

U.S. BANKRUPTCY COURT— WESTERN DISTRICT OF MISSOURI

SPRING 2021 EAT & GREET

APRIL 9, 2021



REMINDER

the materials for today's Eat & Greet may be found
on our website at:
mow.uscourts.gov/OUTREACH



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KOGER SYMPOSIUM

RESCHEDULED TO FRIDAY, AUGUST 20, 2021

COVID-19 BANKRUPTCY RELIEF EXTENSION ACT OF 2021

extends the sunset date for the CARES Act provisions from March 27, 2021 to March 27, 2022

these include:

1. the \$7.5 million debt limit for subchapter V debtors, and
2. § 1329(d)—allowing modification of chapter 13 plans confirmed on or before March 26, 2021

amended General Orders 4 & 5 on 3/29/2021 to address these extensions





MOTIONS FOR DEFAULT JUDGEMENT UNDER RULE 55(b)

now holding motions for default judgment for 7 days
rather than 3 days to account for 2009 amendment to rule 55(b)(2)



DECLARATION RE: ELECTRONIC FILING

attorney signature should be of attorney who actually meets
with/advises the debtor(s), and the name under the signature line
should be of that attorney



SERVICE AND CERTIFICATE OF SERVICE REMINDERS

Claim Objections

- FRBP 3007(a)(2)
- FRBP 7004

Motions to Avoid Liens

- FRBP 4003(d)
- FRBP 9014
- FRBP 7004

Reminder

- make sure it's easy for us to determine who you served
- not "I served parties entitled to notice thereof"

AUTOMATIC TRANSFER RULES

Local Rule 1073-1.H. and I.
for Platte and Stone
Counties—for individual
debtors only

non-individual debtors who are
seeking a divisional transfer (is
never automatic) should state
the basis for transfer under
LR 1073-1.E (for cause, including
convenience of the parties and
the interest of justice)

SOCIAL SECURITY BENEFITS

42.U.S.C. § 407—

“none of the moneys paid or payable . . . shall be subject to . . . the operation of any bankruptcy or insolvency law”

SOCIAL SECURITY BENEFITS

(continued)

Carpenter v. Ries (In re Carpenter), 614 F.3d 2010 (8th Cir. 2010)—

“We therefore hold . . . that § 407 operates as a complete bar to the forced inclusion of past and future social security proceeds in the bankruptcy estate.”

“We conclude § 407 must be read as an exclusion provision, which automatically and completely excludes social security proceeds from the bankruptcy estate, and not as an exemption provision which must be claimed by the debtor.”

SOCIAL SECURITY BENEFITS

(continued)

In re Tydings, 19-20889-drd-7, 2020 WL 1510025 (Bankr. W.D. Mo. Mar. 27, 2020), *aff'd*, *Tydings v. Reed (In re Tydings)*, 2:20-cv-04057-MDH, 2020 WL 5258457 (Sept. 3, 2020)—

- Judge Dow gives us a great roadmap to use when Social Security Benefits are commingled with other funds
- Judge Dow also explains the three most commonly-used tracing methods—lowest intermediate balance test, percentage or pro rata test, and first in first out

CHAPTER 13 PRACTICE ISSUE

trustee files motion to dismiss for default in plan payments and violating § 1322(d) (length)

there are many acceptable responses, for example:

- amend plan and motion to suspend
- motion to suspend and object to claim causing length issue
- pay some delinquency and seek to suspend the rest

CHAPTER 13 PRACTICE ISSUE

(continued)

But a motion to suspend by itself is never enough. Unless the debtor(s) made a payment in the interim, everyone knows the Trustee is going to object to the motion to suspend because he already told us that the plan is running long.

Debtor's counsel should not appear for the hearing having done nothing more than file a motion to suspend. It won't work.

Don't be surprised if we start looking even more carefully at fee applications when this happens.

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QUESTIONS?