

CONFIRMING OR DENYING CONFIRMATION OF PLAN PRIOR TO CONFIRMATION
BY E-MAIL OR AT PRE-CONFIRMATION MEETINGS

The purpose of this Memorandum is to outline how to confirm or deny a proposed Chapter 13 plan pending in the Tyler, Marshall, Lufkin, and Beaumont Divisions of the Eastern District of Texas without the necessity of attending the scheduled confirmation hearing.

This information is being provided only as a courtesy to the debtors and their attorneys in order to assist in the administration of their cases. The debtors must rely upon the advice and assistance of their attorneys through the pendency of their bankruptcy.

A. Requesting Confirmation by e-mail to the Trustee by noon on the Friday before the Confirmation Hearing: If the debtors resolve all of the outstanding objections to confirmation of the proposed Chapter 13 plan [whether the objections were filed by the Trustee or creditors], the debtors' attorney may send to the Trustee an e-mail (conforders@ch13tyler.com) setting forth how the Trustee's objections were resolved along with an electronic copy of a proposed confirmation order with the attorney's electronic signature attached. The e-mail should also indicate how the creditors' objection, if any, was resolved [need either a withdrawal of the creditors' objection, a letter agreement attached to the confirmation order signed by the creditors' attorney and the debtors' attorney, or the creditors' attorney signing the proposed confirmation order]. If the Trustee is in agreement that the plan is ready to be confirmed, the Trustee will attach his electronic signature to the proposed confirmation order and cause such to be uploaded to the Court prior to the scheduled confirmation hearing.

1. **One E-Mail Per Case.** The Trustee requests that one e-mail be sent to him per case on the docket. The Trustee would request that the subject line of the e-mail identify the case number, the names of the debtors, and the date of the upcoming confirmation hearing.
2. **Attached Confirmation Order.** The Trustee requests that the attached confirmation order be an original document in a pdf format. The Court will not accept or enter a scanned confirmation order. If the debtors' attorney must attach a letter agreement or signature page to the confirmation order, the letter agreement or signature page may be scanned but such needs to be attached to an original document consisting of the confirmation order.
3. **Modification of Plan through Confirmation Order.** The Trustee will not upload the proposed confirmation order if the debtors' attorney needs to modify the terms of the plan through the confirmation order (for example, changing the treatment of a particular creditor by the attachment of a letter agreement to the confirmation order). The case must be placed on the "call" docket in order for the debtors' attorney to advise the Court of the modifications that are being made to the terms of the noticed plan so that the Court may make the determination on whether these modifications need further notice

through an amended plan. In order for the Court to confirm the plan with the proposed modifications through the confirmation order, the Court must make one of the following findings pursuant to the provisions of Local Rule of Bankruptcy Procedure 3015(f)(1):

- (a) the modification does not adversely affect any creditors;
- (b) any adversely affected creditor has consented; or
- (c) the adverse impact of the modification on creditors is de minimis.

If the Court cannot make one of these findings concerning the proposed modifications, the debtors will need to amend their plan to incorporate the proposed modifications, thereby providing notice of the amended plan thereby giving not less than 35 days' notice to the Matrix prior to the scheduled confirmation hearing pursuant to the terms of Local Rule of Bankruptcy Procedure 3015(f)(1).

4. **Receipt of proposed confirmation order by Trustee by the Friday before the scheduled confirmation hearing.** If the Trustee receives a proposed confirmation order by **noon on the Friday before the scheduled confirmation hearing** and if the Trustee agrees that **the proposed plan is ready to be confirmed**, the Trustee will make his best effort to review and cause the order to be uploaded prior to the confirmation hearing. In the event that the Trustee fails to upload the confirmation order prior to the confirmation hearing, the Trustee will note on the Court's docket that the plan should be confirmed and will submit the confirmation order within fourteen (14) days after the hearing. In either event, the debtors' attorney is excused from appearing at the scheduled confirmation hearing on that particular case in accordance with the Court's procedures.

B. Requesting Denial by e-mail to the Trustee prior to the Confirmation Hearing. If the debtors' attorney desires to request that confirmation of the proposed plan be denied, the attorney may send the Trustee an e-mail (conforders@ch13tyler.com) thereby requesting that either an initial denial or a final denial order, as the case may be, be entered.

1. **One e-mail setting forth all cases debtors' attorney wants confirmation of the proposed plan denied.** The Trustee requests one e-mail from debtors' attorney thereby indicating in the reference line the date of the confirmation hearing. In the body of the e-mail, the attorney should list the case number and the last names of the debtors of each case the attorney wants confirmation of the proposed plan denied along with an indication whether the denial is an initial denial or a final denial. Through the e-mail, the debtors' attorney should also authorize the Trustee to sign the attorney's name to the appropriate order.

2. **Pending attorney fee application.** If the debtors' attorney contemplates that the case is to be dismissed after the entry of such a denial order (whether by a pending

motion to dismiss, the entry of a final denial order, or the failure of filing a new plan after the entry of an initial denial order) and the debtors' attorney has a pending attorney fee application that the attorney wants the Court to consider upon the dismissal of the case, the debtors' attorney must advise the Trustee in the e-mail of the existence of the pending attorney fee application so that the Trustee may note the existence of such to the Court on the docket so that the Court will rule upon the pending attorney fee application prior to the dismissal of the case. The attorney should also advise the Trustee if the fee application is ripe (whether the notice period has run) or not ripe (whether the Court needs to retain jurisdiction to rule on the application after the notice period runs). Failure to advise the Trustee of the existence of such a attorney fee application so that the Trustee may advise the Court of its existence will probably result in the Court never ruling on the attorney fee application or denying/dismissing the attorney fee application.

C. Requesting a Continuance by e-mail to the Trustee prior to the Confirmation Hearing with the continuance counting as an Initial Deny: The debtors' attorney may send the Trustee an e-mail (conforders@ch13tyler.com) requesting a continuance of the confirmation hearing if the case is not up for a final denial; if the debtors have filed an amended plan that needs the full 35 days notice pursuant to the Court's Local rules; and if the continuance counts the same as if an initial denial order is entered.

1. **No prior Denial Order.** There must not have been a prior initial denial order entered (or a prior continuance that counted as an initial denial order) for the debtors' attorney to request the Trustee to note that confirmation be continued. If the debtors' attorney is looking at a final denial deadline and wants a continuance of the confirmation hearing, the debtors' attorney must appear in Court and request relief from the final denial deadline in order to get such a continuance.

2. **Amended Plan needs full notice.** Local Rule of Bankruptcy Procedure 3015(f)(1) requires that amended plan provide not less than 35 days' notice before the confirmation hearing. If the amended plan needs full notice, the debtors' attorney may request the Trustee to note that the confirmation hearing be continued. The Trustee will not be responsible in counting the number of days between the date of filing and an upcoming docket to determine if notice is sufficient. The debtors' attorney must make that determination. In the e-mail, the debtors' attorney should advise the Trustee the date that the attorney wants confirmation continued. However, if the debtors' attorney wants the confirmation hearing continued beyond the next available confirmation hearing that allows for the full 35 days' notice, the debtors' attorney must appear in Court to advise the Court that the attorney needs a longer continuance.

Note: If the debtors' attorney desires a continuance for any other reason other than giving full notice for an amended plan, the attorney needs to appear at the scheduled confirmation hearing to request the Court for such a continuance.

3. **Continuance Counts as an Initial Denial Order.** Such a requested continuance will count the same as if an initial denial order was entered. In other words, the debtors will only have one more opportunity to confirm a plan after such a continuance unless the Court, for cause shown, grants the debtors relief from the final confirmation deadline. If the debtors' attorney does not wish for the continuance to count as an initial denial, the attorney will need to appear at the scheduled confirmation hearing to request from the Court such a continuance.

4. **Must give Notice of New Confirmation Hearing and New Objection Deadline.** Local Rule of Bankruptcy Procedure 3015(f)(1) requires that the debtors give notice to the mailing matrix of the new confirmation hearing date and of the new deadline for the creditors to object to the amended plan. The new objection deadline is extended to seven (7) days prior to the new confirmation hearing date. A certificate of service evidencing that proper notice has been given must be filed with the Court.

D. **Pre-confirmation Meetings.** The Trustee will schedule days and times to meet with the debtors' attorneys to review the cases on the upcoming docket. Prior to the scheduled pre-confirmation meetings, debtors' attorneys should forward a proposed confirmation order to the Trustee by e-mail (conforders@ch13tyler.com). The proposed confirmation order should contain the attorney's electronic signature and be in the same format as requested in Paragraph A. At the pre-confirmation meetings, the Trustee will discuss with the debtors' attorney the status of confirmation of the plan. As a result of these meetings, the Trustee will note on the Court's docket sheet that the proposed plan should be confirmed; that an initial denial order should be entered; that the hearing should be continued to allow the notice period of an amended plan to run with such a continuance counting as if an initial denial order was entered; that a final denial order should be entered; or that the matter should be "called" for hearing.

Note: If the debtors are represented by counsel, the Trustee will meet with the debtors' attorney at the pre-confirmation meeting. The Trustee will not meet with staff of the debtors' attorney without the presence of the attorney. If the debtors' attorney cannot attend the pre-confirmation meetings and if the confirmation of the proposed Chapter 13 plan has not been otherwise disposed of, the Trustee will note on the Court's docket sheet "Call—Attorney failed to Appear at Pre-Confirmation Meetings". In such a case, the attorney should appear at the scheduled confirmation hearing.

1. **Confirmed.** If the case is ready to be confirmed, the Trustee will note on the docket sheet "Confirm" which the Court will interpret that the Trustee will upload a proposed confirmation order in 14 days. At the pre-confirmation hearing, the Trustee will review the proposed confirmation order with the debtors' attorney, noting any necessary changes thereon, attach his electronic signature thereto, and cause the confirmation order to be uploaded with the Court in 14 days. If the debtors' attorney has failed to provide the Trustee with an acceptable confirmation order, the debtors' attorney

must e-mail an electronic copy of such an order to the Trustee so that he may upload such in 14 days. Failure to timely forward an acceptable confirmation order to the Trustee within sufficient time for the Trustee to review and upload in 14 days may result in the Trustee filing a motion to vacate the oral confirmation of the plan.

2. **Initial Denial Order.** If the debtors' attorney wants an initial denial order entered, the Trustee will have the attorney to sign an initial denial order, noting thereon the reason or reasons the attorney wants confirmation denied, and the Trustee will note on the docket sheet "Initial Deny". As provided for in the initial denial order, the debtors will have 30 days from the entry of the initial denial order to file a new plan, the failure of which will result in the Court dismissing the case without further notice or hearing, such dismissal being with prejudice thereby preventing the debtors from seeking relief under any Chapter of Title 11 for a period of 120 days. If the debtors file a new plan within the 30 day period, the Court will set the amended plan for a new confirmation hearing.

3. **Continuance that Counts as an Initial Denial.** If the debtors' attorney wants a continuance of the confirmation hearing with that continuance to count as an initial denial, the Trustee will note on the Court's docket sheet the date of the rescheduled hearing with a notation that such a continuance counts as an initial denial. The same requirements as set forth in Paragraph C hereof applies to a request for a continuance made at the pre-confirmation meetings.

4. **Final Denial Order.** If the debtors' attorney wants a final denial order (applicable where confirmation has previously been denied, the case is being dismissed pursuant to the Trustee's Motion to Dismiss that is scheduled for the same docket, or the debtors have converted their case to one under Chapter 7 thereby rendering confirmation moot), the Trustee will note on the Court's docket sheet "Final Deny". As noted in Paragraph B above, if there is a pending fee application, the debtors' attorney must notify the Trustee of the existence of the pending fee application so that the Trustee may also note on the docket sheet "Fee Application" and will note whether the fee application is "Ripe" or "Not Ripe".

5. **Call for Hearing.** If the debtors' attorney wants the case to be called for a hearing for any reason, the Trustee will note on the Court's docket sheet the term "Call" along with a general description of why the case is on the call docket (for example, need additional documentation, need plan payments, need a creditor agreement approved, etc.). If there is actually a fact issue that will require testimony (for example, whether a second vehicle is necessary for an effective reorganization of the debtors, whether the expenses are reasonable, etc.) or a legal issue that will require the Court's interpretation of the law [for example, whether the Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Form B 22C) is properly

filled out], the Trustee will also note on the Court's docket sheet a designation "Issue" with a description of the issue that needs to be decided by the Court.

6. **Removing a case from the "Call" Docket on the morning of the Confirmation Docket.** If all issues that required a case to be placed on the "Call" docket are resolved **and** if time permits prior to the confirmation hearing, the Trustee will meet with the debtors' attorney the morning prior to Court and, if the proposed Chapter 13 plan is in fact ready to be confirmed, the Trustee will advise the Court, prior to the commencement of calling the cases on the "Call", that the case is ready to be confirmed and that the Trustee will submit a proposed confirmation order within 14 days after the docket. The debtors' attorney is responsible for submitting an electronic copy of such an order in acceptable form in order to allow the Trustee to review and submit the order within 14 days after the docket.

On the other hand, if the debtors' attorney decides that the proposed Chapter 13 plan on the "call" docket should be denied, the attorney may sign off on such an appropriate denial order prior to Court and the Trustee will also remove the case from the "call" docket.