

Bankruptcy—The Debtor’s Perspective

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GETTING TO KNOW YOUR CHAPTER 11 DEBTOR—A QUESTIONNAIRE

The following questionnaire, or one like it, can be used to obtain the information necessary to adequately identify and address the key issues related to the potential chapter 11 debtor's business operations, and how such operations will be affected by the chapter 11 bankruptcy. The information gained through the completion of this questionnaire will be vital to the chapter 11 debtor's "first day motions", and will ensure that the chapter 11 debtor's counsel avoids several common pitfalls associated with filing bankruptcy petitions with less than complete information (including attacks by dissatisfied equity holders, funding issues with the debtor's lenders, and problems with continuing the normal business affairs of the debtor during the volatile first few weeks of the bankruptcy case). Of course, there will certainly be other issues relevant to particular chapter 11 debtors not covered by this questionnaire, but the questions posed below offer a good starting point in conducting the due diligence necessary to assist the chapter 11 debtor.

I. DEBTOR'S BUSINESS INFORMATION

A. Current Business Operations

1. Is the business an LLC? Corporation? Partnership? How is the debtor governed? Member managed? Manager managed?
2. Where are the business's corporate documents kept? Obtain copies of the relevant documents (*i.e.*, bylaws, articles of incorporation, articles of organization, operating agreements, etc.) as soon as possible.
3. Where is the company incorporated or organized? Check the online corporate records to determine what such records reflect.
4. Where is the principal place of business? How many locations?

5. Who are the members of the Board of Directors of each corporation (including affiliates and subsidiaries)?
6. Who are the officers of each corporation (including affiliates and subsidiaries)?
7. Who are the members or partners of the debtor?

B. Organization and Financial Results

1. What is operational structure (for example, parent companies and affiliates)? List the corporate name and Tax ID number for each entity (including affiliates and subsidiaries), even those that may not be filing bankruptcy petitions. What kind of corporate entity is each parent, affiliate, etc.?
2. What does each affiliate do (i.e., manufacturing, retail, holding company, etc.)
3. Does each affiliate have its own Board of Directors and officers? List the members of the Board and officers of each company, or list the members, managers, partners, etc.
4. Net revenue for last three (3) years. Provide copies of balance sheets, profit and loss statements, and any other financial information that may be available, whether audited or not.
5. Identify company's assets: Equipment? Inventory? Accounts receivable? Real property? Pending or potential lawsuits? Intellectual property?
6. Value of the company's assets? Appraisals? Basis for valuation?
7. Total current and long-term liabilities with a description of both.
8. Provide copies of the minutes of the company (including parents, affiliates and subsidiaries) from the past two (2) years.

C. Events Leading to Chapter 11 Filing

1. Plain English version of why company needs bankruptcy protection.
2. Losses for last three (3) years.
3. Any other information leading to chapter 11 filing?

II. CREDITOR INFORMATION

- A. Complete list of **ALL** creditors (lenders, vendors, utilities, judgment creditors, former employees with claims, etc.) including mailing address.
- B. Types of creditors.
 - 1. How many secured creditors? Who? Provide all security documents (security agreements, notes, UCC-1s, etc.)
 - 2. How many unsecured creditors? Provide list of 20 largest unsecured creditors (excluding insiders) by amount, with full address and contact person.
- C. Which creditors are critical vendors? For example, which vendors are absolutely necessary to the survival of the company? How much are such vendors owed?
- D. What types of services or goods do the critical vendors provide? For example, general service providers (transportation, warehousing, etc.) and gap vendors (creditors in which goods have been ordered from but not yet delivered).
- E. Any goods received from vendors within 45 days for which company has not paid?
- F. Any amounts owed to equity security holders?

III. CASH MANAGEMENT

- A. Bank Accounts
 - 1. How many bank accounts does the company have? (Please provide a complete list with account numbers).
 - 2. What is each account used for? For example, payroll, medical claims, general vendor payments, etc.
- B. Sources of Cash
 - 1. What are all of the sources of cash for the company (for example, client payments, accounts receivable, money loaned, etc.)?

2. Where does cash go when the company receives it? Are there petty cash accounts? Are there segregated accounts for the company's secured lenders?
3. How is cash disbursed (for example, through different zero balance accounts earmarked for specific purposes)?

C. Credit Facilities

1. Provide copies of all loan documents with creditors.
2. Give a general description of the credit facilities employed by the company.
3. How much is outstanding to the company's secured lenders?
4. What is the collateral for the debts owed to secured lenders?
5. How do the company's lenders provide funding? Revolving credit facility? If so, how is it calculated? If available, provide copies of the most recent statements.
6. Any subordinated lenders? If so, how much is outstanding? Describe collateral?

D. Business Forms

1. What type of preprinted business forms does the company have? Stationary, invoices, checks, etc.? Provide examples of each.
2. What type of supply of the business forms does the company have?

IV. SALES AND USE TAX INFORMATION

- A. Types of trust fund taxes collected and remitted by the company?
- B. Amount, on average, of trust fund taxes collected and remitted to taxing authorities each month.

V. INSURANCE INFORMATION

- A. How many and what type of insurance policies does the company have? Provide copies of each policy.
- B. Are premiums current?

- C. Are the premiums financed?
- D. What company finances the premiums?
- E. What is the amount financed, the monthly payment, and the length of the premium financing agreement?
- F. What is the deductible on the insurance policies?

VI. EMPLOYEE WAGE, SALARY AND BENEFIT INFORMATION

A. Employee Information

- 1. Number of employees.
- 2. What are the different positions for the employees?
- 3. Number of employees that are salaried and paid hourly (or other arrangements).
- 4. How are employees paid? Weekly, Bi-Weekly, Semi-Monthly, Monthly?
- 5. Are employees paid by direct deposit? If so, how many receive direct deposit and how many receive actual physical checks?
- 6. How many employees, if any, are owed more than \$10,950?
- 7. Is payroll current? Are any employees owed past due amounts?

B. Paid Time Off

- 1. What is the policy for providing paid time off (“PTO”) to employees? For example, are employees allowed vacation days, sick days, etc.
- 2. How does PTO accrue?
- 3. Does the company pay for accrued but unused PTO?

C. Reimbursable Business Expenses

- 1. What type of expenses are reimbursable to employees?

2. How much, on average, does the company pay in reimbursable business expenses?
3. How much outstanding, on average, does the company have in unpaid reimbursable business expenses?

D. Health Insurance & Dental Insurance

1. What type of coverage does the company provide? For example, self-insured, HMO, PPO, etc.
2. Who is covered?
3. If the company is self-insured, how does the reimbursement process work? Is there a claims agent?
4. On average, how many claims, in number and amount, are made each week? How long does it take to reimburse the claims?
5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

E. Life Insurance and/or AD&D Insurance

1. What type of coverage does the company provide?
2. Who is covered?
3. Who is the insurance carrier?
4. What is the potential exposure for the company, if any?
5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

F. Disability

1. What type of coverage does the company provide?
2. Who is covered?
3. Who is the insurance carrier?
4. What is the potential exposure for the company, if any?

5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

G. Workers' Compensation

1. What type of coverage does the company provide?
2. Who is covered?
3. Who is the insurance carrier?
4. What is the potential exposure for the company, if any?
5. How much, on average, does the company pay in premiums each month? How much of the premium is collected from the employees?

H. Miscellaneous Benefits or Deductions

1. Does the company provide 401(k) benefits?
2. Who administers the 401(k) plan?
3. Does the company match employee contributions?
4. How much, on average, does the company withdraw from its employees' paychecks for 401(k) contributions each month?
5. Does the company provide optional life/dependent life insurance? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?
6. Does the company provide flex medical spending accounts for its employees? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?
7. Does the company provide group auto insurance? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?
8. Does the company provide group homeowners' insurance? If so, how much, on average, does the company withdraw from its employees' paychecks for such coverage?

9. How much, on average, does the company withdraw from its employees' paychecks for garnishments or other court ordered deductions (such as bankruptcy wage deduction orders or child support orders)?
10. Does the company have any union contracts? If so, please provide copies of each.

I. Employee Retention

1. Does the company have an existing employee retention program?
2. Does the company plan on implementing an employee retention program for key employees in an effort to retain the key employees in the wake of a bankruptcy case?
3. Provide a copy of any such program that is in place or is being considered.

VII. LEASES AND EXECUTORY CONTRACTS

A. Nonresidential Real Property Leases?

1. Provide a list of the nonresidential real property leases and also provide a current copy of each lease.

B. Other leases

1. Is the company a party to any other leases? List all leases, leased equipment, terms and lease summaries.
2. Provide a current copy of each lease.

C. Executory Contracts

1. List all executory contracts and indicate if any such executory contract will expire shortly after filing bankruptcy.
2. Provide copies of all executory contracts.

VIII. MISCELLANEOUS ISSUES

A. Professionals

1. Provide a list of the professionals that are currently being utilized by the company. This includes any attorneys, accountants, consultants, architects etc.
2. For each professional, provide the average monthly payment by the company.

IX. UTILITIES

- A. List all utilities used by the corporation including the mailing address and account number of each such utility.

X. ORDINARY COURSE PROFESSIONALS

- A. List all professionals used in the ordinary course of the corporation's business.
- B. List the services provided by each of the above-listed ordinary course professionals.
- C. List the average monthly compensation paid to each such ordinary course professional.

XI. INTELLECTUAL PROPERTY

- A. List all intellectual property utilized including trademarks, copyrights, patents, and/or licenses.
- B. Indicate whether the above-referenced intellectual property is owned, licensed, exclusive, non-exclusive.
- C. Does the company have a domain name? Is it registered?

MEMORANDUM

TO: Potential Chapter 11 Debtor

FROM: Troy J. Aramburu

DATE: March 19, 2010

RE: Various Duties of and Restrictions on a Chapter 11 Debtor in Possession

This memorandum explains briefly some of the more significant legal obligations of an entity operating its business as a debtor in possession (or “DIP”) under Chapter 11 of the United States Bankruptcy Code (“**Bankruptcy Code**” or “**Code**”). *This memorandum is not meant to be a legal authority on all questions an entity in bankruptcy may face*, and as such, should only be used as a quick guide to the issues presented below. If questions arise, *it is expected that the entity will contact bankruptcy counsel to determine answers to such questions* and to consult regarding the proper of action. This memorandum should help management understand some of the consequences of filing a Chapter 11 case; assist in planning for a filing; and serve as a guide if and when a filing becomes necessary.

1. Fiduciary Duty to Creditors
2. Advance Notice to Creditors of Certain Transactions
3. Prohibition of Use of “Cash Collateral”
4. DIP Financing
5. Important Distinction Between “Pre-Petition” and “Post-Petition” Debts and Claims and Consequences Thereof
6. Most Credit Transactions Prohibited Without Advance Court Approval
7. Assumption or Rejection of Executory Contracts and Unexpired Leases
8. New Bank Accounts and New Books and Records
9. Inventory of All Property
10. Notice to Banks and Others
11. Reports to Creditors and Court
12. Preservation of the Estate
13. Maintain Insurance
14. Insider Transactions
15. No Retention of Professional Persons, Such as Attorneys and Accountants, Without Prior Court Approval
16. U.S. Trustee Fee
17. Other Prohibitions and Guidelines

1. FIDUCIARY DUTY TO CREDITORS.

A company that has filed a Chapter 11 bankruptcy petition is permitted to continue its business as a “Debtor in Possession” unless the court orders otherwise, meaning, among other things, that the management team stays in place. However, in many respects, things are not just “business as usual.” Perhaps most importantly, a Debtor in Possession is similar to a court-appointed trustee, and acts in a fiduciary role while managing its assets and conducting the reorganization case. Unlike the situation of an ordinary, solvent corporation in which the directors and management owe their fiduciary duties to the shareholders, when insolvency and bankruptcy intervene, the directors and management owe a fiduciary duty to creditors.

2. ADVANCE NOTICE TO CREDITORS OF CERTAIN TRANSACTIONS.

In the absence of court order, a Debtor in Possession is only authorized to carry on its business functions, and enter into transactions, including the sale, use and lease of its property, that are in the “**ordinary course of business.**” If a proposed transaction falls outside the definition of the ordinary course of business, “notice and a hearing” is required before the transaction can be consummated. The Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**” or “**Rules**”) prescribe the type of notice required for different transactions involving the proposed use, sale or lease of property of the bankruptcy estate that are **not** in the ordinary course of business (other than use of cash collateral or a sale of property free and clear of all liens, either of which involves special rules).

Determining the line between transactions in the ordinary course and outside the ordinary course is not always easy. One court has said that “ordinary course of business” means a transaction that falls within the reasonable expectations of interested parties as to the nature of transactions that the debtor would likely enter in the course of its normal, daily business. Obviously, the reasonable expectations of outsiders (such as creditors and the bankruptcy judge) may not be the same as the debtor’s own perceptions. Because every business is unique, and because guidelines and definitions developed in other cases may not offer any concrete guidance to the Company, thought needs to be given toward formulating some “bright line” test that would guide the Company’s management and staff.

One suggestion that comes immediately to mind is this: Does the transaction require approval by the Company’s Board of Directors? If so, it is sufficiently important to the Company’s business, or it involves so many dollars that “notice and a hearing” is required. Even less “important” transactions may need court approval, such as rejection of contracts or leases. Accordingly, counsel should be kept informed of any significant transactions.

Whenever there is a close question on the issue of whether notice is required, we should give notice, and if necessary, seek prior court approval, so as to avoid the possibility that, when viewed by a court with the benefit of hindsight, the ultimate determination might be unfavorable.

3. PROHIBITION OF USE OF “CASH COLLATERAL.”

The Bankruptcy Code prohibits a debtor from using what is called “cash collateral” unless the court has authorized its use or the creditor having an interest in it consents to its use. “Cash collateral” means “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case” Bankruptcy courts normally look to the provisions of state law to determine whether the security interest of the creditor extends to the cash collateral in question. **Cash received post-petition from pledged accounts receivable will be cash collateral.** In this context “consent” means post-petition consent, in writing, and the agreement to use cash collateral must be approved by the bankruptcy court.

The Bankruptcy Rules provide that prior notice is required on a motion for court authority to use cash collateral, although at a preliminary hearing the court can authorize a debtor to use only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. When an agreement with secured creditors is reached to permit the consensual use of cash collateral, notice to creditors and court approval is also required. Very often, if a creditor is willing to allow the use of cash collateral, it will structure the agreement as a new loan to the Debtor in Possession (which is one form of “**DIP Financing**,” discussed below). **Litigation over the use of cash collateral is often the major battle early in a Chapter 11 case.**

In the absence of consent or court authorization to use cash collateral, it must be segregated and accounted for and cannot be used. Obviously, to the extent that the Company has cash proceeds from operations that are not subject to any creditor’s claim, the cash collateral rules do not apply.

4. DIP FINANCING.

Frequently a debtor will need financing post-petition, either from its current lenders, or from new lenders. **When current lenders are secured and have an interest in cash collateral, they usually prefer to allow use of that collateral (if at all) only as part of a new DIP financing arrangement.** When a new lender is willing to finance the debtor, it can only do so after the loan is approved by the court. Therefore, the negotiation of a loan agreement and all ancillary documents must be prepared and ready to go in advance of the anticipated need for the proceeds of the financing.

5. IMPORTANT DISTINCTION BETWEEN “PRE-PETITION” AND “POST-PETITION” DEBTS AND CLAIMS AND CONSEQUENCES THEREOF.

The filing of a bankruptcy acts as a bright line in time between “pre-petition” claims and obligations and “post-petition” claims and obligations. **Once bankruptcy is filed, the debtor is generally prohibited from making any payment of any pre-petition debts.**

The Company’s personnel would need to be alerted to this important foundation of bankruptcy law so as to be sure that no pre-petition debt is paid post-petition. Since salaries accrue in arrears, this prohibition would prevent the Company from paying salaries that accrued pre-petition but came due post-petition unless specific authorization is obtained from the court to make such payments. Accordingly, the Company may need to “time” a bankruptcy filing, if possible, to assure that wage claims, as well as accrued “trust fund” and similar obligations are paid as “current” as possible. Then, the Company may consider seeking court approval after the filing to pay any unpaid pre-petition accrued wages and related obligations as though no filing occurred. Similar special attention should also be given to employee insurance and other contractual benefits including vacation time that has accrued prepetition.

A similar problem arises with essential suppliers. If you don’t prepay, some of them may simply refuse to supply post-petition (as compared to offering to supply only if pre-petition bills are paid, which might be a violation of the automatic stay). Then again, they may not. Assessing that risk in individual cases may mean that a debtor might choose to bring an essential supplier current before filing. Of course, this course of action brings the risk that the payment would be preferential and subject to later recovery, and the risk that selective prepayment would be an irritant to the Creditors’ Committee, which might demand that payments be recovered by the Company. Please note that utilities that supply a debtor are specifically prohibited from altering or discontinuing service solely because pre-petition services are not paid for, but they can require a security deposit to be posted within twenty (20) days of the filing before continuing service post-petition.

The Company should not make any assurances to pre-petition creditors that anything will be paid to them or that they will be afforded any special treatment. Absent specific authorization from the court authorizing payment of post-petition obligations to suppliers, any proposal for repayment should be contained only in the Plan and Disclosure Statement, which cannot be transmitted to creditors until approved by the bankruptcy court as containing adequate information.

All payments made by the Company post-petition must only be made on services and supplies rendered post-petition, and the Company should attempt to insure that creditors correctly apply such post-petition payments to post-petition services and supplies.

This bright line (and the automatic stay) also means that, without court approval, creditors cannot take setoffs after the bankruptcy has been filed, although the right to recoup in executory, continuing agreements has some limited recognition. **Any attempted set off should be reported to counsel for remedial action in the bankruptcy court.**

6. MOST CREDIT TRANSACTIONS PROHIBITED WITHOUT ADVANCE COURT APPROVAL.

Generally speaking, a Chapter 11 Debtor in Possession cannot borrow money without court approval. However, if a trade supplier is willing to sell on ordinary credit terms post-petition, that is permissible, and the trade supplier will have an administrative priority for repayment under a Plan if the bill is not paid when due. More common, of course, is that all trade credit dries up, and the Debtor in Possession is put on a cash basis by all trade suppliers post-petition.

Any other loan or extension of credit considered out of the ordinary course of business will require court approval, after notice and a hearing.

7. ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

The Bankruptcy Code allows a Debtor in Possession to assume or reject executory contracts and unexpired leases. Generally speaking, this ability to assume exists notwithstanding clauses that purport to terminate a contract because of a party's insolvency or bankruptcy filing. A particular class of lease - a lease of non-residential real property where the debtor is the lessee ("NRRP") - requires prompt action after the filing of the petition or they are automatically rejected. When a NRRP is involved, the Debtor in Possession is required to assume the NRRP within 120 days of filing, unless an extension of time is granted by the court before the 120 days expire. The Bankruptcy Code now limits the extension to an additional 90 days. Otherwise, the lease is deemed rejected and the Debtor in Possession is required to surrender the leased premises immediately. Pending assumption or rejection of a NRRP, the Code affirmatively requires that all post-petition obligations of the debtor be met.

On other contracts and unexpired leases, the deadline for assumption is any time before confirmation of a plan unless shortened by the court. In the meantime, what is the Debtor in Possession to do regarding either giving or accepting performance under a lease or contract? For the most part, the cases allow a debtor to continue to operate under the contract or lease without assuming or rejecting, and the action of continuing to perform (meaning, in most cases, to pay the amounts called for post-petition), in and of itself, will not constitute an assumption. However, the lessor may move the court for an order requiring that a time be fixed for the debtor to assume or reject. **If the Company is aware of contracts or leases that are unfavorable or burdensome, however, advance planning is important so that there will be no mistake about the Company's intentions during Chapter 11 that might adversely affect the right to assume or reject. Burdensome property should be abandoned promptly in order to lessen claims against the estate.**

Some contracts cannot be assumed. In particular, a contract to make a loan, or to extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor, cannot be assumed.

All executory contracts should be reviewed with counsel to determine the strategy for both favorable and burdensome agreements.

8. NEW BANK ACCOUNTS AND NEW BOOKS AND RECORDS.

The local rules or local practices of many bankruptcy courts and the U.S. Trustee Guidelines reflect another aspect of the pre-bankruptcy, post-bankruptcy cleavage by requiring the DIP to close all bank accounts and other books and records maintained prior to the filing of the petition and to open new books and records and new general, payroll and tax bank accounts. These requirements may prove burdensome and can often be worked around by pre-filing negotiations with parties such as the U.S. Trustee, or by seeking an order from the court in a proper case to avoid unnecessary trouble and expense.

9. INVENTORY OF ALL PROPERTY.

Bankruptcy Rule 2015(a)(1) provides, in part, that a Debtor in Possession shall “if the court directs, in a Chapter 11 reorganization case file and transmit to the United States Trustee a complete inventory of the property of the debtor within 30 days after qualifying as . . . debtor in possession, unless such an inventory has already been filed . . .” The U.S. Trustee Guidelines also address the necessity of a physical inventory. While the records a company normally maintains concerning its property may be sufficient for preparing the required schedule of assets including inventory summaries, the U.S. Trustee’s requirements regarding the need for a physical inventory will need to be addressed.

10. NOTICE TO BANKS AND OTHERS.

Bankruptcy Rule 2015(a)(4) requires, in part, that a Debtor in Possession shall “as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company that has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case.”

11. REPORTS TO CREDITORS AND COURT.

The Bankruptcy Code and U.S. Trustee Guidelines impose upon the Debtor in Possession a duty to keep creditors informed as to financial matters by filing monthly reports and summaries of the operation of its business, including a statement of receipts and disbursements.

12. PRESERVATION OF THE ESTATE.

The Debtor in Possession may not diminish the value of the estate. For example, the Debtor in Possession should not make any donations, and, without court approval, would be prohibited from granting any mortgages, security interests, or undertaking any extraordinary commitments. Preservation and maintenance of assets during the Chapter 11 is essential. The

Debtor in Possession must ensure that new liabilities are not incurred if they cannot be paid. If such liabilities are incurred but not paid, they will be administrative expenses payable before unsecured creditors. The debtor must avoid excessive expenditures, particularly for unnecessary luxury items (such as luxury cars, special office equipment, etc.). The debtor must not make gifts to charities or to anyone else. The debtor must not make transfers for other than reasonably equivalent value. The debtor must not engage in speculative activities.

13. MAINTAIN INSURANCE.

The Debtor in Possession must keep the property of the debtor's estate insured at a level equal to the value of such property and shall pay such premiums as may be or become due thereon. The DIP should maintain appropriate worker's compensation insurance, as well as any other types and kinds of insurance that would be maintained by a prudent company in the line of business in which the DIP is engaged. There are additional insurance requirements set forth in the U.S. Trustee Guidelines that must be satisfied.

14. INSIDER TRANSACTIONS.

All insider transactions will be viewed with extremely close scrutiny. When the debtor is a corporation, the term insider includes a director, officer or person in control of the debtor, a partnership in which the debtor is a general partner, a general partner of the debtor, a relative of a general partner, director, officer or person in control of the debtor, an affiliate of the debtor or an insider of an affiliate, or a managing agent of the debtor. The debtor should report to counsel any proposed transaction between the debtor and any present or former employee, director or officer, or any company controlled by them, or between the debtor and any of its counsel. If a proposed transaction with an insider becomes necessary, the terms and conditions of such transaction should be disclosed to all interested parties and prior court approval should be sought. Do not make advances to employees other than for actual anticipated expenses that would qualify for reimbursement if properly submitted after the fact.

15. NO RETENTION OF PROFESSIONAL PERSONS, SUCH AS ATTORNEYS AND ACCOUNTANTS, WITHOUT PRIOR COURT APPROVAL.

Do not retain professional persons, such as attorneys, accountants, investment bankers, financial advisors, independent contractors, consultants or other professionals for assistance in the bankruptcy case, or agree to compensate any such persons without making the engagement subject to court approval of such person's employment and compensation. There are also requirements imposed by the U.S. Trustee Guidelines that must be satisfied.

16. U.S. TRUSTEE FEE.

If the Company files in a jurisdiction in which the U.S. Trustee system is applicable (such as Utah), then, by statute, the Company will have to pay a quarterly fee to the U.S. Trustee. The fee is based on disbursements during the quarter and is calculated according to a table set forth in the U.S. Trustee Guidelines.

17. OTHER PROHIBITIONS AND GUIDELINES.

The debtor should check with counsel before releasing significant information regarding progress of the reorganization case, especially as pertains to the foundation of the Plan, financial projections and valuations.

Counsel should be informed immediately if any governmental agency seeks to conduct an investigation of the debtor's business.