

United States Bankruptcy Court

Southern District of Georgia

Samuel L. Kay
Clerk

OFFICE OF THE CLERK

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PUBLIC NOTICE

Notice of Opportunity for Public Comment: Chapter 13 Plan and Proposed General Order 2005-3

Attached to this Notice is a draft of the Chapter 13 Plan, as revised September 28, 2005, proposed General Order 2005-3 and a proposed addition to General Order 2005-3 suggested by Sylvia Brown, Trustee. Notice is hereby given that the Court will receive public comments on the proposed plan and General Order for a period commencing upon the publication of this Notice on the Court's website (www.gas.uscourts.gov) through and including Friday, October 7, 2005.

Comments should be made in writing and addressed to Clerk, U.S. Bankruptcy Court, Post Office Box 8347, Savannah, Georgia, 31412, or submitted electronically to the Clerk of Court at Samuel_Kay@gas.uscourts.gov.

Notice of the final approved Chapter 13 Plan form and General Order will be published not later than October 13, 2005, for use beginning Monday, October 17, 2005.

For The Court:

Dated: September 28, 2005

Samuel L. Kay
Clerk of Court

**In the United States Bankruptcy Court
for the Southern District of Georgia**

In the matter of:

10th Draft

Debtor(s)

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)
)
)

Chapter 13 Case

Number _____

CHAPTER 13 PLAN

[Revised September 28, 2005]

1. Debtor(s) shall pay to the Trustee the sum of \$ _____ monthly for _____ months. (If the payments change over time include the following): These plan payments change to \$ _____ monthly on _____, 20__.
2. From the payments so received, the Trustee shall make disbursements as follows:
 - (a) The Trustee percentage fee as set by the United States Trustee.
 - (b) Attorney fees allowed pursuant to 11 U.S.C. § 507(a)(2) of \$ _____ to be paid in accordance with applicable General Orders of this Court.
 - (c) Section 507 claims, unless provided for otherwise in the plan will be paid in full over the life of the plan as funds become available in the order specified by law.
 - (d) Monthly payments according to the contract on the following long-term debts. § 1322(b)(5). (Payments which become due after the filing of the petition but before the month of the first payment designated here will be added to the pre-petition arrearage claim):

<u>CREDITOR</u>	<u>MONTH OF FIRST TRUSTEE PAYMENT</u>	<u>MONTHLY PAYMENT ON FILING DATE</u>
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or

- Debtor will make post-petition payments according to the contract on the following long-term debts. § 1322(b)(5):
- | <u>CREDITOR</u> | <u>MONTHLY PAYMENT ON FILING DATE</u> |
|-----------------|---------------------------------------|
|-----------------|---------------------------------------|

- (e) Fully Secured Claims and Executory Contracts as set forth below:

<u>CREDITOR</u>	<u>COLLATERAL</u>	<u>CLAIM AMOUNT</u>	<u>INTEREST RATE</u>	<u>MONTHLY PAYMENT</u>
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- (f) Undersecured Claims. Debtor proposes to value the collateral securing the following claims pursuant to § 506 and provide payment in satisfaction of those claims as set forth below:

<u>CREDITOR</u>	<u>COLLATERAL</u>	<u>VALUATION</u>	<u>INTEREST RATE</u>	<u>MONTHLY PAYMENT</u>
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(g) Prepetition arrearage claims set forth below:

CREDITOR

PREPETITION CLAIM AMOUNT

Will be cured as follows:

(h) The following unsecured claims are classified to be paid at 100% with interest at _____ %; without interest.

(i) Allowed general unsecured creditors will be paid a _____% dividend or a prorata share of \$ _____, whichever is greater.

3. Debtor will make § 1326(a)(1) pre-confirmation lease and adequate protection payments for the benefit of the following creditors:

Direct to the Creditor; or To the Trustee

CREDITOR

ADEQUATE PROTECTION OR LEASE PAYMENT AMOUNT

4. Debtor will pay all post-petition domestic support obligations direct to the holder of such claim identified here. § 101(14A). Debtor requests Trustee to provide the statutory notice of § 1306(d) to these claimants.

CREDITOR

ADDRESS

5. Other provisions:

6. Debtor moves to avoid, pursuant to 11 U.S.C. § 522(f), the liens of the following creditors, upon confirmation and subject to § 349, with respect to the described property:

CREDITOR

PROPERTY

7. The following collateral is surrendered to the creditor in FULL or PARTIAL satisfaction of the creditor's claim:

CREDITOR

DESCRIPTION OF COLLATERAL

AMOUNT OF CLAIM SATISFIED

8. Holders of allowed secured claims shall retain the liens securing said claims to the full extent provided by § 1325(a)(5).

9. The amount, and secured or unsecured status, of claims disclosed in this Plan are based upon debtor's best estimate and belief. An allowed proof of claim will supercede those estimated claims unless the Court orders otherwise. Objections to claims may be filed before or after confirmation. Debtor will increase payments in the amount necessary to fund allowed claims as this Plan proposes, after notice and a hearing, unless a Plan Modification is approved.

Dated _____

Debtor

Debtor

**In the United States Bankruptcy Court
for the
Southern District of Georgia**

GENERAL ORDER NUMBER 2005- 3

ORDER REGARDING LEASE AND ADEQUATE PROTECTION PAYMENTS

11 U.S.C. § 1326(a) provides that Chapter 13 debtors shall make certain payments “directly” to certain lessors or creditors, “unless the Court orders otherwise.”

After due consideration the Court enters this Order for the purpose of permitting debtors in their Plan to elect whether to (1) remit those payments “directly” or (2) remit those payments to the Trustee, earmarked for the purpose set forth by Congress.

This action is based in part upon the following considerations and is authorized by § 1326 and § 105:

1. Judicial Economy. No mandatory provision, either allowing or prohibiting these payments to be handled by the Chapter 13 Trustee, can possibly meet the particular needs of every case. Failure to order in advance that debtors may elect the method most likely to permit their Plans to succeed will inevitably lead to countless motions to obtain this permission on a case-by-case basis, consuming untold hours of judicial and administrative resources and driving the cost of Chapter 13 proceeds to debtors, creditors, and counsel higher than can be justified.
2. Record-keeping and Evidentiary Considerations. Chapter 13 Trustees act as fiduciaries, and are uniquely qualified to receive and disburse funds, and to provide reliable records of all such payments. All parties in Chapter 13 cases justifiably rely heavily upon the integrity of these transactions and the records that the Trustee maintains and provides, at no additional cost, to all parties in interest.
3. Creditors’ Interests Protected. In the case of adequate protection payments, because debtor’s obligation to make these payments is not triggered until a claim is “allowed” and because claims are not “allowed” until filed (§ 502), it may be impossible for a debtor to know when to begin making such payments “directly.” Payment to the Trustee of funds estimated to cover these claims will ensure debtors do not become delinquent under this provision simply because they lack any

notice of an obligation to commence making them. Creditors rights are preserved under longstanding precedent of this Court. See In re Coplin, 1987 W. L. 61929 (Bankr. S.D.Ga.). Coplin ensures that funds held by a Trustee in a case that is dismissed are held for a sufficient period of time, not expressly provided by the terms of § 1326(a)(2), so as to permit creditors with an interest in those funds to make a claim to them. The amendments to § 1326 do not negate this precedent.

4. Timely Hearings on Objections. Confirmation hearings will be conducted prior to the deadline for filing claims. As a result, the Court can timely adjudicate any dispute over the amount and method of payment of these claims at confirmation, should a timely objection to the Plan be filed by any creditor.

IT IS THEREFORE ORDERED that pursuant to 11 U.S.C. §§ 1326 and 105, commencing October 17, 2005, debtors are authorized to designate in their Chapter 13 Plans whether lease and adequate protection payments shall be made "directly" to the creditor or remitted to the Trustee.

If these payments are remitted to the Trustee they shall be paid to the creditor designated in the Plan after a claim is allowed until confirmation or further order of this Court. Creditor's rights in these funds shall be governed by the terms of a confirmed Plan, further order of Court, or in the case of a dismissal prior to confirmation, remitted to the creditor for whose benefit they were paid by Debtor and held during the pendency of the case.

This _____ day of _____, 2005.

Lamar W. Davis, Jr.
Chief United States Bankruptcy Judge

John S. Dalis
United States Bankruptcy Judge

From: Sylvia F. Brown, Chapter 13 Trustee

**PROPOSED RULE OR GENERAL ORDER
FOR THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA**

**Chapter 13 § 1326(a)(1)
Pre-Confirmation Adequate Protection Payments in Chapter 13 Cases**

PAYMENT BY THE CHAPTER 13 TRUSTEE

The Chapter 13 Trustee is hereby authorized to pay § 1326(a)(1) pre-confirmation payments in the amount described in the debtor's plan, and from funds paid to the trustee by or on behalf of the debtor. No payment shall be made to a creditor until a proof of claim is filed by or on behalf of that creditor pursuant to Bankruptcy Rules 3001-3005. Pre-confirmation payments to a creditor shall begin on the first normal monthly trustee disbursement date which occurs more than 7 days after a proof of claim is filed by or on behalf of that creditor and shall continue at monthly intervals until a plan is confirmed. The trustee shall make each adequate protection payment pursuant to this order only from the funds paid by or on behalf of the debtor more than 7 working days prior to the trustee's normal monthly disbursement date.

The trustee shall credit each pre-confirmation adequate protection payment against the unpaid principal balance of the corresponding allowed secured claim.

No secured creditor shall be prejudiced by this Order from challenging the sufficiency of the adequate protection payments made under this Order and pursuant to § 1326(a)(1).

In the event the debtor files a modified plan prior to confirmation which changes the amount of the pre-confirmation adequate protection payment to any creditors, the trustee shall begin making the adequate protection payments described in the modified plan beginning with the first normal monthly trustee disbursement date which occurs more than 7 days after the filing of the modified plan.

In the event a case is dismissed prior to confirmation, the Trustee shall, after deducting the costs of administration, including attorney fees not to exceed \$300.00, disburse any undisbursed funds paid by or on behalf of the debtor(s). Said funds shall be disbursed to creditors holding allowed secured claims which were to be paid through the trustee under the terms of the debtor's unconfirmed plan, unless a party in interest files a written objection within ten (10) days from the date of the order dismissing the case.