

**Motion Procedures for Payment of
Pre-Petition Amounts Owed to Critical Vendors**

- 1.1 A Motion intending to pay pre-petition amounts owed to Critical Vendors shall so state in the title and the body of the Motion.
- 1.2 The Motion shall comply with local rule 9013.
- 1.3 Within the body of the Motion, the Motion shall set forth the:
 - (a) Critical nature of the debtor's relationship with the creditors;
 - (b) Risk of harm to the debtor's estate should the creditor's claim remain unpaid or the economic benefit to the debtor's estate derived from payment of the creditor's claim; and
 - (c) Absence of a legal or practical alternative to payment of the claim.
- 1.4 The Motion will list each creditor it considers to be a Critical Vendor and the criteria utilized by the Debtor in selecting the Critical Vendors.
- 1.5 The Motion will set forth a timeline as to how much each Critical Vendor is owed and when each Critical Vendor will be paid.
- 1.6 The Motion will set forth the conditions, if any, to be met by the Critical Vendors in exchange for the Critical Vendor's claim being paid or given priority status.
- 1.7 A proposed order will accompany the Motion stating:
 - (a) the amounts to be paid to each Critical Vendor;
 - (b) the conditions imposed upon each Critical Vendor;
 - (c) language stating that a Critical Vendor that accepted payment on its prepetition claim that breaches the conditions or covenants following demand of and acceptance of payment of its prepetition claim will require the Critical Vendor to show cause as to why it is not in violation of section 362 of the United States Bankruptcy Code;
 - (d) language stating that a Critical Vendor that accepted payment on its prepetition claim that refuses to provide postpetition goods and services to the debtor due to nonpayment of any prepetition debt, and despite assurance, in the form of a deposit or prepayment, that such entity will suffer no loss through provision of postpetition goods or services, absent good cause, constitutes a willful violation of section 362 of the United States Bankruptcy Code;

- (e) language stating that a Critical Vendor that accepted payment on its prepetition claim will be required to repay the amounts paid to it by the debtor's estate if its actions are found by the Court to fall within paragraphs 1.7(c) and (d) of this rule; and
 - (f) language requiring the Critical Vendor that accepted payment on its prepetition claim to provide goods or services on a postpetition basis in accordance with the best terms the Critical Vendor provided goods and services to the debtor within 120 days of the debtor filing for bankruptcy.
- 1.8 Any objection to the Motion will set forth specific legal rights and/or protections being deprived the objecting party due to the payment of pre-petition amounts owed to Critical Vendors in accordance with the terms of the Motion, and any other grounds for denying the Motion.
- 1.9 A hearing will be set on the Motion following a request made by an objecting party or the Movant, but no sooner than twenty (20) days after service of the Motion, unless such hearing is expedited by separate order of the Court for cause.
- 1.10 Movant shall provide Notice of the hearing in accordance with Fed. R. Bankr. P. 2002 and Local Bankr. R. 9013.
- 1.11 Each Critical Vendor is to provide to the debtor written verification of postpetition trade terms. The debtor will provide these terms to parties of interest upon request.
- 1.12 As soon as practicable, the debtor is to file a list setting forth the name and payments made to Critical Vendors for prepetition claims.