

## **B-4001-1. MOTIONS FOR RELIEF FROM STAY AND MOTIONS TO EXTEND OR IMPOSE THE STAY**

### **(a) Relief from Stay or Co-debtor Stay**

#### **(1) Contents of Motion**

A motion for relief from the automatic stay or relief from the stay as to a co-debtor pursuant to 11 U.S.C. §1301 shall include the following information to the extent applicable:

- (A) a description of the property as to which stay relief is sought;
- (B) the amount of principal and interest due as of the date of the motion;
- (C) documents upon which the movant relies to establish its lien or security interest (or incorporate by reference the movant's proof of claim if documentation attached);
- (D) evidence of perfection of the movant's lien or security interest (or incorporate by reference the movant's proof of claim if documentation attached);
- (E) if the case is pending under Chapter 13 and a post-petition default is alleged, a post-petition payment history;
- (F) if the motion seeks relief from the co-debtor stay, the name of the co-debtor.

A sample form motion is available on the Court's website. The movant may include in the motion a waiver of the 30-day hearing requirement in 11 U.S.C. §362(e), and shall note that waiver by including in the caption, the statement, "with 30-day waiver." The motion may be combined with the notice required by subparagraph (a)(2).

#### **(2) Notice; Disposition**

##### **(A) Chapters 7, 11, 12, and 13**

In cases pending under any chapter except Chapter 11, notice of the motion shall be served by the movant on the Debtor, parties that have entered an appearance, any trustee, and the UST, except as otherwise provided by S.D.Ind. B-2002-1(b). If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the notice, the moving party shall file a copy of the motion and a certificate of service listing the name and address of each entity served and the date and manner of service. A sample notice is available at the Court's website. If no proper response to the motion is filed the Court may grant relief from the stay without further notice or hearing. At any

hearing on the motion the Debtor or objecting party has the burden of establishing any payment alleged to have been made but not set forth in the payment history.

(B) Chapter 11

In cases pending under Chapter 11, notice of the motion shall be served by the movant on the Debtor, parties that have entered an appearance, any creditors committee or if no committee has been appointed, the twenty largest unsecured creditors, any trustee, and the UST, except as otherwise provided by S.D. Ind. B-2002-1(b). If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. Notice of the motion shall be issued by the Clerk, unless otherwise ordered by the Court or unless counsel for the movant contacts the Court, obtains a hearing date, and provides the notice according to subparagraph (A), above.

(b) Extend or Impose the Stay

(1) Motion Filed Ten Days or Less After Filing Date

(A) The Motion will be set for hearing, and notice of that hearing and the deadline for objections will be issued by the Court.

(B) If, by the deadline, the debtor has filed an affidavit with sufficient facts to support the motion and no objection has been filed, then the Court may, in its discretion, rule on the motion without hearing, conduct a telephonic hearing, or make such other arrangements as will be most efficient for the Court and the debtor, including but not limited to excusing the debtor from appearing in person.

(2) Motion Filed More than Ten Days After Filing Date

(A) The movant shall contact the Courtroom Deputy for the Judge assigned to the case and obtain a hearing date.

(B) The movant shall send notice of the Motion and the hearing to those creditors as to whom it is proposed that the stay be imposed or extended.

(C) The movant shall file a certificate of service establishing such notice on or before the hearing date.

(D) Debtor's attendance at the hearing may be required, even if no objection is filed.