



AMERICAN  
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# Northeast Bankruptcy Conference & Consumer Forum

*Consumer Track*

## **What Consumer Practitioners Need to Know About Business Bankruptcy**

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What Consumer Practitioners  
Need to Know About  
Subchapter V

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**The Small Business Reorganization Act of 2019  
(SBRA)**

- SBRA was signed into law on August 19, 2019 and effective February 19, 2020.
- SBRA added Subchapter V to Chapter 11 of the Bankruptcy Code to provide a streamlined procedure for reorganization of small business debtors with debts of \$2.5mm (adjusted for inflation).
- Revised by the CARES Act effective March 27, 2020 to temporarily increase the debt limit for eligibility to \$7.5mm.
- Increase in the debt limit reverted on June 21, 2024.
- The debt limit has been reduced to \$3,024,725 (adjusts for inflation).
- Up in the air as to whether Congress will raise the debt limit in the future.

## *Distinctive Features of Subchapter V*

Subchapter V was intended to provide a small business friendly alternative to a traditional Chapter 11 case.

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**Subchapter V Trustee.** A trustee is always appointed, but the debtor remains in possession of the assets of the estate. The Subchapter V Trustee's duties are limited and defined by 11 U.S.C. § 1183.

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**No U.S. Trustee Fees.** The debtor is exempt from paying U.S. Trustee quarterly fees.

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**No creditor's committee by default.** Unless the court orders otherwise for cause, there is no unsecured creditor's committee.

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**Plan deadlines and exclusivity.** The debtor must file a plan within 90 days of the petition date unless the court extends time, but there is no deadline to confirm a plan. Only the debtor may propose a plan.

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**Absolute priority rule.** Does not apply under 11 U.S.C. § 1191. Replaced with "Best Interest Test." Creditors must receive as much under the plan as they would in a Chapter 7 liquidation.

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**No disclosure statement required.** The Debtor may solicit votes for a plan without providing a disclosure statement.

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**Eligibility.** A small business debtor, see 11 U.S.C. § 101(51D), may elect to proceed under Subchapter V.

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## Who is a Small Business Debtor?

11 U.S.C. § 101(51D) provides that a "small business debtor" is:

- A person (natural person or most business entities) engaged in commercial or business activities
- Except for a person whose primary activity is owning single asset real estate
- Having aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than **\$7,500,000** (as of June 20, 2024) or **\$3,024,725** (as of June 21, 2024).

## Participants in a Subchapter V Case

- The Debtor and Debtor's Counsel
- United States Trustee
- The Subchapter V Trustee
- Creditors and Creditors' Counsel
- The Bankruptcy Judge

## Debtor

### Who may be a debtor?

- To file a small business case, the debtor must be engaged in commercial or business activities (other than primarily owning or operating a single piece of real property).
- Debtor must have secured and unsecured debts of \$3,024,725 or less.
- Debtor may not file under Subchapter V unless 50 percent of the debts arose from the commercial or business activities of the debtor.
- The combined total of secured and unsecured debts must be owed as of the date of filing for bankruptcy relief.

Chapter 13	Subchapter V
Only individuals with regular income can file	Individuals and entities can file – excludes single asset real estate debtors and any entity subject to the Securities and Exchange Act of 1934
Debt limit \$3,024,725 (previous debt limit of \$7,500,000 expired June 21, 2024 – it is unknown if Congress will act to bring the previous limit back)	Two-part debt limit test: \$465,275 in general unsecured debt & \$1,395,875 in secured debt (previous combined debt limit of \$2,750,000 expired June 21, 2024 – it is unknown if Congress will act to bring the previous one-part test back)
Chapter 13 plan payments required within 30 days of filing	Subchapter V does not require pre-confirmation payments
Chapter 13 discharge enters after the debtor completes payments or a hardship discharge is granted	Discharge occurs upon confirmation of a consensual plan

### A Confirmable Plan Must Include:

- a brief history of the debtor's business operations
- the liquidation analysis
- plan projections
- the provision for the submission of all or a portion of the debtor's future earnings or income
- provisions of 11 U.S.C Section 1123
- not necessary to have an assenting class

## Dischargeability Issues

- If a plan is confirmed under § 1191(a), then § 1141(d) applies, except § 1141(d)(5), removing the delay for an individual debtor's discharge
- If confirmed under § 1191(b), then § 1192 addresses the subchapter V debtor's discharge rights, and states:
  - "[T]he court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A),
  - and all other debts allowed under section 503 [] and provided for in the plan, except any
  - debt-(1) on which the last payment is due after the first 3 years of the plan, or such other
  - time not to exceed 5 years fixed by the court; or (2) of the kind specified in section 523(a) of this title."
  - § 1141(d) does not apply if a case is confirmed under § 1191(b), except as specifically provided in § 1192. See 11 U.S.C. § 1181(c).
- § 1141(d)(1)(A)(2) states that an individual debtor does not receive a discharge from any debt excepted from discharge under § 523

## U.S. Trustee

### The role of the US Trustee:

- **First Day Orders.** Reviews the debtor's requests for emergency orders early in a bankruptcy case and ensures that the requested relief is tailored to the circumstances.
- **Reorganization Plans, Disclosure Statements.** Reviews reorganization plans and disclosure statements filed by parties in the case to make sure they provide adequate and accurate information.
- **Compliance.** Ensures that all required reports, schedules, and fees are timely filed, and that the debtor manages money and assets consistent with the Bankruptcy Code and with its fiduciary duty to creditors. Required documents include the debtor's monthly operating reports, tax returns, schedules of income and expenses, and proof of insurance. These documents allow parties to monitor the debtor's progress toward reorganization.

- **Prevents Delay.** Takes action to prevent undue delay.
- **Professional Employment.** Reviews and, if appropriate, objects to applications filed by professionals seeking employment in the case, payment of compensation, and/or reimbursement of expenses. Professionals who serve in the case--and receive payment from the bankruptcy estate--might include attorneys, accountants, auctioneers, investment advisors, "turnaround specialists," and real estate brokers.
- **Fraud.** Investigates criminal, fraudulent, or abusive conduct for possible civil or criminal prosecution. The U.S. Trustee pursues civil (non-criminal) penalties, and refers cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

### Subchapter V Trustees

- § 1183(a) appoints the Subchapter V trustee
- § 1183(b) defines the Subchapter V trustee's duties
- § 704 duties
- Certain § 1106(a) duties, if the court orders, for cause - Appear and be heard at the § 1188 status conference, and hearings regarding valuation, confirmation, plan modification, and sales of estate property; ensure timely plan payments - If the debtor is removed from possession, then authorized to operate the business; facilitate the development of a consensual plan of reorganization
- § 1183(b)(5)(B) provides that the Subchapter V Trustee may be authorized to operate the business of the debtor, if the debtor ceases to be a debtor in possession

## Creditors

### Cash Collateral

Under 11 U.S.C. § 363(a) **cash collateral** is cash, cash equivalents like marketable securities, and the proceeds from the sale of liquid assets such as accounts receivable and inventory belonging to the debtor.

- A debtor may only use cash collateral: (a) with the consent of each entity having an interest in cash collateral (security interest or a lien) or (b) with approval of the court. § 363(c)(2).
- Authority to use cash collateral is essential for the debtor to operate its business. This is usually done on an emergency basis through a first day motion via a preliminary hearing. *See* Fed. R. Bankr. P. 4004(b)(2).
- Final approval of cash collateral use requires a hearing that is scheduled on a minimum of 14 days notice .
- Most cash collateral motions are resolved through negotiation of a cash collateral order between the debtor and secured creditors.

- To obtain permission to use cash collateral, debtors must provide adequate protection for secured creditor interests.
- **Adequate protection** is (1) cash payments; (2) additional or replacement liens against property to the extent that use results in a decrease in value of the creditor's lien; or (3) other relief, such as an administrative claim, or "indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361.
- Commonly negotiated provisions that benefit creditors include:
  - Periodic (weekly/biweekly) budget to actual reporting.
  - Ability for secured creditor to rescind cash collateral consent if debtor does not meet agreed to budget to actual variances.
  - "Drop dead" provisions granting the secured creditor relief from stay on the occurrence of certain events.
  - Periodic payments.
  - Replacement liens on post-petition assets.

### **Superpriority – 11 U.S.C. § 507**

- If adequate protection provided by the trustee (debtor in possession) fails and the secured creditor suffers a loss, section 507(b) may allow for a “superpriority” claim payable before any other unsecured claim, including administrative expenses.
- For superpriority status the debtor must give the creditor something which the creditor does not already have.
- Creditors should insist on adequate protection being provided by a court order. *Ex parte* agreements for adequate protection are subject to close judicial scrutiny. *In re Blehm Land & Cattle Co.*, 859 F.2d 137 (10<sup>th</sup> Cir. 1988).
- Must be a benefit to the estate sufficient to grant administrative priority.
- Superpriority only available to the extent of the loss.
- Valuation can be difficult.

### **11 U.S.C. § 1111(b) election**

- Under 11 U.S.C. § 1111(b) an undersecured creditor can make an election to treat its entire nonrecourse claim as secured if the debtor is proposing to retain the property securing the creditor’s lien. The value of the lien must be more than inconsequential.
- Under Fed. R. Bankr. P. 3014, the election must be made prior to the conclusion of the hearing on the disclosure statement, or such later time that the court may fix. Since there’s no disclosure statement in a Subchapter V case, the deadline to make the election should be provided by the court in a scheduling order, or a local rule.
- Under 11 U.S.C. § 1129(a)(7)(B), the court can only confirm the plan if the present value of plan payments equal the value of the secured creditor’s interest in the collateral.
- The election provides a secured creditor with a choice. If it assesses that the dividend on its unsecured deficiency will be less than the present value of any future appreciation of the collateral, it will make the election; if it perceives that recovery on the unsecured deficiency will be larger, it will not.

## Subchapter V is not just a big Chapter 13 case...

Chapter 13	Subchapter V
Only individuals with regular income can file	Individuals and entities can file
Spouse of a Chapter 13 Debtor can file jointly even if the spouse does not have regular income.	Non-eligible spouses of the Debtor may not file jointly
Filing fees \$313	Filing fees \$1,738
Chapter 13 Trustee administers payments to creditors	Generally, Subchapter V Trustee does not administer payments, unless the Plan is non-consensual
No first day motions	First day motions required
Debt limit \$3,024,725 (previous debt limit of \$7,500,000 expired June 21, 2024 – it is unknown if Congress will act to bring the previous limit back)	Two-part debt limit test: \$465,275 in general unsecured debt & \$1,395,875 in secured debt (previous combined debt limit of \$2,750,000 expired June 21, 2024 – it is unknown if Congress will act to bring the previous one-part test back)
Chapter 13 plans do not require voting by creditors	Subchapter V contemplates voting on the plan by creditors
Chapter 13 Trustee received a commission based on disbursements under the Chapter 13 Plan	Subchapter V trustees receive compensation based on services rendered
No code-based duties or requirements on Debtor regarding the operation of a business, though most Chapter 13 Trustees impose some requirements like the filing of monthly business operating reports	Debtors are subject to the reporting requirements of §1116 (i.e. post-petition financial and other reports)
Prohibits the “cram-down” of residential mortgages	Permits the modification of a residential mortgage under §1190(3) in a non-consensual plan provided the requirements of subparagraphs (A) and (B) exist

“Hanging paragraph” prohibits bifurcation of certain secured claims	No “hanging paragraph”
Equal monthly payments required for secured creditors under §1325(a)(5)(B)	Equal monthly payments not required
Plan requires debtors to commit “projected disposable income” if a plan provides for less than full payment of unsecured claims	Debtor only required to commit “projected monthly income” in cramdown situations. If all classes of impaired creditors accept the plan, the commitment of projected monthly income is not applicable
Calculation of disposable income is based on current monthly income and the “means test” applies to above-median debtors	§1191(d) defines disposable income as “income that is received by the debtor and that is not reasonably necessary to be expended” for support, payment of domestic support obligations, and business expenditures. Subchapter V does not use “current monthly income,” and it does not require the “means test” standards. Best practice, however, is to provide disposable income.
Chapter 13 must remain open for the applicable commitment period	Subchapter V permits payments over a shorter period of time
Chapter 13 Plan must be filed within 14 days of filing of the petition	Subchapter 5 requires plan be filed within 90 days, unless the court otherwise extends that timeframe
Chapter 13 plan payments required within 30 days of filing	Subchapter V does not require pre-confirmation payments
Chapter 13 discharge enters after the debtor completes payments or a hardship discharge is granted	Discharge occurs upon confirmation of a consensual plan

## **Chapter 11 Subchapter V Statistical Summary Through May 31, 2024<sup>1</sup>**

### **Subchapter V Filing Summary**

Time Period	Subchapter V Cases
Fiscal Year 2020	1,118
Fiscal Year 2021	1,716
Fiscal Year 2022	1,592
Fiscal Year 2023	1,985
Fiscal Year 2024	1,760

### **Chapter 11 Small Business Case Outcomes Summary**

Disposition	Chapter 11 Small Business (Non-Subchapter V)		Subchapter V
	FY 2017 – FY 2019	FY 2020 – FY 2023	FY 2020 – FY 2023
Pending Without Confirmed Plan	1%	5%	6%
Plan Confirmed	31%	21%	52%
Converted	15%	22%	12%
Dismissed	54%	52%	31%
Total	100%	100%	100%
Median Months to Confirmation	10.8	10.3	6.5
Median Months to Dismissal	6.0	4.1	4.7

- Compared to other (non-subchapter V) chapter 11 small business cases, subchapter V cases have had approximately double the percentage of confirmed plans and half the percentage of dismissals, as well as a shorter time to confirmation.
- Of subchapter V cases with confirmed plans, 69 percent of the confirmed plans have been consensual plans.

<sup>1</sup> All totals are for cases filed in United States Trustee Program (USTP) districts (excluding Alabama and North Carolina) and include cases that opted into subchapter V during the time period, either during or after filing. Totals may change over time due to subsequent case status updates. Subchapter V disposition percentages reflect results through May 31, 2024, and exclude cases that amended out of subchapter V, either at the debtor's request or after having been deemed ineligible to proceed under subchapter V, as well as cases that were administratively closed upon transferring to another division or district. Median disposition times are based on the date that cases entered into subchapter V and may change for each group as remaining pending cases reach their dispositions. Fiscal Year 2024 disposition percentages are not yet included because many cases have not yet reached a disposition. Percentages may not add up to 100 percent due to rounding.

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS  
FOR CHAPTER 11 CASES**

**REGION I**

**MAINE, MASSACHUSETTS,  
NEW HAMPSHIRE AND RHODE ISLAND**



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*Effective 2/1/23*

**Notice for Subchapter V Debtors**

Please note that portions of the OGRR do not apply to Chapter 11 debtors who have elected to proceed under subchapter V. Specifically –

- Subchapter V debtors are not required to pay quarterly fees under 28 U.S.C. § 1930(a)(6)(A). Therefore, Section VII of the OGRR regarding quarterly fees does not apply to subchapter V debtors.
- Because subchapter V debtors are not required to pay quarterly fees, subchapter V debtors do not need to file post-confirmation reports of disbursements, pursuant to Interim Bankruptcy Rule 2015(a)(5). Therefore, Section VI-B of the OGRR regarding the filing of post-confirmation reports does not apply to subchapter V debtors in districts that have adopted Interim Bankruptcy Rule 2015(a)(5).
- Unless the Bankruptcy Court orders otherwise for cause, subchapter V debtors are not required to file a disclosure statement, pursuant to 11 U.S.C. § 1181(b). Therefore, the disclosure statements does not apply to subchapter V debtors, unless the Court orders them to file a disclosure statement.

However, subchapter V debtors are required to comply with deadlines not imposed in other chapter 11 cases. Specifically –

- The Bankruptcy Court will hold a status conference not later than 60 days after the case is filed “to further the expeditious and economical resolution” of the subchapter V case. 11 U.S.C. § 1188(a).
- Not later than 14 days before the status conference, “the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.” 11 U.S.C. § 1188(c).
- The subchapter V debtor shall file a plan not later than 90 days after the petition date, except that the court may extend the period “if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.” 11 U.S.C. § 1189(b).

The subchapter V debtor also has a duty to cooperate with the subchapter V trustee in the trustee’s performance of his/her statutory duties, under 11 U.S.C. § 521(a)(3).

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## I. GENERAL REQUIREMENTS

The United States Trustee Program is a component of the Department of Justice charged with supervisory and administrative responsibilities in cases filed under the Bankruptcy Code.

Pursuant to 28 U.S.C. § 586(a)(3) and 11 U.S.C. § 704(a)(8)<sup>1</sup>, the United States Trustee has established these Operating Guidelines and Reporting Requirements (the Guidelines) for Chapter 11 Debtors-in-Possession and Chapter 11 trustees.

To ensure appropriate compliance with the Operating Guidelines and Reporting Requirements it is extremely important that Debtor's counsel review these requirements with the Debtor-in-Possession immediately upon receipt. The Debtor and counsel must acknowledge receipt of these Guidelines and furnish the United States Trustee with verification that they have read, understand and agree to comply with the Guidelines by executing the Verification and

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<sup>1</sup> 11 U.S.C. § 704(a)(8) is made applicable to a Chapter 11 Debtor by 11 U.S.C. §§ 1106(a)(1) and 1107(a).

returning to the United States Trustee within fourteen (14) days. *See* REQUIRED DOCUMENTS for the form.

#### A. DEBTOR-IN-POSSESSION RESPONSIBILITIES

With the filing of a Chapter 11 petition, the Debtor becomes a new and separate entity called a "Debtor-in-Possession." The Debtor-in-Possession (or "Debtor") has fiduciary and statutory responsibilities to preserve and maintain the bankruptcy estate and to operate as efficiently as possible to maximize ultimate payments on pre-petition debts while keeping post-petition debts current. *See* 11 U.S.C. §§ 1106 and 1107. Some of the Debtor's obligations are as follows:

- The Debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by Order of the Court.
- The Debtor must obtain a Court Order to employ or pay any attorneys, accountants, and other professionals.
- The Debtor must pay in full all post-petition obligations as they come due. This includes quarterly fee payments to the United States Trustee.
- The Debtor may not make any new loan, give a post-petition guarantee, or borrow funds without Court approval unless otherwise permitted by the Bankruptcy Code.
- The Debtor may not sell assets outside the ordinary course of business without Bankruptcy Court approval.
- The Debtor must comply with Section 363 of the Bankruptcy Code regarding the use of cash collateral. Questions regarding cash collateral should be directed to the Debtor's attorney.
- The Debtor must notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within fourteen (14) days after the change. The United States Trustee must be advised immediately of any significant change in the Debtor's business. Significant changes include, but are not limited to, casualty or theft losses, changes in insurance coverage, or allegations of violations of laws, ordinances, or regulations, including but not limited to the failure to pay taxes, which could affect the continued operation of the Debtor's business.

- The Debtor must file all federal, state, and local tax returns when due or obtain an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or Court Order. The Debtor must timely pay all post-petition taxes.
- The Debtor should be aware that in addition to the requirements of the Bankruptcy Code, there are many requirements for Debtors found in the Federal Rules of Bankruptcy Procedure, as well as Local Bankruptcy Rules and Standing Orders for the District in which the Debtor filed its bankruptcy case. The websites for the Bankruptcy Courts within Region 1 are as follows:
  - Maine - [www.meb.uscourts.gov](http://www.meb.uscourts.gov)
  - Massachusetts - [www.mab.uscourts.gov](http://www.mab.uscourts.gov)
  - New Hampshire - [www.nhb.uscourts.gov](http://www.nhb.uscourts.gov)
  - Rhode Island - [www.rib.uscourts.gov](http://www.rib.uscourts.gov)
- The Debtor must file a list of its twenty (20) largest unsecured creditors, excluding insiders, with the Clerk of the Bankruptcy Court. The complete name, address, e-mail address, telephone number, fax number and name of contact of each creditor must be supplied. *See* Fed. R. Bankr. P. 1007(d).
- The Debtor must file a list of all equity security holders of the Debtor including the name, address, telephone number and type of interest held by each holder. Unless an extension is granted by the Court, the Debtor's schedules, statements and other documents must be filed within 14 days after the filing of a voluntary petition for relief. *See* 11 U.S.C. § 521(1) and Fed. R. Bankr. P. 1007(c).

In addition, the accounting books and records of the Debtor must be closed as of the petition filing date. The Debtor must open a new set of books and records and must provide separate accounting with respect to pre-petition and post-petition accounts and transactions. Any pre-petition tax return due, but not filed, as of the date of the petition, must be filed with the appropriate taxing authority. It is the responsibility of the Debtor to ascertain whether there are

such unfiled returns and, as appropriate, to amend schedules to reflect all pre-petition tax liabilities.

All certifications, reports, documents, and any other papers required by the United States Trustee which are to be signed by the Debtor, must be signed by the Debtor or a responsible officer or managing member of the Debtor. Failure of the Debtor or its responsible officer or managing member to sign any certification, report or document, or signing by any other party, such as Debtor's attorney or accountant, renders the document incomplete.

Any request to amend or modify these requirements for a particular Chapter 11 case must be made in writing and approval by the United States Trustee is effective only if in writing.

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with the provisions of the Bankruptcy Code or with the United States Trustee Guidelines may result in the United States Trustee seeking from the Bankruptcy Court an Order converting or dismissing the case, appointing a chapter 11 trustee, or any other remedy deemed appropriate.

**B. COMMUNICATION WITH REPRESENTED PARTIES  
(MCDADE AMENDMENT)**

Most communication occurring between United States Trustee Program employees and Debtors is administrative in nature relating to the United States Trustee's statutory duty to supervise the administration of bankruptcy cases. In order to ensure that direct contact with a represented party is authorized by the Debtor's attorney, the United States Trustee requires the Debtor's attorney to complete and submit the Direction of Debtor Attorney Concerning United States Trustee Contact with Client (the "McDade" Authorization form). *See* REQUIRED DOCUMENTS for additional information and for a link to this form.

## II. INITIAL DEBTOR INTERVIEW

The Debtor and the Debtor's attorney must attend an Initial Debtor Interview (the "IDI") that is scheduled by the United States Trustee's Office shortly after the filing of the chapter 11 case and prior to the § 341 meeting ("Meeting of Creditors.") At the Initial Debtor Interview, the United States Trustee will seek to become familiar with the Debtor's case as well as the Debtor's business plan and operations, assets, liabilities and accounting methods. Accordingly, the Debtor's representative(s) at the Initial Debtor Interview must have personal knowledge and information regarding the Debtor's pre-petition and post-petition operations, accounting records, tax returns and financial statements. During the Initial Debtor Interview, the United States Trustee will discuss the role of the United States Trustee, explain the Guidelines, and discuss scheduling matters. The Debtor should review the information contained in these Guidelines thoroughly before the Initial Debtor Interview so that any administrative questions can be addressed at that time. Failure by the Debtor to attend meetings reasonably requested by the United States Trustee is cause for conversion or dismissal of the bankruptcy case. *See* 11 U.S.C. § 1112(b)(4)(H).

### A. REQUIRED DOCUMENTS

The Debtor must provide a number of documents to the United States Trustee, some immediately upon the chapter 11 filing, some before the Initial Debtor Interview to be held no later than 14 days after the chapter 11 filing, and others on a regular basis throughout the case. All documents are available on the United States Trustee's website at [http://www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm)

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<b>Item</b>	<b>Due Date</b>
<p><b>Evidence of Insurance. Immediately upon filing, the Debtor must provide the United States Trustee with evidence of insurance for every policy maintained by the Debtor.</b> A Certificate of Insurance from the Debtor's insurance agent with the United States Trustee named as a notified party is required. The Certificate of Insurance must show the type(s) of coverage, coverage limits, and policy period. The Certificate of Insurance must show the name of the Debtor (i.e. the name on the petition) as the insured party. <i>See</i> INSURANCE REQUIREMENTS for additional information.</p>	<p>Immediately upon filing</p>
<p>Debtor's Receipt and Certification of Understanding of Operating Guidelines and Reporting Requirements of the United States Trustee For Chapter 11 Cases and Designation of Specific Individuals.</p>	<p>By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing</p>
<p>Information for Initial Debtor Interview with United States Trustee. (<i>See</i> link to website with forms.)</p>	<p>By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing</p>
<p>(1) Declaration of Pre-Petition Account Closings and Opening of Debtor-In-Possession Bank Accounts and (2) Authorization For Release of Information. The Debtor should have begun the process of setting up Debtor-in-Possession account(s) either before or immediately upon the filing of the bankruptcy petition. (<i>See</i> BANK ACCOUNT REQUIREMENTS for additional information and for a link to the current list of approved financial depositories.)</p>	<p>By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing</p>

**2024 NORTHEAST BANKRUPTCY CONFERENCE & CONSUMER FORUM**

<b>Item</b>	<b>Due Date</b>
An original voided check for each DIP account the Debtor has opened with the appropriate styling. Photocopies or temporary checks are not acceptable. (See BANK ACCOUNT REQUIREMENTS for additional information and a sample check.)	By the time of the Initial Debtor Interview, but no later than 14 days after chapter 11 filing
Direction of Debtor Attorney Concerning United States Trustee Contact with Client (the “McDade” Authorization form).	No later than 14 days after chapter 11 filing
Group/Pension Information Form (must be completed even if not applicable).	No later than 14 days after chapter 11 filing
Copies of the Debtor's federal income tax returns filed in the past two years. Copy of the most recently issued or prepared audited and/or unaudited financial statements (inclusive of balance sheet, income statement, and statement of cash flows).	No later than 14 days after chapter 11 filing
A schedule of aged accounts receivables.	No later than 14 days after chapter 11 filing
A list of all disbursements for the ninety (90) days prior to the filing.	No later than 14 days after chapter 11 filing
Copies of all licenses and/or permits (including licenses to intellectual property and certificates evidencing ownership of intellectual property).	No later than 14 days after chapter 11 filing
Copies of all written policies given to customers regarding the sale of personally identifiable information.	No later than 14 days after the chapter 11 filing

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Item	Due Date
Chart of Accounts, Listing of Accounts, or General Ledger (if available).	No later than 14 days after chapter 11 filing
Copies of bank statements and cancelled checks for every pre-petition bank account held by the Debtor or to which the Debtor had or has access for the six months prior to the bankruptcy filing.	No later than 14 days after the chapter 11 filing
Proof of timely payment of all applicable post-petition taxes (e.g. income, payroll, sales and use, meals, real and personal property)	Copy of each return and verification of payment of taxes to be attached to each monthly operating report
Proof of insurance renewal prior to the expiration dates shown in the current policies. <i>See</i> INSURANCE REQUIREMENTS for additional information.	Copies to be provided to the United States Trustee when each insurance policy renews
Copies of Periodic Report Regarding Value, Operations and Profitability of Entities in which the Estate Holds a Substantial or Controlling Interest, (Official Form 426). <i>See</i> website for a link to the Official Form 426.	Initial Report filed with the Court no later than 7 days before the § 341 meeting of creditors with subsequent reports no less frequently than 6 months thereafter until the effective date of a plan or the case is dismissed or converted. <i>See</i> Fed. R. Bankr. P. 2015(3).

### B. AFFILIATED ENTITIES

If the Debtor is an entity that is indirectly or directly affiliated, related, and/or shares common ownership with other entities (a "layered" entity structure, for example), the Debtor must provide the United States Trustee with an organizational chart or detailed statement that explains the relationship between the companies and provides the federal identification numbers (FEINs) for each. The Debtor must also file periodic financial reports for each entity that is not a

publicly traded corporation or a Debtor in a bankruptcy case, and in which the estate holds a substantial or controlling interest. *See* Fed. R. Bankr. P. Rule 2015.3.

### **III. § 341 MEETING OF CREDITORS**

The Debtor or authorized representative of the Debtor (i.e. an officer, director, or shareholder if the Debtor is a corporation; a partner if the Debtor is a partnership; a manager or member if the Debtor is a limited liability company) and the Debtor's attorney are required to appear at the § 341 Meeting of Creditors which must take place within twenty-one (21) to sixty (60) days after the filing of a voluntary petition. All creditors and other parties in interest are notified of the meeting by the Clerk of the Bankruptcy Court using the list provided by the Debtor. The Debtor(s) will be examined under oath by the United States Trustee, creditors, and other parties in interest in attendance. *See* 11 U.S.C. §§ 341 and 343; Fed. R. Bankr. P. Rule 2003(b). The Debtor's testimony at the § 341 meeting is recorded and preserved for public access for at least two years after the conclusion of the meeting of creditors. *See* Fed. R. Bankr. P. 2003(d). The United States Trustee may also request that additional representatives of the Debtor attend the § 341 Meeting and be available for examination.

To reschedule a meeting the Debtor's counsel must contact the United States Trustee. If the United States Trustee approves the request, the Debtor's counsel is responsible for notifying all interested parties of the rescheduled § 341 meeting and must certify that notice of the rescheduled meeting has been sent to all parties in interest. Except in extraordinary situations, the United States Trustee will not reschedule a meeting after the Clerk's Office has sent notice of the meeting.

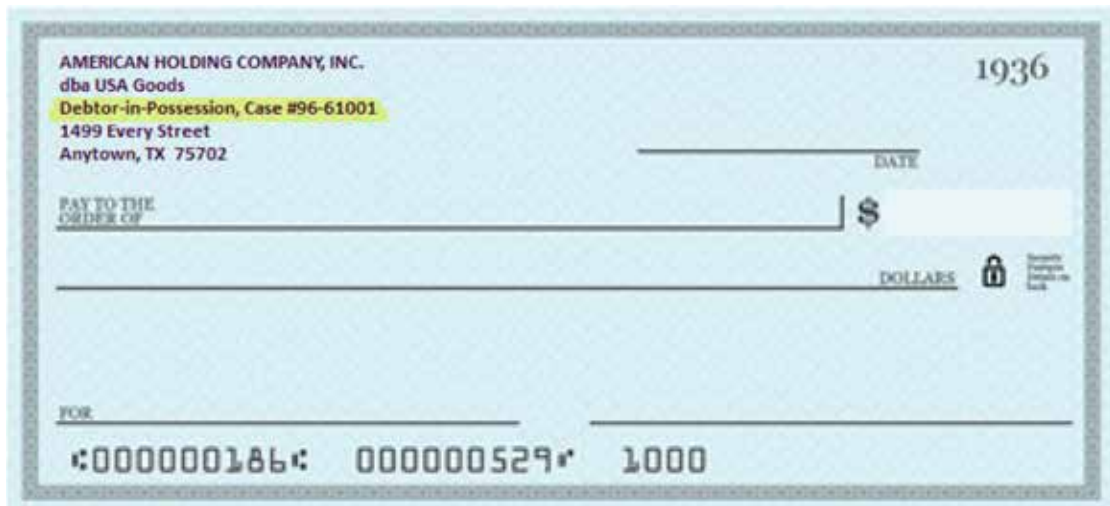
If the Debtor is an individual, he or she must bring to this meeting (1) proof of his/her identity and (2) proof of his/her Social Security Number. Permissible forms of identification

include a valid driver's license, government issued photo identification card, U.S. Passport, or resident alien card. Proof of Social Security Number may include a Social Security card, current Form W-2, or payroll check stub.

#### IV. BANK ACCOUNT REQUIREMENTS

Immediately upon the filing of the Debtor's petition, the funds in the Debtor's existing bank accounts become property of the bankruptcy estate. Upon the filing of the case, the Debtor must immediately close pre-petition bank accounts and deposit the funds into new "Debtor-in-Possession" (DIP) bank account(s). Note that outstanding checks that have not cleared pre-petition bank accounts at the time of filing should not be permitted to clear. All financial transactions involving property of the estate must be made through the DIP account(s). All receipts must flow through the DIP account(s). All disbursements should be by check.

The Debtor must ensure that its checks are imprinted with the full name of the Debtor-in-Possession, exactly as shown on its voluntary petition, (Official Bankruptcy Form 1). If the Debtor is filing individually or filing a joint petition, the check must include the first, middle and last names (not initials) of all petitioners. If use of a d.b.a. ("doing business as") is desired in the styling of the check, the d.b.a. must have been recorded in the box on the petition labeled "All other Names used by the Debtor in the last 6 years (including married, maiden and trade names)." The designation "Debtor-In-Possession" (do not abbreviate as "DIP") and the case number must also be imprinted on all checks. See the following sample check as an illustration:



The Debtor must provide voided samples of permanent checks from each account to the United States Trustee for review. If the Debtor uses cash collateral, separate cash collateral accounts must be established and maintained pursuant to 11 U.S.C. § 363(4). Any funds in excess of those required for current operations should be maintained in either an interest-bearing account, or other investments as permitted by 11 U.S.C. § 345(a).

If a trustee is appointed to succeed a Debtor-in-Possession, the trustee may continue to use previously opened Debtor-in-Possession accounts, but must ensure that the accounts and checks reflect the trustee's name and title along with the name of the Debtor and the case number.

The investment and protection of bankruptcy estate funds is governed by Section 345 of the Bankruptcy Code. Section 345(b) of Title 11 provides that, unless the Court Orders otherwise, all financial institutions in which estate monies exceeding federal deposit insurance limits are deposited or invested, have either posted a bond or pledged securities of a type specified in the statute. This requirement ensures that all estate fund balances exceeding federal deposit insurance limits are protected against loss in the event of the failure of the financial

institution. The most current Authorized Depository Listing is available on our website at [www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm) under the heading "Initial Debtor Interview (IDI) Information." The United States Trustee maintains a list of financial institutions that have agreed to pledge securities with the Federal Reserve or post a bond in order to insure their bankruptcy accounts. The United States Trustee monitors these institutions to ensure the requirements of Section 345(b) are met.

## V. INSURANCE REQUIREMENTS

The Debtor must maintain appropriate insurance and make all premium payments when due. **Immediately upon filing, the Debtor must provide the United States Trustee with proof of the insurance coverage required by these Guidelines.** The proof is typically in the form of a one page certificate. The proof must disclose, at a minimum, the effective date and the termination date of coverage; the type and limits of coverage provided; and the identity of all loss payees and notified parties. The Debtor must instruct its insurance company to list the United States Trustee as a notified party or certificate holder. Upon expiration or other termination of any coverage, the Debtor shall immediately provide the United States Trustee with adequate proof of replacement coverage. The Debtor shall maintain at least the following coverage, where appropriate:

- General comprehensive liability
- Property (personal and theft)
- Casualty and theft
- Workers' compensation
- Vehicle
- Product Liability
- Flood insurance
- Directors and Officers Liability

- Professional malpractice
- Liquor Liability
- Other coverage customary or prudent in the Debtor's business, or required by law
- Proof of Renewal of Insurance during pendency of the case

## **VI. OPERATING REPORT REQUIREMENTS**

Debtors are required to file Operating Reports until the Court enters a Final Decree, dismisses the case, or converts the case to another chapter in bankruptcy. The form of the required report varies, depending on the type and status of the case. Failure to file Operating Reports may result in dismissal of the case or conversion of the case to Chapter 7. *See* 11 U.S.C. § 1112(b)(4)(F), and (H).

### **A. Small Business Cases, Including Subchapter V Cases**

In small business cases, which include subchapter V cases, Debtors must use the Official Form B 425C, Monthly Operating Report for Small Business Under Chapter 11 (“Form B 425C”). The Form B 425C is available on the U.S. Bankruptcy Court's website: <http://www.uscourts.gov/bkforms/index.html>.

The Debtor is required to file as an attachment to the Form B 425C each month's bank statement for every account in the Debtor's name, as well as any account to which the Debtor had access during the reporting period. The Debtor is also required to attach copies of all tax returns filed during the reporting period. Tax returns and bank statements should be redacted to comply with applicable laws affecting privacy rights of third parties. *See* Fed. R. Bankr. P. 9037.

The Form B 425C is based on a calendar month (e.g., January 1 - January 31), and all reports must be filed by the fourteenth (14<sup>th</sup>) day of the month following the reporting period. Such reports shall disclose all transactions of the calendar month immediately preceding the due date. The first report shall include all transactions for the period of the first month that the

Debtor is in bankruptcy. It is recognized that in almost all cases, the first report will only be for a partial month. Compliance with Local Rules and filing procedures in each jurisdiction is required.

After confirmation of a Debtor's plan, the Debtor in a non-subchapter V small business case is required to file a Post-Confirmation Summary Report. The Post-Confirmation Summary Report is to be filed monthly, and includes, among other items, all payments made under the plan of reorganization and payments made in the ordinary course of doing business. A copy of the Post-Confirmation Summary Report form is provided on the United States Trustee website: [http://www.justice.gov/ust/r01/reg\\_info.htm](http://www.justice.gov/ust/r01/reg_info.htm). The Post-Confirmation Summary Report is to be filed for all months until the Court enters a Final Decree, dismisses the case, or converts the case to another chapter in bankruptcy. No Post-Confirmation Summary Reports are required for subchapter V cases.

#### **B. Non-Small Business Cases**

In non-small business cases, prior to a plan's effective date, Debtors must use the UST Form 11-MOR, Monthly Operating Report ("MOR").

The Debtor is required to file as an attachment to the MOR each month's bank statement for every account in the Debtor's name, as well as any account to which the Debtor had access during the reporting period. The Debtor is also required to attach copies of all tax returns filed during the reporting period. Tax returns and bank statements should be redacted to comply with applicable laws affecting privacy rights of third parties. *See* Fed. R. Bankr. P. 9037.

The MOR is based on a calendar month (e.g., January 1 - January 31), and must be filed by the twenty-first (21<sup>st</sup>) day of the month following the reporting period. Such reports shall disclose all transactions of the calendar month immediately preceding the due date. The first

report shall include all transactions for the period of the first month that the Debtor is in bankruptcy. It is recognized that in almost all cases, the first report will only be for a partial month. Compliance with Local Rules and filing procedures in each jurisdiction is required.

After a plan's effective date, Debtors must use the UST Form 11-PCR, Post-Confirmation Report ("PCR").

The PCR is based on a calendar quarter (e.g., January 1 – March 31), and must be filed by the twenty-first (21<sup>st</sup>) day of the month following the reporting period.

Forms and instructions for the MOR and PCR are available at:

<https://www.justice.gov/ust/chapter-11-operating-reports>.

## **VII. UNITED STATES TRUSTEE QUARTERLY FEES**

United States Trustee quarterly fees accrue until the Court has issued an Order converting or dismissing the case or a Final Decree closing the case. *See* 11 U.S.C. § 350; Fed. R. Bankr. P. 3022. The quarterly fee is calculated on the actual and constructive cash disbursements made during the days of the quarter that the Chapter 11 case is open. Constructive disbursements are those made by another party on the Debtor's behalf or in which the Debtor benefits. Proceeds from the sale of properties that are used to pay debt are also considered constructive cash disbursements and are included in the quarterly fee calculation even if those funds are not received directly.

Subchapter V debtors are not required to pay quarterly fees under 28 U.S.C. § 1930(a)(6)(A).

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Quarterly fees are not prorated for a partial quarter. The minimum fee applies even if the case is open for only one day of the quarter and if no disbursements are made during the reporting period. Beginning April 1, 2021, the quarterly fee schedule is as follows. *See* 28 U.S.C. § 1930(a)(6):

<b><u>Quarterly Disbursement Range</u></b>	<b><u>Quarterly Fee</u></b>
\$0 to \$62,624	\$250
\$62,625 to \$999,999	0.4% of quarterly disbursements
\$1,000,000 to \$31,249,937	0.8% of quarterly disbursements
\$31,249,938 or more	\$250,000

	QUARTERLY FEE DUE DATE	
1st Quarter	January 1 <sup>st</sup> to March 31 <sup>st</sup>	Due by April 30 <sup>th</sup>
2nd Quarter	April 1 <sup>st</sup> to June 30 <sup>th</sup>	Due by July 31 <sup>st</sup>
3rd Quarter	July 1 <sup>st</sup> to September 30 <sup>th</sup>	Due by October 31 <sup>st</sup>
4th Quarter	October 1 <sup>st</sup> to December 31 <sup>st</sup>	Due by January 31 <sup>st</sup>

Quarterly fees must be timely paid. As soon as the final monthly operating report for a quarter is complete, the responsible party should calculate the quarterly fee and, using one of two approved payment methods, remit payment so that it is received by the due date. The responsible party need not wait for the courtesy statement sent by the Executive Office for U.S. Trustees to pay quarterly fees.

Checks made payable to “United States Trustee” may be sent to:

United States Trustee Payment Center  
P.O. Box 6200-19  
Portland, OR 97228-6200

The address given is a lockbox at a bank. It may not be used for service of process, correspondence, or for any other purpose other than for the payment of quarterly fees. All correspondence and questions should be directed to the local Office of the United States Trustee.

## 2024 NORTHEAST BANKRUPTCY CONFERENCE & CONSUMER FORUM

The overnight delivery address for quarterly fee payments is:

U.S. Bank  
Attn: Government Lockbox – U.S. Trustee Payment Center 6200-19  
175650 N.E. Sandy Blvd  
Portland, OR 97230

Please include the full 10 digit case number on the check.

The second payment option is an on-line electronic funds transfer from a bank account through Pay.gov at <https://www.pay.gov/public/form/start/672415208>

If a check is marked "Insufficient Funds," all future quarterly fee payments must be made by cashier's check, certified funds, postal money order, or an on-line electronic funds transfer. Failure to pay quarterly fees is cause for conversion or dismissal of the Chapter 11 case pursuant to 11 U.S.C. § 1112(b)(4)(K).

The United States Trustee Program assesses interest on unpaid Chapter 11 quarterly fees. The interest rate assessed is the rate in effect as determined by the Treasury Department at the time the Debtor's account becomes past due. If payment of the full principal amount past due is received within thirty (30) days of the date of the notice of initial interest assessment, the interest assessment will be waived. *See* 31 U.S.C. § 3717.

In order to be confirmed, a Debtor's plan of reorganization must provide for payment of all unpaid quarterly fees as of its effective date and continuing through the date that the Court enters the Final Decree. *See* 11 U.S.C. § 1129(a)(12). The United States Trustee may also object to dismissal of any case in which outstanding fees are owed.

Debtors are advised that the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. § 3701, permits the United States Trustee to use the Debtor's Taxpayer Identification Number (TIN) as reported by the Debtor on its bankruptcy petition for the purpose of collecting and reporting on any delinquent debt, including Chapter 11 quarterly fees and interest, if

applicable, that are owed to the United States Trustee. The Department of Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the Debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the Debtor; (4) engage private collection agencies to collect the debt; or (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

#### **VIII. APPOINTMENT OF AN UNSECURED CREDITORS' COMMITTEE**

The Bankruptcy Code requires the United States Trustee to appoint a Creditors' Committee composed of unsecured creditors willing to serve. *See* 11 U.S.C. § 1102. The Committee is generally appointed from the list of the twenty (20) largest unsecured creditors submitted with the petition.

Shortly after the filing of the petition, the United States Trustee invites the Debtor's largest unsecured creditors to serve on the unsecured Creditors' Committee. Potential committee members receive information explaining the duties and responsibilities of the creditors' committee. If at least three (3) creditors respond affirmatively, the United States Trustee may appoint an unsecured Creditors' Committee. The Debtor is required to meet with the members of the Creditors' Committee as soon as practicable after the appointment of the Committee to transact such business as may be necessary and proper. *See* 11 U.S.C. § 1103(d).

The United States Trustee may appoint a committee of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. For example, under certain circumstances, the United States Trustee may appoint a committee of timeshare holders, limited partners, or bondholders. *See* 11 U.S.C. § 1102.

**RECEIPT AND CERTIFICATION OF UNDERSTANDING OF  
OPERATING GUIDELINES AND REPORTING REQUIREMENTS  
OF THE UNITED STATES TRUSTEE FOR CHAPTER 11 CASES  
AND DESIGNATION OF SPECIFIC INDIVIDUALS**

**Case Name:** \_\_\_\_\_

**Case Number:** \_\_\_\_\_

I hereby certify that I have received from the Office of the United States Trustee the Operating Guidelines and Reporting Requirements For Chapter 11 Cases. Further, I hereby certify that I have read and understand the said guidelines and requirements, and I agree to perform in accordance with the said guidelines and requirements. I also designate below, as provided under Bankruptcy Rule 9001(5), the individual responsible for discharging the duties of the debtor under 11 U.S.C. § 1107 and as may be required by the Court or the United States Trustee. Also designated is the individual responsible for the preparation of all financial reports as required by the Court of the United States Trustee.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

Preparation of Monthly Operating Reports:

Other Duties of the Debtor:

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print or type)

Name: \_\_\_\_\_  
(Print or type)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_

The undersigned, as counsel for the debtor, has read and reviewed with the debtor, the operating guidelines and reporting requirements discussed above.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Attorney for the Debtor)

**INFORMATION FOR INITIAL DEBTOR INTERVIEW**

Today's Date:			
<b>DEBTOR INFORMATION</b>			
Case Name:		Case Number:	
Case Contact:	Telephone:	E-Mail:	
Debtor Attorney:	Telephone:	E-Mail:	
Type of Debtor:  <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"><input type="checkbox"/> Individual(s)*</div> <div style="width: 33%;"><input type="checkbox"/> General Partnership</div> <div style="width: 33%;"><input type="checkbox"/> C-Corporation</div> <div style="width: 33%;"><input type="checkbox"/> Sole Proprietorship*</div> <div style="width: 33%;"><input type="checkbox"/> Limited Partnership</div> <div style="width: 33%;"><input type="checkbox"/> S-Corporation</div> <div style="width: 33%;"><input type="checkbox"/> Professional Association</div> <div style="width: 33%;"><input type="checkbox"/> Limited Liability Partnership</div> <div style="width: 33%;"><input type="checkbox"/> Limited Liability Corporation</div> </div>			
*Domestic Support Obligations? <small>(if an individual or sole proprietorship)</small> <input type="checkbox"/> Yes <input type="checkbox"/> No		*Attended Credit Counseling in last 6 mos? <small>(if an individual or sole proprietorship)</small> <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>BUSINESS INFORMATION</b>			
Start Up Date:	Formation Date:	Number of Employees :	
Does case qualify as: <input type="checkbox"/> §101(51B) Single Asset Case <input type="checkbox"/> §101(51C) Small Business Case			
Description of Business:			
Average Monthly Income:		Average Monthly Expenses:	
Identification of corporate officers, partners, members, and/or owners:			
Name	Title	% Interest	Salary/Frequency
<b>CASE INFORMATION</b>			
Briefly explain the reason(s) the bankruptcy was filed:			
Proposed Plan: <input type="checkbox"/> Reorganization <input type="checkbox"/> Liquidation			
Provide a brief summary of your overall plan:			

<b>ASSET INFORMATION</b>			
Provide the estimated value of assets as of the filing date:			
Cash			
Accounts Receivable (Total)	% Uncollectible:		
Fixtures and Equipment			
Inventory			
Vehicles			
Real Estate:			
Location/Description	Value	Debt	Lienholder(s)
Receivables from Officers	DESCRIPTION		
Other Assets			
Has the Debtor and/or any of the Debtor's assets been part of a prior bankruptcy? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Explain:			
<b>LIABILITY INFORMATION</b>			
Provide the estimated liabilities as of the filing date:			
Unsecured/Trade Payables	Number of Accounts:		
Taxes:			
Taxing Authority	Amount	Applicable Periods	
Wages Owed			
Rent Owed	Months in Arrears		
Payables to Officers			
Secured Debts (not already listed under above under real estate debts)			
Secured Party	Amount	Collateral	
Other Liabilities (include unliquidated, contingent, or disputed liabilities)			
DESCRIPTION			

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ADDITIONAL NOTES & COMMENTS			
APARTMENT COMPLEX ADDENDUM			
Name of Apartment Complex:		Date Purchased:	
Address of Complex:			
Number of Units:	Rent Range:	Occupancy Rate:	
Year Built:	Condition of Property: <input type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor		
Name of Management Company:		Related Party? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Management Company Representative:		Telephone:	
Address of Management Company:			
Management Fee:		Is Management Co. responsible for all salaries? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the Management Co. operate any other properties currently in C11? If yes, please list below:			

**RESET**

**DECLARATION OF PRE-PETITION ACCOUNT CLOSINGS AND  
OPENING OF DEBTOR-IN-POSSESSION BANK ACCOUNTS**

**CASE NAME:** \_\_\_\_\_

**CASE NUMBER:** \_\_\_\_\_

All pre-petition bank accounts of \_\_\_\_\_, as listed  
(Debtor)

Below, were closed on \_\_\_\_\_.  
(Date)

Depository Name	Account Name	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

On \_\_\_\_\_, all monies were transferred to the following chapter 11 Debtor-  
(date)  
in-Possession bank accounts:

Depository Name	Account Name	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attach proof that pre-petition accounts have been closed and Debtor-in-Possession accounts opened.

**PURSUANT TO 28 U.S.C. § 1746, I DECLARE UNDER PENALTY OF PERJURY  
THAT THE FOREGOING IS TRUE AND CORRECT.**

Executed on: \_\_\_\_\_

\_\_\_\_\_  
(Debtor)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(Printed Name of Signatory)

Attach additional sheets if necessary.

**AMERICAN BANKRUPTCY INSTITUTE**

**AUTHORIZATION FOR RELEASE OF INFORMATION**

**CASE NAME:** \_\_\_\_\_

**CASE NUMBER:** \_\_\_\_\_

The above-referenced Debtor-In-Possession certifies that he has opened the following accounts at

\_\_\_\_\_  
(Name of Financial Institution)

and that said accounts have been designated as Debtor-In-Possession or DIP accounts.

Debtor-In-Possession accounts established at this depository are as follows:

<u>Account Name &amp; Number</u>	<u>Account Type</u>	<u>Date Opened</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The debtor hereby authorizes the depository to release to the Office of the United States Trustee any information that may be requested pursuant to the United States Trustee's duties under 28 U.S.C. § 586(a)(3), including bank statements and copies of any documents pertaining to the above-referenced Debtor-In-Possession accounts.

This form is to be completed and signed by the designated representative of the debtor and the original returned to the Office of the United States Trustee.

\_\_\_\_\_  
Signature, Debtor's Designated Representative

\_\_\_\_\_  
Name and Title (please print) of Designated Representative

\_\_\_\_\_  
Date

**DEBTOR-IN-POSSESSION STATEMENT FOR DEPOSITORY**

To: Designated Depository

From: Office of the United States Trustee

Case Name: Horizon Interiors, LLC

Bankruptcy Case Number: 24-11196

Date: 6/17/2024

The Debtor-in-Possession has stated that the depository (from the attached listing) for the above styled case is \_\_\_\_\_  
(Designated Depository)

This authorization may be used to establish one or more accounts at the selected depository. It should be provided to and left with bank personnel for their records when opening the debtor-in-possession account(s).

The authorized signatories on these accounts, which must be indicated below, may be determined by the debtor, an officer of the debtor, a general partner of the debtor, or the debtor's attorney.

Authorized Signatories	Title
_____	_____
_____	_____
_____	_____

Attorney for Debtor

or William K. Harrington  
United States Trustee  
Region One  
Maine, Massachusetts, New Hampshire and  
Rhode Island

# AMERICAN BANKRUPTCY INSTITUTE



## U.S. Department of Justice

Office for United States Trustees  
*Districts of Maine, Massachusetts,  
New Hampshire and Rhode Island*

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*John W. McCormack Post Office and Courthouse  
5 Post Office Square, Suite 1000  
Boston, MA 02109-3934  
Tel: 617-788-0400  
Fax: 617-565-6368*

### **United States Trustee's List of Authorized Depositories For Bankruptcy Cases Filed in Region One 3/13/24**

Androscoggin Bank	KeyBank, N.A.
Avidia Bank	Main Street Bank [2]
Axos Bank	M&T Bank
Banc of California, N.A.	Metropolitan Commercial Bank
Bangor Savings Bank	Millennial Bank
Bank of New Hampshire [4]	NobleBank & Trust
BOKF N.A. dba Mobank	Pinnacle Bank
Cadence Bank	PNC Bank, N.A.
Citibank, NA	Rockland Trust Company [3]
Citizens Bank [1]	TD Bank
Comerica Bank	Texas Capital Bank, N.A. [4]
East West Bank	Texas Traditions Bank
Eastern Bank	The Washington Trust Company [2]
Fifth Third Bank, N.A.	Thread Bank
First & Peoples Bank and Trust Company	TriState Capital Bank
First Bank of Alabama	Truist Bank
First Citizens Bank & Trust Company	Wells Fargo Bank, N.A.
Flagstar Bank, N.A.	Western Alliance Bank
JPMorgan Chase Bank [2]	Woodsville Guaranty Savings Bank

#### NOTES:

[1] Citizens Bank has reserved the right to require new bankruptcy accounts to be subject to management approval and any case accounts may be required to reach a threshold of at least \$10,000.

[2] JPMorgan Chase Bank, Main Street Bank and The Washington Trust Company limit their bankruptcy estate accounts to chapter 11 customers who have pre-existing relationships with the bank (i.e., prior to filing).

[3] Rockland Trust Company restricts Debtor-in-Possession bank accounts to one per case.

[4] Bank of New Hampshire and Texas Capital Bank, N.A. restrict Debtor-in-Possession bank accounts to chapter 11 customers who have pre-existing commercial relationships with the bank (i.e., prior to filing). In addition, the opening of bankruptcy accounts is subject to Executive Management approval.



U.S. Department of Justice  
Office of the United States Trustee – Region 01  
Maine, Massachusetts, New Hampshire, and Rhode Island

### GROUP/PENSION INFORMATION

Debtor:

Bankruptcy Case #:

EIN:

Is this a public corporation? ☐ Yes ☐ No

**1. Does the debtor sponsor a group health or dental plan?** ☐ Yes ☐ No **If No, go to #2.**

Premiums paid through:

☐

employee contributions

☐

employer contributions

Are the premium payments current?

☐

Yes

☐

No

Benefits paid from:

☐

employee contributions

☐

general assets of the company

Name and address of responsible officer:

Number of plan participants:

Amount of plan assets:

**2. Does the debtor sponsor a pension plan?** ☐ Yes ☐ No **If No, go to #3.**

☐

401(k) Plan

☐

Profit Sharing Plan

☐

Defined Benefit Plan\*

☐

Money Purchase Plan\*

☐

Employee Stock Ownership Plan

Name and address of responsible officer:

Who is the custodian of the plan assets:

Do employees make contributions to the plan?

☐

Yes

☐

No

Have all employee contributions been forwarded to the trust fund?

☐

Yes

☐

No

\*Are defined benefit or money purchase plans fully funded?

☐

Yes

☐

No

Have any trustees, officers, owners, or board members of the debtor received any distributions from the plan within the last year? If so, please provide the name(s), address(es), and title(s):

Has the debtor received any loans from the plan? If so, state the approximate date, amount, and purpose of the loan:

Number of plan participants:

Amount of plan assets:

**3. I declare under penalty of perjury that the answers contained in the foregoing question are true and correct.**

\_\_\_\_\_  
Debtor

\_\_\_\_\_  
Date

A copy of this document may be provided to the Department of Labor USTLA-8 (1/03)

**DIRECTION OF DEBTOR ATTORNEY  
CONCERNING U.S. TRUSTEE CONTACT WITH CLIENT**

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

**Part I: Purpose**

The United States Trustee is responsible for supervising the administration of cases under chapters 7, 11, 12, and 13 of the United States Bankruptcy code, 28 U.S.C. §586. To fulfill this responsibility, the U. S. Trustee has issued Guidelines for Debtors-in-Possession. The Guidelines impose certain administrative and reporting responsibilities on Chapter 11 Debtors-in-Possession. In addition, there are other requirements imposed by law, including a requirement to pay U. S. Trustee quarterly fees. The U. S. Trustee's staff is available to assist Debtors-in-Possession in fulfilling these requirements. In addition, it is frequently necessary for members of the U. S. Trustee's staff to contact Debtors concerning missing documents, incomplete forms, and other administrative matters. Many Debtors-in-Possession and attorneys prefer that these administrative matters be handled directly between the Debtor and the U. S. Trustee's staff. Others prefer that all such contacts be made through counsel. We need to know how you and your client would like these matters to be handled.

**Part II: Direction**

Please initial your directives in the boxes below.

☐

**Option 1:** We direct that all contacts between the U. S. Trustee's staff concerning the administrative requirements of the U. S. Trustee, including completion of operating reports, insurance, banking arrangements, payment and calculation of quarterly fees, may be made directly between the U. S. Trustee and the Debtor-in-Possession.

☐

**Option 2:** We direct that all contacts between the U. S. Trustee's staff concerning this case, including all administrative matters, be conducted through counsel for the Debtor-in-Possession.

\_\_\_\_\_  
Signature of Attorney for Debtor-in-Possession

\_\_\_\_\_  
Printed Name of Attorney for Debtor-in-Possession

\_\_\_\_\_  
Date

# 2024 NORTHEAST BANKRUPTCY CONFERENCE & CONSUMER FORUM

Fill in this information to identify the case:

Debtor Name \_\_\_\_\_

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_

Case number: \_\_\_\_\_

☐ Check if this is an amended filing

## Official Form 425C

### Monthly Operating Report for Small Business Under Chapter 11

12/17

Month: \_\_\_\_\_

Date report filed: \_\_\_\_\_  
MM / DD / YYYY

Line of business: \_\_\_\_\_

NAISC code: \_\_\_\_\_

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following small business monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Responsible party: \_\_\_\_\_

Original signature of responsible party \_\_\_\_\_

Printed name of responsible party \_\_\_\_\_

#### 1. Questionnaire

Answer all questions on behalf of the debtor for the period covered by this report, unless otherwise indicated.

	Yes	No	N/A
<b>If you answer No to any of the questions in lines 1-9, attach an explanation and label it Exhibit A.</b>			
1. Did the business operate during the entire reporting period?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do you plan to continue to operate the business next month?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you paid all of your bills on time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did you pay your employees on time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you deposited all the receipts for your business into debtor in possession (DIP) accounts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you timely filed your tax returns and paid all of your taxes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Have you timely filed all other required government filings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Are you current on your quarterly fee payments to the U.S. Trustee or Bankruptcy Administrator?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Have you timely paid all of your insurance premiums?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>If you answer Yes to any of the questions in lines 10-18, attach an explanation and label it Exhibit B.</b>			
10. Do you have any bank accounts open other than the DIP accounts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Have you sold any assets other than inventory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Have you sold or transferred any assets or provided services to anyone related to the DIP in any way?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Did any insurance company cancel your policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Did you have any unusual or significant unanticipated expenses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Have you borrowed money from anyone or has anyone made any payments on your behalf?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Has anyone made an investment in your business?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# AMERICAN BANKRUPTCY INSTITUTE

Debtor Name \_\_\_\_\_

Case number \_\_\_\_\_

17. Have you paid any bills you owed before you filed bankruptcy?

☐ ☐ ☐

18. Have you allowed any checks to clear the bank that were issued before you filed bankruptcy?

☐ ☐ ☐

## 2. Summary of Cash Activity for All Accounts

### 19. Total opening balance of all accounts

This amount must equal what you reported as the cash on hand at the end of the month in the previous month. If this is your first report, report the total cash on hand as of the date of the filing of this case.

\$ \_\_\_\_\_

### 20. Total cash receipts

Attach a listing of all cash received for the month and label it *Exhibit C*. Include all cash received even if you have not deposited it at the bank, collections on receivables, credit card deposits, cash received from other parties, or loans, gifts, or payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit C*.

Report the total from *Exhibit C* here.

\$ \_\_\_\_\_

### 21. Total cash disbursements

Attach a listing of all payments you made in the month and label it *Exhibit D*. List the date paid, payee, purpose, and amount. Include all cash payments, debit card transactions, checks issued even if they have not cleared the bank, outstanding checks issued before the bankruptcy was filed that were allowed to clear this month, and payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit D*.

Report the total from *Exhibit D* here.

- \$ \_\_\_\_\_

### 22. Net cash flow

Subtract line 21 from line 20 and report the result here.

This amount may be different from what you may have calculated as *net profit*.

+ \$ \_\_\_\_\_

### 23. Cash on hand at the end of the month

Add line 22 + line 19. Report the result here.

Report this figure as the *cash on hand at the beginning of the month* on your next operating report.

This amount may not match your bank account balance because you may have outstanding checks that have not cleared the bank or deposits in transit.

= \$ \_\_\_\_\_

## 3. Unpaid Bills

Attach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.

### 24. Total payables

(*Exhibit E*)

\$ \_\_\_\_\_

## 2024 NORTHEAST BANKRUPTCY CONFERENCE & CONSUMER FORUM

Debtor Name \_\_\_\_\_

Case number \_\_\_\_\_

### 4. Money Owed to You

Attach a list of all amounts owed to you by your customers for work you have done or merchandise you have sold. Include amounts owed to you both before, and after you filed bankruptcy. Label it *Exhibit F*. Identify who owes you money, how much is owed, and when payment is due. Report the total from *Exhibit F* here.

25. **Total receivables** \$ \_\_\_\_\_  
(*Exhibit F*)

### 5. Employees

26. What was the number of employees when the case was filed? \_\_\_\_\_  
27. What is the number of employees as of the date of this monthly report? \_\_\_\_\_

### 6. Professional Fees

28. How much have you paid this month in professional fees related to this bankruptcy case? \$ \_\_\_\_\_  
29. How much have you paid in professional fees related to this bankruptcy case since the case was filed? \$ \_\_\_\_\_  
30. How much have you paid this month in other professional fees? \$ \_\_\_\_\_  
31. How much have you paid in total other professional fees since filing the case? \$ \_\_\_\_\_

### 7. Projections

Compare your actual cash receipts and disbursements to what you projected in the previous month. Projected figures in the first month should match those provided at the initial debtor interview, if any.

	Column A		Column B		Column C
	<b>Projected</b>	—	<b>Actual</b>	=	<b>Difference</b>
	Copy lines 35-37 from the previous month's report.		Copy lines 20-22 of this report.		Subtract Column B from Column A.
32. <b>Cash receipts</b>	\$ _____	—	\$ _____	=	\$ _____
33. <b>Cash disbursements</b>	\$ _____	—	\$ _____	=	\$ _____
34. <b>Net cash flow</b>	\$ _____	—	\$ _____	=	\$ _____
35. Total projected cash receipts for the next month:					\$ _____
36. Total projected cash disbursements for the next month:					- \$ _____
37. Total projected net cash flow for the next month:					= \$ _____

# AMERICAN BANKRUPTCY INSTITUTE

Debtor Name \_\_\_\_\_

Case number \_\_\_\_\_

## **8. Additional Information**

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If available, check the box to the left and attach copies of the following documents.

- ☐ 38. Bank statements for each open account (redact all but the last 4 digits of account numbers).
- ☐ 39. Bank reconciliation reports for each account.
- ☐ 40. Financial reports such as an income statement (profit & loss) and/or balance sheet.
- ☐ 41. Budget, projection, or forecast reports.
- ☐ 42. Project, job costing, or work-in-progress reports.

# Faculty

**Aaron P. Burns** is a partner at Pearce, Dow & Burns, LLP in Portland, Maine, where he concentrates on serving clients with commercial, transactional, business and/or debtor and creditor needs. He focuses his practice on commercial litigation, real estate litigation, commercial real estate and land use law, bankruptcy, reorganization, insolvency, and admiralty and maritime liens. Mr. Burns is admitted to practice in Maine, Massachusetts and New Hampshire, and he is a member of ABI and the American, Maine, Cumberland and New Hampshire Bar Associations. He has been listed in *Chambers and Partners* (2023) for Bankruptcy and Insolvency, and in *New England Super Lawyers* (2023) for Business Litigation. Mr. Burns received his B.A. in 1996 *summa cum laude* from the University of Maine and his J.S. in 1999 *cum laude* from the University of Maine School of Law, where he served as comments editor of the *Ocean and Coastal Law Journal*.

**Hon. Heather Zubke Cooper** is the Chief U.S. Bankruptcy Judge for the District of Vermont in Rutland. Prior to her appointment, she was a partner at Facey Goss & McPhee, P.C., a Vermont-based law firm. Judge Cooper has more than 20 years of experience in the financial and restructuring industry, having represented individual and corporate debtors and creditors in loan workouts and restructurings, liquidations, foreclosures, litigation, seizures and receiverships. She previously clerked for former bankruptcy judge Colleen A. Brown and practiced with Murphy & King, P.C. and Dunn, Kacal, Adams, Pappas & Law, P.C. Before entering private practice, Judge Cooper served as briefing attorney to Justice David L. Richards of the Texas Court of Appeals, Second District. She is a member of the Texas, Massachusetts and Vermont Bar Associations, the Federal Bar Council, the National Conference of Bankruptcy Judges, ABI and the National Association of Bankruptcy Trustees. In addition, she serves as a member of the Human Resources Advisory Council of the Administrative Office of the U.S. Courts and various Second Circuit committees. Judge Cooper is a frequent lecturer at national conferences on bankruptcy-related issues. She received her B.A. from the University of Houston in 1993 and her J.D. *magna cum laude* from South Texas College of Law in 1998.

**Stephen B. Darr, CPA, CIRA, CFF, CDBV** is a managing director in the Boston office of Huron Consulting Group and has more than three decades of experience helping organizations across industries navigate complex accounting, auditing and financial management issues. He has also provided litigation support and expert testimony in bankruptcy and non-bankruptcy matters involving preference and fraudulent conveyance actions, professional liability claims, patent infringement, royalty and intellectual property disputes, construction claims, wrongful employment discharge, and lender liability and business tort claims. Mr. Darr has testified in U.S. bankruptcy court proceedings in states across the East Coast on a wide range of bankruptcy matters, including business plan feasibility, debtor-in-possession financing, substantive consolidation issues, cash-collateral arrangements, valuation, reorganization tax issues and key employee retention plans. Prior to joining Huron, he held leadership roles at Mesirow Financial, KPMG and EY. Mr. Darr is a Fellow in the American College of Bankruptcy and holds FINRA Series 7, 24 and 79 licenses. He also serves as a subchapter V trustee. Mr. Darr received his B.B.A. from Boston College and his M.B.A. from the University of Chicago.

**Jennifer G. Hayden** is a partner with Molleur Law Office in Saco, Maine, where she focuses on chapter 7 and 13 consumer bankruptcy cases. She also litigates consumer and bankruptcy law violations in bankruptcy and state courts. Ms. Hayden specializes in providing guidance to individuals on how to resolve defaulted student loans, and she has a special interest in federal student loan discharge cases in light of the Department of Education's new guidance. Prior to joining the firm, she practiced in Massachusetts for several years at Neighborhood Legal Services in Lynn and Lawrence, where her practice focused on eviction defense for poor and disabled Massachusetts residents. Previously, Ms. Hayden spent eight years in the Maine Army National Guard as a medic and reached the enlisted rank of sergeant. Prior to going to law school, she worked as a housing advocate at Rosie's Place in Boston. Ms. Hayden is licensed to practice in Maine, New Hampshire and Massachusetts in both state and federal jurisdictions. She has taught legal studies courses at Andover College and Kaplan University, including bankruptcy and debtor/creditor rights, as well as law courses at the North Shore Community College in Danvers, Mass. Ms. Hayden is a member of ABI, the National Association of Consumer Bankruptcy Attorneys, the National Association of Consumer Advocates, the York and Cumberland County Bar Associations and the Maine Bar Association. She received the Katahdin Counsel Pro Bono Legal Service Awards each year since it has been awarded. Ms. Hayden received her undergraduate degree from Northeastern University and her J.D. from New England Law in Boston in 2002.