

DRAFT  
10/30/2008

Proposed LOCAL RULE 6006—Assumption, Rejection or Assignment of an Executory Contracts or  
Unexpired Leases by Omnibus Motion

(a) A trustee filing a motion to reject or a motion to assume or assign multiple executory contracts or unexpired leases may employ the following omnibus notice procedure instead of filing a motion:

(1) Subject to the restrictions set forth in Bankruptcy Rule 6006, the trustee may file an omnibus notice of rejection or of assumption and/or assignment instead of filing a motion. A trustee may use an omnibus notice to reject multiple executory contracts or unexpired leases in one notice. A trustee may *not* use an omnibus notice to assume or assign multiple executory contracts or unexpired leases unless: 1) all executory contracts or unexpired leases to be assumed and assigned are between the same parties or are to be assigned to the same assignee; 2) the trustee seeks to assume, but not to assign to more than one assignee, unexpired leases of real property; or (3) the court authorizes otherwise after notice and a hearing in response to a motion brought by the trustee seeking relief from restrictions (1) and/or (2) of this subsection.

(2) The title of each omnibus notice shall conform to the following format:

“[First] Omnibus Notice of [Rejection] [Assumption] [Assumption and Assignment] of [Executory Contracts] [Unexpired Leases] [Executory Contracts and Unexpired Leases] by [Trustee]”.

Each omnibus notice filed in a case must be consecutively numbered. The title of each omnibus notice must reflect this consecutive numbering of omnibus notices.

(3) Each omnibus notice shall include these paragraphs immediately below the title:

PLEASE TAKE NOTICE THAT on [\_\_\_\_], an order for relief was entered under [Chapter \_\_\_\_] of Title 11 of the United States Code (the “Bankruptcy Code”) for [Debtor Name] (the “Debtor”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) in the above-styled bankruptcy proceeding[s] (the “Bankruptcy Case[s]”).

PLEASE TAKE FURTHER NOTICE THAT this omnibus notice seeks an order that may adversely affect you, in accordance with Bankruptcy Code § 365, Rule 6006 of the Federal Rules of Bankruptcy Procedure, and Local Rule 6006. You are receiving this omnibus notice because you may have an executory contract and/or unexpired lease with the debtor in the Bankruptcy Case[s]. The exhibit(s) attached to this omnibus notice list multiple contracts and leases. You should immediately review these exhibit(s) and locate your name(s) and your executory contract and/or unexpired lease with the Debtor. The exhibit(s) specifies the proposed treatment of executory contract and/or unexpired lease.

PLEASE TAKE FURTHER NOTICE THAT if you oppose the proposed treatment of your contract and/or lease specified in the attached exhibit(s), you should immediately contact the party filing this notice to resolve this dispute. If you and the party filing this notice cannot agree, you must file a response and send a copy to such party along with any other party entitled to service of such a response. **You must file and serve your response within 20 days of the date this omnibus notice was served on you.** In addition you shall include in your response a certificate of conference explaining either that (i) a conference was held and that you and the party filing this notice were unable to resolve the matter or (ii) the specific dates you attempted to contact the party and the reason why no conference was held. Your response must also state why the Court should deny the treatment proposed in the exhibit(s).

PLEASE TAKE FURTHER NOTICE THAT if you do not file a timely response, the treatment proposed in the exhibit(s) will be granted without further notice to you. If you file a timely response and the court sets a hearing on the matter, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may rule on the relief requested at the hearing. Represented parties should act through their attorney.

- (4) Every omnibus notice shall include one or more exhibits. At a minimum, if a notice seeks both to assume and/or assign and to reject executory contracts and unexpired leases, the trustee should include an exhibit for contracts or leases being rejected and a separate exhibit for the contracts or leases being assumed and/or assigned. Each exhibit should list in alphabetical order each counterparty affected and identify the corresponding contract(s) or lease(s) between that party and the debtor. For each contract or lease affected, the exhibit should specify the proposed treatment—(1) rejection, (2) assumption or (3) assumption and assignment. For contracts to be assumed, the exhibit should also identify all the key terms of the assumption, such as the proposed cure of defaults and proposed adequate assurance of future performance. Finally, for contracts to be assumed and assigned, the exhibit should list the identity of the proposed assignee as well as the key terms of the proposed assumption.
- (5) The omnibus notice may include any other relevant information the trustee desires. The omnibus notice should comport with the standard format for pleadings filed in this district, but it does not need to include separate section headings (such as a background facts section or a statement of jurisdiction) or other formatting ordinarily associated with motions. The omnibus notice does not need to cite additional legal authority or case law for the relief sought under Bankruptcy Code § 365. Failure to include an exhibit with the omnibus notice will result in the striking of the notice from the case docket.
- (6) Every omnibus notice must be accompanied by a proposed order granting the relief sought in the notice for the executory contracts or unexpired leases identified in the notice's exhibit(s). Failure to include a proposed order will result in the striking of the omnibus notice from the case docket.
- (7) Every omnibus notice shall include a certificate of service. Service of the notice shall comply with Bankruptcy Rule 6006 and Local Rule 9013. The parties listed as

counterparties on the exhibit(s) to the omnibus notice must be served with the notice, all accompanying exhibits, and the proposed order.

- (b) After the expiration of the time required for filing a response to the omnibus notice, the filing party should file a certificate referencing the omnibus notice and identifying the objections, if any, to it. If no party responds to the omnibus notice within the time required for a response, then the court shall enter the relief requested without a hearing or further notice. If a party (such as a contract counterparty) responds only with respect to certain contract(s) or lease(s) and not the entire notice, then the court shall enter the relief requested for any other contracts or leases, and shall set a hearing within 30 days to consider the assumption, rejection or assignment of such contract(s) or lease(s) that were the subject of the objection. Such a hearing will proceed as if a separate motion to assume or reject had been originally filed for such contract(s) or lease(s). If a party objects to the entire omnibus notice, then the court shall set a hearing within 30 days to consider such party's objection.

Attachment #1 – Form Notice with Exhibits

Attachment #2 – Form Order