or Trustee, whichever is in actual physical possession of the collateral or leased property, shall notify the holder of the claim of the location of the collateral;

_____ (C) The debtor or Trustee, whichever is in actual physical possession of the collateral or leased property, shall surrender it to the holder of the claim within 72 hours of the date of service of the order, unless within that time (1) the holder of the claim is provided with adequate evidence of full collision and comprehensive insurance or (2) the debtor or Trustee requests a hearing concerning same;

_____ (D) The holder of the claim is authorized to take physical possession of collateral or leased property required to be surrendered under this Rule, and to hold same, provided that the holder may not dispose of the collateral or leased property unless and until the automatic stay is modified or terminated or expires as a matter of law and provided that, if the debtor provides adequate evidence of full collision and comprehensive insurance prior to the expiration or termination of the automatic stay, then the holder of the claim must return the property to the debtor; and

_____ (E) The holder of the claim or its attorney shall serve copies of the motion and order promptly on the debtor, the debtor's attorney, and the Trustee, and shall provide telephonic notice to the debtor's attorney and the Trustee, if the Trustee is in actual physical possession of the property.