

**TRUSTEE MEMO CONCERNING DEBTOR'S DIRECT PAYMENTS UNDER
SECTIONS 3.1 AND 3.5 OF THE NEW FORM PLAN ADOPTED BY THE COURT ON 12/1/17**

Below is a summary of the Trustee's interpretation of Sections 3.1 and 3.5 of the New Form Plan adopted by the Court for use in the Eastern District of Texas filed on or about 12/1/17. This interpretation is subject to change as the Court makes future rulings/interpretations of the provisions of the new Form Plan. This Memo is not intended to give the debtors or their attorneys legal advice concerning these Sections and the debtors' attorneys should make their own independent interpretation of the applicable Sections to determine the proper manner in completing the Sections and what is in the best interests of their clients.

Section 3.1: Direct payments for the mortgage should be placed in this section, not Section 3.5.

Section 3.5: The requirements that needs to be meet for other claims to be paid direct:

#1. MUST BE CURRENT ON THE DIRECT PAYMENTS: "The Debtor represents that each secured claim listed in this subsection was not in default on the Petition Date"

In other words, the Debtor has made all of the pre-petition monthly payments to the creditor with no pre-petition arrears in order for the claim to be paid direct. **If the Debtor is in default with direct payments on the petition date, the claim must be paid through the Plan.**

AND one of the following options MUST apply:

#2. OPTION PERTAINING TO 910 CLAIMS: "(1) is protected from valuation under Section 506(a) and payable at a contractual interest rate reasonable under the circumstances;"

There are two things at work in this provision.

First, it applies to the direct payment of 910 claims.

Second, it must be payable at a contractual interest rate reasonable under the circumstances. There is nothing in this paragraph that requires the Debtor to give a reason for the direct payment of this claim on the "Justification" line contained in this Section of the Plan. However, the Trustee will be focusing on whether the interest rate is reasonable under the circumstances. If the interest rate is greater than what is reasonable under *Till*, the Trustee will object to the direct payment of the claim. You may want to include an explanation of the reasonableness of the interest rate on the Justification line in order to avoid such an objection by the Trustee.

OR

#2. OPTION PERTAINING TO 506 CLAIMS: "(2) should otherwise be approved by the Court based upon the justification provided."

There are three things at work in this provision.

First, it applies to the direct payment of 506 claims. Generally, the Trustee will object to the direct payment of 506 claims.

Second, the direct payment of 506 claims must be approved by the Court. Even if the Trustee had not objected to the direct payment of the 506 claim, the matter will still need to be placed on the "Call" docket (with one exception). Per Judge Parker, the Trustee does not need to place on the "Call" docket 506 claims that are being paid direct by a third party. The Trustee will still need to receive verification that the third party is in fact paying this 506 claim direct.

Third, the "Justification" line must be completed. Per Judge Parker, the reasons as given on the Justification line is not only included for the benefit of the Court and the Trustee but is included for the benefit of the creditors in general. In other words, the failure of including reasons in the Justification line will probably not be fixable by including the matter on the "Call" docket so that the Justification can be given on the record and submitted for Court approval.

Attached hereto is a summary sheet that contains a summary of this information which I will cause to be included on my website under the tab "Trustee Memos".

Again, this is my interpretation of the sections. This is subject to change as the Court makes future rulings/interpretations of the provisions of the new Form Plan. **However, you should make your own independent interpretation of the applicable sections to determine the proper manner in completing the sections and what is in the best interests of your clients.**

Thanks,
John J. Talton
Chapter 13 Trustee
Tyler, Marshall, Lufkin, and Beaumont Divisions
of the Eastern District of Texas