

“Fast-Track” Confirmation Practice Under Bankruptcy Local Rule 2002.5

Submitted by Tecla Druffel, Lewiston, Idaho

There’s a path to confirmation that saves time and money—are you using it?

When a Chapter 13 plan and all other schedules and statements are filed with the bankruptcy petition, an accelerated confirmation process is available under LBR 2002.5 which allows a confirmation order to be entered without a hearing if no objections to the plan are received within seven days of the 341(a) hearing. The rule is designed to allow confirmation and payments to creditors in cases where there are no objections or where objections can be readily resolved.

To be eligible for this “fast track” procedure, the Chapter 13 Plan must be filed with the petition. Getting the plan filed with the petition has major incentives—the BNC will do the copying and mailing of the Plan, saving the expense of a later mailing. All other statements and disclosures must also be filed with the petition and all required tax returns and other documents must be turned over to the bankruptcy trustee prior to the 341(a) hearing.

Creditors get notice of this rule when they receive the Chapter 13 plan itself. The first page of our district’s standard Chapter 13 plan states the provisions of the fast track rule and puts the parties on notice of the need to object quickly. Again, when filed with the petition, the Chapter 13 plan is sent by the BNC to all parties in interest, *see* LBR 2002.5(a)(2).

In practice, the trustee and debtor’s attorney will usually discuss whether the case is qualified for fast-track at the 341(a) meeting. According to Chapter 13 Trustee Barry Zimmerman, it’s important that debtors’ attorneys and trustees agree to use the procedure. He added that judges also like to know ahead of time so they can review the trustee’s recommendations, which Mr. Zimmerman tries to file as soon as possible following the 341(a) meeting. Mr. Zimmerman estimates that about 10 percent of cases assigned to his office are successfully fast-tracked.

If a case is fast-tracked, creditors have seven days from the date of the first 341(a) meeting to object to confirmation. Failing to be aware of the fast-track procedure and failing to object to confirmation can be a costly mistake for creditor’s attorneys.

From a debtors’ attorney practice management perspective, the advantages of the fast-track option are clear. Having the schedules and plan filed with the petition and the necessary documents to the trustee early means the bulk of your work is behind you by the time the 341(a) hearing rolls around. It removes the need to hound your debtor for additional documents or information. It also eliminates the pressure that comes with the 14 day deadline to file a Chapter

13 plan following the filing of the petition and it saves your clients the expense of noticing out a Chapter 13 plan to all parties, which can be quite costly and time-consuming.

Fast-tracking also benefits trustees, the court and creditors because it avoids the time and expense of an unnecessary confirmation hearing.

Moreover, parties get paid sooner if a case is fast-tracked. This is generally an advantage to using the procedure but a debtor's attorney needs to closely monitor the case to ensure all necessary proofs of claim are filed by the time the trustee starts to disburse.

A common issue arises when a secured creditor does not file a proof of claim in time for the fast-track confirmation order. One solution could be for the debtor's attorney to file the proof of claim on the secured creditor's behalf *if the debtor's attorney has all the necessary documentation to attach to the claim*. If a proof of claim is filed on behalf of a creditor without the necessary documentation, the claim may be disallowed.

In summary, the fast track procedure is a great way to move Chapter 13 cases along. It does require a certain level of attention to detail by debtors' attorneys to have all their ducks in a row from the very beginning of a case and it demands vigilance by creditors' attorneys to review Chapter 13 plans, all schedules and timely file their clients' proof of claims and objections to confirmation. But we all win when it works.