Motion Practice in the United States Bankruptcy Court for the Western District of Missouri

Honorable Dennis R. Dow

I. Generally

A. Form of Motions

1. Must be in writing unless made orally at hearing. Local Rule 9013-1.A.

2. Documents Supporting Motion

a. If relying on facts not of record, affidavit or documents must be attached.

b. May be attached unless they exceed five pages, in which case a summary of the documents must be provided.

c. Copies must be provided to opposing counsel. Local Rule 9013-1.B.

3. Proposed Orders – recent amendments to Fed. R. Bankr. Proc. 4001 notwithstanding, proposed orders need not be submitted on motions for relief from stay, for use of cash collateral or to borrow in cases under Chapter 7 or Chapter 13.

4. Responses

a. Unless another time period is specified by statute, the Federal Rules of Bankruptcy Procedure, local rules or court order, responses are due within 21 days. Local Rule 9013-1.C.

b. Responses must address the merits of the motion and, if appropriate, offer remedies. Failure to do so may result in the motion being granted with no hearing. Local Rule 9013-1.D.

c. Responses should not contain separate requests for relief. All such requests should be contained in a separate motion.

B. Service of Motions

1. By Whom – most motions must be served by the movant. Local Rule 2002-1.A., B.

2. On Whom Served

a. Must be served on all parties in interest as specified on the most current version of the mailing matrix maintained for the case. Local Rule 2002-1.C.

b. Certain specified motions must also be served upon the United States Trustee (e.g., employment and compensation of professional persons; use, sale or lease of property outside the ordinary course of business; approvals of compromises). Local Rule 2002-2.A.

3. What Must be Served – must serve request for relief; court may order the hearing notice to be served by the movant as well. Local Rule 9060-1.B.

a. If the movant has been directed to serve the notice of hearing, failure to promptly serve the notice or to file a certificate of such service may result in denial of or delay in granting the motion.

b. If directed to serve a notice of objection deadline, use the format suggested on the court's website.

4. Certificate of Service – each pleading must be accompanied by a certificate of service endorsed on the pleading or on a separate document and indicating the manner in which the document was served, the date of service and the persons upon whom the document was served. Local Rule 9013-3.A.

C. Processing of Motions – motions are processed in one of the following four ways.

1. Notice with Opportunity for Hearing – Local Rule 9060-1.G.

a. These motions are scheduled for hearing only if a response is filed within the time set in a notice issued by the court (e.g., relief from automatic stay, redemption, lien avoidance).

2. Set for Hearing – Local Rule 9060-1.H.

a. Motions described in this subparagraph of the rule are set for hearing regardless of whether a response is filed (e.g., motions to extend or impose stay, objections to confirmation.

b. The movant is required to serve notice of the scheduled hearing.

3. Held for Response – Local Rule 9060-1.I. These motions are held for the

appropriate period of time (in most instances 21 days) to determine if a response is filed (e.g., borrowing, debtor's motion to convert or dismiss, Chapter 13 trustee's motion to dismiss).

a. If a response is filed, a hearing will be scheduled; the movant will be directed to serve notice of the hearing.

b. If no response, an order will be entered granting the motion.

4. Ruled Sua Sponte – Local Rule 9060-1.J.

a. The motions identified in this subparagraph of the rule may be ruled by the court upon the motion papers with or without awaiting a response. No hearing will be set unless the court determines that one is necessary (e.g., application to pay filing fee in installments, application to waive the filing fee, motions for extension of time, motions to reinstate dismissed cases).

D. Practical Tips on Motion Practice

1. Check the local rules for any specific requirements of form, content or procedure.

2. Make the motion as self-contained as possible, including all relevant facts. Do not make the judge search the file for information relevant to the motion.

3. Include all grounds for the relief requested. The court may find some persuasive and others not. Cite the applicable law.

4. Remember, this is your opportunity to convince the court that the relief requested is appropriate. The more detailed and persuasive the motion, the greater the chance it may be granted without the need for a hearing. Even if a response is filed and a hearing is set, a detailed and persuasive motion may incline the court to your side of the dispute as the court reviews the motion papers prior to the hearing.

II. Specific Motions

A. Procedural Motions

1. Extension of Time

a. Make certain that the deadline you seek to extend can be extended by the court and is not subject to limitations on the court's power to

extend. Fed. R. Bankr. P. 9006(b)(2), (3).

b. Extension of time requires a demonstration of cause. Do not assume that you will receive the requested extension even if it is the first one that has been requested. If you seek to extend the deadline for the second time or more, describe why the first extension was insufficient, what progress has been made and why additional time is necessary. If the motion is filed after the expiration of the relevant time period, the movant must demonstrate excusable neglect.

c. Assert all grounds for the requested extension. The court may agree with some of the reasons offered and disagree with others.

d. If possible, advise the court of the position of the opposing party with respect to the motion, particularly if the opposing party does not oppose the requested extension. Providing the court with this information will facilitate a prompter resolution of the motion and, if unopposed, virtually assure a successful one.

2. Shorten Time or Expedite

a. Some time periods may not be shortened. Make certain that the relief you request can be granted by the court. Fed. R. Bankr. P. 9006(c)(2).

b. Cause must be demonstrated in order to shorten the time otherwise provided for response. Be specific in your assertion of reasons for shortening the time or expediting the hearing. State all grounds in support of the request as some may be more persuasive than others.

c. If requesting that the court take action on the face of the motion without a hearing and without awaiting expiration of the ordinarily prescribed time for response, be clear in your request.

3. Continuances

a. Local rules require that such requests be filed within two days of the hearing, except for cause arising within that two-day period. Local Rule 9006-1.C. If you make a later request for postponement, because the reason arose within the two-day period, make sure to bring the motion to the attention of the courtroom deputy. You must appear unless you have been notified that the motion was granted.

b. Cause must be shown for the requested continuance. Be specific as to the reasons why the hearing should be postponed and indicate the period of time requested. State all available grounds for the requested postponement as the court may find some more persuasive than others. If requesting a continuance for the second time or more, state precisely why the previous postponement was not sufficient, what has taken place in the meantime and why the additional time is necessary.

c. You must provide the court with a statement of the position of the opposing side or state the efforts made to contact opposing counsel. Unopposed motions for continuance are certainly more likely to be granted.

4. Vacating Orders

a. Technically, such a motion is either a motion to alter or amend an order pursuant to Rule 9023 (which incorporates Rule 59 of the Federal Rules of Civil Procedure) or a motion for relief from a judgment or order pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure (incorporating Rule 60 of the Federal Rules of Civil Procedure). You must state one of the grounds for relief available under one of those rules.

b. Time limits – a motion to alter or amend must be filed within 14 days of the order you seek to amend; a motion for relief from judgment or order must be filed within a reasonable period of time and, for some requests, no later than one year from the date of the order.

c. If you seek to vacate an order of dismissal, it is wise to solve the problem giving rise to the dismissal or state a definitive proposal for resolving the problem; otherwise, the court may deny the motion.

5. Reopening Cases

a. Reopening a closed case is done by motion, most often to accord certain relief to the debtor such as avoiding a lien on real property or seeking a determination of dischargeability of a student loan indebtedness. Such motions can also be filed to permit the filing of a certificate of obtaining the personal financial management course and facilitate the entry of an order of discharge in a case closed without a discharge order.

b. The motion to reopen must be accompanied by an appropriate filing

fee unless it is waived or deferred. Local Rule 1017-1.E.; Local Rule 5010-1.B. The fee is not required if relief is sought with regard to a violation of the discharge injunction, a determination of dischargeability or to correct an administrative error. Local Rule 5010-1.C.

c. A motion to reopen to add a creditor must be served upon the affected creditor along with a notice advising the creditor of the 30-day deadline for objecting to reopening or filing a complaint to determine dischargeability of the debt to be added to the schedules. Local Rule 5010-1.D., F.

B. Substantive Motions

1. Extension or Imposition of Automatic Stay

a. Contents of motion – the motion should advise the court of the number of previous cases filed by the debtor and pending within the one-year period which were dismissed, identify those cases by jurisdiction and case number, state the reason for dismissal of the prior cases and assert all facts relied upon to rebut any presumption of lack of good faith in filing. Local Rule 4001-2.B.

b. Service of motion and notice of hearing

(1) Must be served on all parties to be bound. Local Rule 4001-2.C.

(2) Case will be set for hearing on first motion docket after 14 days from the date of the filing of the motion. The movant must serve the hearing notice generated by the court. If an expedited hearing is sought, it must be requested by the movant. Local Rule 4001-2.D.

(3) Responses must be filed within 14 days of service.

c. Hearing

(1) Will be held regardless of whether an opposition to the motion is filed, unless an affidavit is filed and found to be satisfactory.

(2) Debtor or debtors should attend the hearing and be prepared to answer the court's questions or testify.

(3) Should be prepared to demonstrate that the problem causing the dismissal of the prior case has been resolved and provide any other facts indicating that the case is otherwise filed in good faith (e.g., substantial payment offered to creditors; plan payments assured by wage order).

(4) The court may grant the motion without a hearing if no opposition is timely filed, the debtor files an affidavit containing the facts upon which debtor relies to rebut any presumption for lack of good faith and the court determines the affidavit is satisfactory. If no order is entered within 48 hours of the scheduled hearing, the parties should appear as scheduled. If on a document separate from the motion, the affidavit must contain all of the facts relied upon to rebut the presumption rather than a mere incorporation by reference of the allegations contained in the motion.

2. Relief from Automatic Stay – Local Rule 4001-1.

a. Contents of motion. Local Rule 4001-1.B.

(1) Motions should indicate the balance due on the claim of the creditor as of the date of the filing of the petition.

(2) In a Chapter 7 case, if the motion is filed before the meeting of creditors, it must assert the value of the collateral securing the claim.

(3) In a Chapter 13 case, motions for relief based upon a payment default on a claim secured by real property must be accompanied by a detailed payment history on a form prescribed by the local rules.

b. Service of the motion and accompanying papers

(1) The movant must serve the notice of hearing and certify such service. Failure to do so may result in denial of the motion. Local Rule 4001-1.A.

(2) The trustee must be served with all documents supporting the motion. Local Rule 4001-1.F.

(3) Debtor's counsel and the trustee must be served with all documents evidencing perfection of the claimed security interest.

(4) With respect to deeds of trust, the movant may serve only that page or pages showing the recording information and the signature of the debtors. Full copies of the exhibits must be made available on request to interested parties.

3. Objections to Claims – Local Rule 3084-1.H., I., J.

a. It is the debtor's obligation to object to claims in Chapter 13 cases. Claims filed will be allowed unless objected to.

b. Form of objection

(1) Use of Local Form 3007-1.1 is encouraged, but not required.

(2) The objection must state some factual or legal basis for disallowance of the claim. Merely stating that appropriate documentation has not been attached or that the claimant has failed to respond to a request for itemization does not state a basis for disallowance of the claim.

(3) The objection must refer to the court's claim register number.

c. Service – the objection must be served upon the claimant, the claimant's attorney and the trustee.

d. Omnibus objections may be filed subject to the limitations of Fed. R. Bankr. Proc. 3007(d) and (e).

4. Motions for Payoff – Local Rule 3093-1.

a. Contents of motion – a motion requesting a payoff figure from the Chapter 13 trustee must be accompanied by the following information: the reason for the request for payoff; the source of funds to be used to payoff the Chapter 13 plan; the claims to be included in the payoff figure; the proposed percentage payment to unsecured claims and basis for any proposed payoff less than in full.

5. Motions to Borrow – Local Rule 3088-1.D.

a. Request to borrow must be made to the court if debtor seeks to borrow more than $2,500.00.

b. Contents of the motion – a motion to borrow must contain the

following information: the identity of the lender; the amount of the borrowing; the precise terms of the borrowing, including the periodic payment and interest rate; the purpose of the borrowing; and the impact of the repayment obligations on the debtor's ability to make payments under the Chapter 13 plan.

6. Motions to Suspend

   a. Motions to suspend should contain the following: (1) the precise number and amount of payments to be suspended; (2) the reason for the payment default; (3) a confirmation that the debtor is able to continue to make the payments going forward.

   b. The Court may be reluctant to grant a motion to suspend if it has granted numerous such suspensions in the past or if there have been multiple dismissals for failure to make plan payments and reinstatements.

   c. Anticipate the problems the motion to suspend may create. Be prepared to take necessary corrective action, such as amending the plan or increasing plan payments.

7. Motions to Retain Tax Refund

   a. If possible, the anticipated tax refund should be built in to the debtor's income as reflected on Schedule I and the Form 22C. In addition, expense amounts based on the debtor's experience in using tax refunds for deferred or extraordinary expenses should be reflected on Schedule J.

   b. A motion to retain tax refunds should include the following: (1) the source and amount of the anticipated refund; (2) a specific itemization of the proposed disposition of the funds, including the purpose and the amount of each expenditure and a detailed explanation as to why the expense is necessary and reasonable.

   c. The Court will ordinarily approve expenditures for unanticipated and out of the ordinary vehicle repairs and medical expenses and repairs to real property that affect the structural integrity of the property or the health and welfare of the occupants. Requests for other kinds of proposed expenditures should be accompanied by a brief explanation of the circumstances. Failure to do so will likely cause your motion to be set for hearing.

8. Lien Avoidance

a. Motions to avoid liens as impairing exemptions under § 522(f) should contain the following information: description of the property subject to the lien and its value; the identity of the lienholder and the amount of the claim; basis for the claim of exemption; a demonstration as to why the lien impairs an exemption claim in accordance with the formula set forth in § 522(f)(2).

b. Responses in opposition to motions to avoid liens should state specifically the reason why the lien is not subject to avoidance. If the respondent contends that the property is not exempt, the response should state why the exemption should not be allowed. If the respondent contends that the property is of a value sufficient that the lien may be retained without impairing the exemption, then the amount and basis for an alternative valuation should be stated. If the respondent contends that for some other reason the lien does not impair the exemption and is therefore not avoidable, it should be stated specifically.

9. Motions to Sell

a. Motion to sell property outside the ordinary course of business should contain the following information: (1) a description of the property to be sold; (2) the reason for the sale; (3) the identity of the purchaser and the relationship, if any, between the purchaser and the debtor; (4) sale price with some indication of the reasonableness of that price, particularly in relation to any previously scheduled value; and (5) the proposed disposition of the proceeds, including the payment of any commission, closing costs, debts and amounts to be retained by the debtor.

10. Dismissal or Conversion – Local Rule 1017-1.

a. Dismissal of cases under Chapter 7 or 11. Local Rule 1017-1.A.

(1) Must state reasons for dismissal, including the existence of any agreement between the debtor and any creditor or party in interest.

(2) Must serve notice of the motion on all creditors with 21-day objection period.

b. Conversion – Local Rule 1017-1.C.

(1) Must state reasons for conversion and state if case was

previously converted from another chapter.

(2) Notice of motion must be served by the debtor on the trustee, the United States Trustee and parties requesting notice. Creditors have 21 days to object to the motion.

(3) The above procedure is not applicable to requests to convert cases from Chapter 13 to Chapter 7. Such conversions are done by notice. The filing of the notice is the effective date of the conversion. Fed. R. Civ. P. 1017(f)(3).

11. Discharge – Local Rule 4004-4.

a. After completion of payments in a Chapter 13 case, the debtor must file a motion requesting the entry of an order of discharge, using Local Form 4004-4.1.

b. If no such request is filed, the case will, upon the filing of a final report, be closed without the entry of an order of discharge. The case must then be reopened and an appropriate reopening fee paid in order to obtain a discharge order.

C. Motions in Adversary Proceedings

1. Motions for Default Judgment

a. Contents – motions for default judgment should demonstrate the following: the plaintiff's entitlement to the relief requested; that proper service has been effectuated as required by Fed. R. Bankr. P. 7004; and that no timely response to the complaint has been filed.

b. Procedure – the motion must be filed with the court and served on the parties against whom default judgment is to be rendered. A proposed order must be submitted to the court. If damages are sought in an unliquidated amount, the court will enter an interlocutory judgment of default and set a hearing on determination of damages.

2. Motions for Summary Judgment – Local Rule 9013-1.H.

a. Contents of motion – by rule, a motion for summary judgment must contain an itemized statement of the alleged undisputed facts supporting the request for relief set forth in separately numbered paragraphs with references to the factual record supporting those assertions.

b. Contents of response – likewise, the response must identify in separately numbered paragraphs with references to the factual record, the facts allegedly in dispute. Facts in the motion will be deemed admitted unless controverted in the response.

c. Facts asserted in the motion or response must be supported by affidavits or documents or references to the record.

d. Schedule – a response to the motion for summary judgment may be filed within 21 days; 14 days thereafter a reply may be filed by the movant.

e. Timing – if possible, file the motion sufficiently in advance of the scheduled trial date to permit the briefing schedule to expire prior to trial. Otherwise, the court may decline to rule on the motion in advance of trial.

D. Replies to Motions

1. General Principles

a. Replies must respond to the substance of the allegations contained in the motion. Local Rule 9013-1.D. Failure to do so may result in the motion being granted without a hearing. This requires that factual assertions made in the motion be admitted or denied and that affirmative defenses be specifically pled.

b. Be as specific as possible about proposed solutions to problems raised in the motion. If possible, effectuate the proposed plan for resolving the issues raised by the motion prior to the hearing.

2. Motions for Relief From Automatic Stay

a. With respect to allegations of default, if the movant has complied with the rule requiring the submission of a post-petition payment history, the burden shifts to the debtor to demonstrate that payments have been made which are not reflected on the schedule. Be as specific as possible about such payments, including details such as dates and amounts.

b. If the debtor wishes to offer adequate protection, such proposal must be contained in the response to the motion. Local Rule 4001-1.E. If offering to cure defaults, be as specific as possible in the cure proposal with respect to both dates and amounts.

3. Motions to Dismiss for Default in Payment

a. A response to a motion to dismiss for default in plan payments should indicate why the payments are in default, demonstrate that the problem creating the default has been resolved and that the debtor is now in a position to continue the required plan payments, make a specific proposal for a cure of the default and demonstrate that the proposal is both reasonable and feasible.

b. If certain action is to be taken in response to the motion (such as suspension of plan payments), file the appropriate pleadings or take the appropriate action in advance of the hearing date on the motion to dismiss.

III. Small Business Chapter 11

A. Application for Retention

1. Counsel should file an application for retention immediately as the Court may not compensate counsel for time spent prior to the filing of such an application without extraordinary circumstances. The Court may not, pursuant to Rule 6003, enter an order any sooner than 21 days after the filing of the petition, but the Court will enter an order retroactive to the date of the filing of the application.

2. The Court will ordinarily authorize counsel to be paid on an ongoing monthly basis 80% of fees earned and 100% of expenses incurred, but a separate motion authorizing these monthly filings must be filed.

B. Use of Cash Collateral

1. A debtor may not use cash collateral without consent of every entity that has an interest in the collateral or an order from the Court. Unauthorized use of cash collateral may result in appointment of a trustee or a dismissal of the case.

2. Motions for authorization to use cash collateral should contain the following: (a) how much cash collateral the debtor proposes to use; (b) for what period of time the debtor proposes to use the creditor's cash collateral; (c) for what purposes the debtor proposes to use cash collateral (commonly reflected in a proposed budget attached to the motion); (d) the identity of any entities that have a claim to cash collateral; (e) any proposals for adequate protection of those entities' interest in the cash collateral. Common elements of adequate protection in cash collateral are limitations

on amount, time and purpose, as reflected above, as well as the granting of a replacement lien in cash collateral used and a requirement for monthly reporting.

3. The Court may permit the interim use of cash collateral on short notice, but may not conduct a final hearing on the use of cash collateral sooner than 15 days after the filing of the motion. Accordingly, final approval of the use of cash collateral requires two orders and possibly two hearings. Debtor's counsel must serve the persons identified in Rule 4001 and the motion must contain the information required by that rule.

4. Attached is an order approved by the Court and entered in a Chapter 11 proceeding which provides a good model for a proposed cash collateral order.

C. Bar Date

1. The Court does not ordinarily enter a bar date in a Chapter 11 proceeding unless requested to do so.

2. Requesting a bar date early in a Chapter 11 case is good practice so that the number and amount of claims can be identified. This may be essential for demonstrating feasibility if the plan proposes to pay a certain percentage of the filed and allowed amount of unsecured claims.

3. Attached is an order entered by the Court in another Chapter 11 proceeding which provides a good model of a bar date order.

D. Plan Formulation

1. Only the debtor may file a plan in the first 180 days after the filing of the case. Debtor must file a plan within 300 days of the filing of the case. Failure to do so can result in dismissal of the proceeding.

2. In a small business case, the debtor may file a combined plan and disclosure statement. A form of such combined plan and disclosure statement has been approved by the Court and is available on the Court's website. *See* Local Rule 3016-3.D. and MOW 3016-3.1.

3. The disclosure statement portion of the form should, among other things, contain historical income and expense information, a description of the financial results of the debtor while operating in Chapter 11, projections of income and expenses for the period of time over which plan payments are to be made, the amount of payments proposed to be made to classes under the plan, a balance sheet and an analysis of the value of the debtor's assets upon

liquidation and the likely distribution to creditors in the event of such a liquidation.

E. Plan Confirmation

1. The Court will ordinarily combine hearings on the disclosure statement and plan of reorganization and will issue an order upon the filing of those documents preliminarily approving the disclosure statement, setting a hearing on confirmation of the plan and establishing deadlines for the filing of ballots and objections.

2. Small business debtors are now subject to a deadline for obtaining confirmation. The Court must confirm a plan within 45 days of the date on which it was filed. Although this deadline may be extended, extensions are subject to strict limitations. *See* 11 U.S.C. § 1129(e).

3. Confirmation Hearing

a. Immediately before the confirmation hearing, debtor's counsel should file a summary of the ballots indicating the number and amount of claims accepting or rejecting in each class and identifying those classes which have accepted or rejected. Copies of the ballots should be available for inspection at the confirmation hearing.

b. Debtor's counsel should be prepared to submit evidence necessary to permit the Court to make the findings required by § 1129(a). In particular, if any individual creditor has voted against the plan, the proponent of the plan must demonstrate that that creditor would receive more under the plan than it would receive if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. In addition, with respect to each class which has rejected the plan, a proponent must demonstrate the plan is fair and equitable in accordance with the requirement set forth in § 1129(b). Even in a case in which there have been no objections, the Court will require some evidence indicating that the debtor is capable of making the payments proposed under the plan and that the plan is therefore feasible and may be confirmed in accordance with § 1129(a)(11).

c. Be prepared to tender to the Court a proposed confirmation order. Any last minute agreements may be embodied in amendments to the plan made by interlineation in the confirmation order, assuming they are not material and do not require resolicitation.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

In re:	)	
A-Z MANUFACTURING & SALES COMPANY, INCORPORATED.,	)	**CASE NO. 11-43025-drd-11**
Debtor.	)	

INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION; AND (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)

On August 5, 2011, the Court took up the debtor A-Z Manufacturing & Sales Company, Incorporated's ("Debtor") Emergency Motion for Use of Cash Collateral and Request for Immediate Hearing in the Event of an Objection to Said Motion (the "Cash Collateral Motion") . The Debtor appeared by counsel, Erlene W. Krigel. UMB Bank, n.a. ("UMB") appeared by counsel, Lisa Epps Dade. The United States Trustee appeared by counsel, Daniel Casamatta. Other appearances are noted on the record. The Court, having jurisdiction hereof, and upon review of the file and pleadings in this matter, the statements of counsel at the hearing, hereby **FINDS** as follows:

1. Debtor commenced the captioned case by filing its Voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Code ("Code"), Code §§ 101 through 1146, on June 28, 2011 (the "Petition Date").

2. This Court has jurisdiction to hear the Cash Collateral Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core proceeding" within the meaning of 28 U.S.C. § 157.

3. Adequate and sufficient notice of the Interim Hearing and the relief requested in the Cash Collateral Motion, as evidenced by the applicable certificates of service filed with the

Court and as stated on the record, have been given in accordance with the provisions of Code § 363 and Bankruptcy Rules 2002, and 4001(d). Under the circumstances, no further notice is required.

4. Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Code §§ 1107 and 1108.

5. UMB asserts that prior to the Petition Date, UMB loaned money to Debtor pursuant to the terms and conditions of various loan agreements and documents (collectively, the "UMB Loan Documents"). UMB further asserts that as of the Petition Date, (i) Debtor was liable to UMB for two loans: $30,602.48 for the equipment loan and $301,316.19 for the line of credit loan (exclusive of interest and fees accrued and unpaid thereon and other costs, expenses including, but not limited to attorneys' fees and expenses. "UMB Pre-Petition Loan Indebtedness").

6. UMB further asserts that as security for repayment of the UMB Pre-Petition Indebtedness, Debtor granted UMB security interests in, and liens upon, substantially all of its assets, as more fully described in the UMB Loan Documents, including, without limitation, Debtor's furniture, fixtures, inventory, chattel paper, accounts receivable, equipment, machinery and general intangibles (collectively, including Cash Collateral (as defined below), the "Collateral"). Further, Debtor's cash constitutes proceeds of the Collateral and, therefore, is cash collateral of UMB within the meaning of Code § 363(a) ("Cash Collateral").

7. Bank of the West ("BOW") would assert that prior to the Petition Date, BOW loaned money to Debtor pursuant to the terms and conditions of various loan agreements and documents (collectively, the "BOW Loan Documents"). BOW would further assert that as of the Petition Date, Debtor was liable to BOW in an approximate amount of $100,000 ("BOW Pre-Petition Loan Indebtedness").

8. BOW would further assert that as security for repayment of the BOW Pre-Petition Indebtedness, Debtor granted BOW security interests in, and liens upon, substantially all of its assets, as more fully described in the BOW Loan Documents, including, without limitation, the Collateral and Cash Collateral.

9. Since June 28, 2011, Debtor has been using cash collateral without authorization from the Court. Debtor filed the Cash Collateral Motion asserting that the use of Cash Collateral is essential to the continued operations and the reorganization of Debtor and without such authorization Debtor will suffer irreparable harm and would be forced to cease business operations.

10. In the Cash Collateral Motion, Debtor seeks authority to use cash collateral.

11. Good cause has been shown for the immediate entry of this Order. Among other things, the entry of the Order: (i) will enable the Debtor to continue the operation of its business and avoid immediate and irreparable harm to the Debtor's estate; (ii) will permit the Debtor to acquire needed goods and services, and pay other necessary and ordinary business expenses; (iii) provide for necessary adequate protection in the interim period for the Lenders; and (iv) is in the best interests of the Debtor, its creditors, and its estate.

NOW, THEREFORE, IT IS HEREBY:

ORDERED that Debtor is granted the use of Cash Collateral on a temporary basis for the expenses listed in and for the time period covered by the Budgets for the months of August, September and October, 2011, attached as **Exhibit A**, and for payment of United States Trustee fees owed pursuant to 28 U.S.C. § 1930(a)(6), unless specifically prohibited by this Order.

IT IS FURTHER ORDERED, that the Debtor's interim use of Cash Collateral is expressly conditioned upon the following:

a. Without prior approval of the Court or the express written consent of the Lenders, Debtor shall pay the reasonable amounts which are actual, necessary expenses in the operation of their businesses not to exceed one hundred and ten percent (110%) of the amount stated for each category of expense in the Budgets; PROVIDED, HOWEVER, that in no event should cash collateral in this interim period be used to pay pre-petition claims or obligations, or obligations to insiders unless specifically authorized by separate order from this Court.

b. Debtor shall provide Lenders its balance sheet and profit and loss statements no later than the 20th day of the month following the month for which the report is made (and such requirement may be satisfied by production of the Monthly Operating Report supplied to the United States Trustee's Office);

c. Lenders shall have the right to examine all of Debtor's books and records and the Collateral, including bank records relating to prepetition and post-petition time periods, upon three (3) business days advance notice, during normal business hours;

d. Lenders are hereby granted replacement security interests in, and liens on, the same type of assets which constitute their pre-petition Collateral that are acquired post-petition by the Debtor, including, without limitation, inventory, chattel paper, accounts receivable, equipment, and general intangibles, up to the amount of the debt to the Lenders (the "Replacement Liens") and to the extent that Lenders hold valid and perfected security interests in the pre-petition Collateral. Moreover, the priority between the Lenders with respect to the Replacement Liens shall be in the same priority as the Lenders' pre-petition liens and security interests;

e. As further adequate protection, Debtor shall pay to UMB a monthly payment of $1,153.77 on the equipment loan and $936.43 on the line of credit loan.. Debtor shall pay to BOW a monthly payment of $495.00. Such further adequate protection payments under this

Interim Order shall be due on or before the 1st day of the month for the months of August, September and October, 2011. The Lenders shall be entitled to super priority administrative claims pursuant to Code § 507(b) for any diminution in their respective collateral positions (the "Superpriority Claim");

f. The adequate protection granted in this Interim Order is without prejudice to the Lenders seeking further and other adequate protection during the interim period and/or objecting to the continued use of Cash Collateral at the Final Hearing in this case. Further, this Interim Order is without prejudice to (i) Lenders seeking the early termination of Debtor's interim use of Cash Collateral prior to the expiration of this Interim Order for cause, including lack of adequate protection or (ii) Debtor's opposing such early termination;

g. Debtor shall continue to maintain the types and amounts of insurance on all its property and assets as required by the Loan Documents. Further, Debtor shall continue and maintain, in substantially similar fashion, all the types and amounts of insurance that are currently in place; and

h. Except as set forth herein, Debtor shall pay all budgeted expenses when due, including insurance and taxes, and Lenders shall be notified of any failure or inability to do so.

i. The Debtor has provided a retainer to Debtor's counsel in the amount of $15,000. Such funds shall be set aside as "carve-out" for payment of counsel's fees and expenses, and such fees as approved by the Court are authorized to be paid as a part of the Budget whether or not set forth under the Budget. Nothing contained herein is a waiver of Lenders' right to object to the reasonableness of any such fees and expenses.

IT IS FURTHER ORDERED that this Interim Order shall expire and Debtor's right to use Cash Collateral shall terminate, unless extended by further order of this Court or by express written consent of the Lenders, on the earlier of (i) October 31, 2011; (ii) the first business day

after the date of the final hearing on Debtor's use of Cash Collateral, which will be held no later than September 14, 2011; (iii) the failure of the Debtor to comply with any provision of this Order; (iv) the entry of an order authorizing, or there shall occur, a conversion or dismissal of this case under Code § 1112; (v) the entry of an order appointing a trustee, or appointing an examiner with powers exceeding those set forth in Code § 1106(b); (vi) the closing of a sale of all or a substantial portion of the assets of the Debtor; (vii) entry of an order granting, or there shall arise, a security interest, mortgage, lien, claim, charge, or encumbrance which is equal or senior to the Replacement Liens; (viii) entry of an order granting, or there shall arise, a claim that is equal or senior to the Superpriority Claims; (ix) the cessation of day-to-day operations of Debtor; (x) any loss of accreditation or licensing of the Debtor that would materially impede or impair the Debtor's ability to operate as a going concern; and (xi) any material provision of this Order for any reason ceases to be enforceable, valid, or binding upon the Debtor, or any party so asserts in writing.

IT IS FURTHER ORDERED that to be effective any waiver by the Lenders of the provisions of this Order or consent required under this Order must be in writing, which includes electronic mail.

IT IS FURTHER ORDERED that the provisions of this Order and the adequate protection granted herein, including the Replacement Liens, shall also extend to any Cash Collateral used by the Debtor subsequent to the Petition Date, but prior to entry of this Order.

IT IS FURTHER ORDERED that the provisions of this Order shall be binding upon and inure to the benefit of the Lenders the Debtor, and their respective successors and assigns (including without limitation, any Chapter 11 or Chapter 7 trustee, examiner, or other fiduciary

hereafter appointed for the Debtor or with respect to any of the Debtor's property); provided, however, nothing herein shall prohibit any party from challenging the amount of the Lenders' claims or the nature, extent and priority of the Lenders' security interests in, and liens on, the Collateral.

IT IS FURTHER ORDERED that this Interim Order shall become effective and enforceable upon approval and entry as an order of the Bankruptcy Court. If any provision of this Interim Order is hereafter modified, vacated or stayed by subsequent order of this or any other Court for any reason, such modification, vacation, or stay shall not affect the validity of any obligation or liability incurred pursuant to this Interim Order and prior to the later of (a) the effective date of such modification, vacation, or stay, or (b) the entry of the order pursuant to which such modification, vacation, or stay was established, nor the validity, priority, or enforceability of any lien or claim granted by Debtor's to Lenders. The liens and claims granted to the Lenders under this Interim Order, and the priority thereof, and any payments made pursuant to this Interim Order, shall be binding (subject to the terms of this Interim Order) on Debtor, its bankruptcy estate, any subsequent trustee or examiner, and all creditors of Debtor.

IT IS FURTHER ORDERED that a final hearing on Debtor's Cash Collateral Motion shall be heard on **September 8, 2011, at 2:30 p.m.**

IT IS FURTHER ORDERED that Debtor shall, within two (2) business days after the entry of this Interim Order, mail copies of a notice of the entry of this Interim Order, together with a copy of the Motion, on (i) the Office of the United States Trustee; (ii) the Lenders; (iii) all creditors known to Debtor who have or may assert liens against Debtor's assets; (iv) the 20

largest unsecured creditors of Debtor; and (v) all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Bankruptcy Rules or the Local Rules of the Western District of Missouri. Such notice shall state that objections to the relief being sought in the Cash Collateral Motion and to Debtor's use of cash collateral, including the Lender's objection to the Debtor's further use of Cash Collateral, shall be in writing and shall be filed with the United States Bankruptcy Clerk for the Western District of Missouri on or before **seven days prior to the Final Hearing, September 1, 2011** (the "Objection Deadline"). Any objections by creditors or other parties in interest to the Cash Collateral Motion shall be deemed waived unless filed and served in accordance with this paragraph. Any party who has filed an objection, but fails to appear at the hearing shall be deemed to have withdrawn its objection.

IT IS FURTHER ORDERED that neither their consent to this Interim Order nor anything herein prejudices any rights or remedies that the Lenders may have on account of the Debtor's unauthorized use of Cash Collateral.

IT IS SO ORDERED.

Dated: August 5, 2011

/s/ Dennis R. Dow
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

KRIGEL & KRIGEL, P.C.

/s/ Erlene W. Krigel

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ATTORNEYS FOR DEBTOR AND DEBTOR
IN POSSESSION

Approved by:

SPENCER FANE BRITT & BROWNE LLP

/s/ Lisa Epps Dade

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ATTORNEYS FOR UMB BANK

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In re:	
AMERICAN FORMAL WEAR CO., INC.,	Case #10-45215-11
Debtor.	Chapter 11

ORDER ESTABLISHING DEADLINE FOR FILING PROOFS OF CLAIM AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF

Upon the application of American Formal Wear Co., Inc. ("Debtor") for an order pursuant to *F.R.B.P. 3003*(c)(3), fixing a deadline (the "Bar Date") and establishing procedures for filing proofs of claim and approving the form and manner of service thereof, and it appearing that the relief requested is in the best interests of the Debtor, its estate, and creditors, and that adequate notice has been given and that no further notice is necessary; and after due deliberation and good and sufficient cause appearing therefore, it is hereby

ORDERED that except as otherwise provided, all persons and entities (including, without limitation, individuals, partnerships, corporations, joint ventures, trusts and governmental units) that assert a claim, as defined in § 101(5) of the Bankruptcy Code, against the Debtor which arose on or prior to the filing of the Chapter 11 petition on November 6, 2009 (the "Filing Date") shall file a proof of such claim in writing so that it is received on or before **THURSDAY, JUNE 30, 2011;** and it is further

ORDERED that the following procedures for filing of Proofs of Claim shall apply:

(a) Proofs of Claim must conform substantially to Official Bankruptcy Form No. 10;

(b) Attorneys and employees of institutional creditors should file Proofs of Claim electronically on the Court's Case Management/Electronic Case File ("CM/ECF") System. Those without accounts to the CM/ECF System must file their Proofs of Claim by mailing or delivering the original Proof of Claim by hand to the Clerk of the United States Bankruptcy Court, 400 East Ninth Street, Room 1510, Kansas City, Missouri 64106; and

(c) Proofs of Claim must (i) be signed; (ii) including supporting documentation (if voluminous attach a summary) or an explanation as to why documentation is not available; (iii) be in the English language; and (iv) be denominated in United States currency.

IT IS FURTHER ORDERED THAT THE FOLLOWING PERSONS OR ENTITIES NEED NOT FILE A Proof of Claim on or prior to the Bar Date:

(a) Any person or entity that has already filed a Proof of Claim against the Debtor with the Clerk of the Bankruptcy Court for the Western District of Missouri in a form substantially similar to Official Bankruptcy Form No. 10;

(b) Any person or entity whose clam is listed on the Schedules filed by the Debtor, unless (i) the claim is scheduled as "disputed," "contingent" or "unliquidated"; or (ii) the claimant does not agree with the amount, nature and priority of the claim as set forth in the Schedules;

(c) Any holder of a claim that heretofore has been allowed by order of this Court;

(d) Any person or entity whose claim has been paid in full by the Debtor;

(e) Any holder of a claim allowable under § 503(b) and § 507(a)(2) of the Bankruptcy Code as an expense of administration.

IT IS FURTHER ORDERED that any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease, as to which the order authorizing such rejection is dated on or before the date of entry of this Order, must file a Proof of Claim based on such rejection on or before the Bar Date, and any person or entity that holds a claim that arises from the rejection of an executory contract or unexpired lease, as to which an order authorizing such rejection is dated after the date of entry of this Order, must file a Proof of Claim on or before such date as the Court may fix in the applicable order authorizing such rejection; and it is further

ORDERED that holders of equity security interests in the Debtor need not file proofs of interest with respect to the ownership of such equity interests, provided, however, that if any such holder asserts a claim against the Debtor (including a claim relating to an equity interest or the purchase or sale of such equity interest), a proof of such claim must be filed on or prior to the Bar Date pursuant to the procedures set forth in this Order; and it is further

ORDERED that if the Debtor amends or supplements the Schedules subsequent to the date hereof, the Debtor shall give notice of any amendment or supplement to the holders of claims affected thereby, and such holders shall be afforded 30 days from the date of such notice to file proofs of claim in respect of their claims or be barred from doing so, and shall be given notice of such deadline; and it is further

ORDERED that nothing in this Order shall prejudice the right of the Debtor or any other party in interest to dispute or assert offsets or defenses to any claim reflected in the Schedules; and it is further

ORDERED that pursuant to *Bankruptcy* Rule 3003*(c)*(2), all holders of claims that fail to comply with this Order by timely filing a proof of claim in appropriate form shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution; and it is further

ORDERED that a copy of the notice substantially in the form annexed hereto is approved and shall be deemed adequate and sufficient if served by first class mail no more than 10 days from the date of this Order on:

(a) the United States Trustee;

(b) counsel to each official committee;

(c) all persons or entities that have requested notice of the proceedings in the Chapter 11 case;

(d) all persons or entities that have filed claims;

(e) all creditors and other known holders of claims as of the date of this Order, including all persons or entities listed in the Schedules as holding claims;

(f) all parties to executory contracts and unexpired leases of the Debtor;

(g) all parties to litigation with the Debtor;

(h) the Internal Revenue Service for the district in which the case is pending, and, if required by Bankruptcy Rule 2002(j), the Securities and Exchange Commission and any other required governmental units (a list of such agencies is available from the Office of the Clerk of the Court); and

(i) such additional persons and entities as deemed appropriate by the Debtor.

IT IS FURTHER ORDERED that any person or entity who desires to rely on the Schedules will have the responsibility for determining that the claim is accurately listed in the Schedules; and it is further

ORDERED that the Debtor is authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order; and it is further

ORDERED that entry of this Order is without prejudice to the right of the Debtor to seek further order of this Court fixing a date by which holders of claims or interests not subject to the Bar Date established herein must file such Proofs of Claim or Interest or be barred from doing so.

Dated: _____, 2011.

_____
United States Bankruptcy Judge

Submitted by:

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