

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
ALL DIVISIONS

-----x

Miscellaneous Proceeding re:
Enlargement of Certain Deadlines in
Pending Bankruptcy Cases Due
to the Exigent Circumstances Created
By COVID-19 Pandemic

Misc. Proceeding
#20

-----x

NOTICE OF MOTION

PLEASE TAKE NOTICE that William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”) has moved before the Honorable Carla E. Craig, Chief United States Bankruptcy Judge, in the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York for entry of an order extending certain deadlines in those chapter 7, 12 and 13 cases in which the first date set for the meeting of creditors under § 341(a) is March 17, 2020 through April 10, 2020, and in which in-person § 341(a) meetings were continued by the United States Trustee in response to the declaration of both a national and state health emergency and restrictions put in place on Courthouse access due to the COVID-19 pandemic. The motion of the United States Trustee seeking such relief has been filed with the Court.

PLEASE TAKE FURTHER NOTICE that any responsive papers should be filed with the Court and served on the United States Trustee to the attention of Marylou Martin, Esq. via email at marylou.martin@usdoj.gov on or before April 15, 2020. Responsive papers shall state the factual grounds upon which the relief sought is opposed and the legal authorities that support the respondent’s position, either in the response or in a memorandum of law.

Dated: New York, New York
April 1, 2020

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Marylou Martin
Marylou Martin
Assistant United States Trustee
Eastern District of New York
201 Varick Street, Suite 1006
New York, New York 10014
Email: marylou.martin@usdoj.gov

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
ALL DIVISIONS**

-----X

Miscellaneous Proceeding re:
Enlargement of Certain Deadlines in
Pending Bankruptcy Cases Due
to the Exigent Circumstances Created
By COVID-19 Pandemic

Misc. Proceeding
#20

-----X

**MOTION OF THE UNITED STATES TRUSTEE FOR AN ENLARGEMENT
OF CERTAIN DEADLINES UNDER THE FEDERAL RULE 10001 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE AND SECTION 105 THE UNITED STATES BANKRUPTCY
CODE IN LIGHT OF PUBLIC HEALTH EMERGENCY**

William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), in furtherance of his administrative responsibilities under 28 U.S.C. § 586(3)(G), 11 U.S.C. §§ 704(b)(1) and 707(b)(1), hereby moves under Fed. R. Bankr. P. 1001 and 11 U.S.C. §105, and under all other applicable statutes and rules, for an enlargement of certain deadlines set forth in the Federal Rules of Bankruptcy Procedures and the United States Bankruptcy Code related to the entry of an order for relief a bankruptcy case in chapters 7, 12, and 13 (the “Motion”) as follows:

PRELIMINARY STATEMENT

In order to protect public health due to the COVID-19 pandemic that has impacted the United States and particularly those individuals in the State of New York, which has been designated an epicenter for Coronavirus, federal and state authorities, as well as the District Court of the Eastern District of New York (the “District Court”) and the Office of the United States Trustee have taken certain actions to deter the spread of the virus.

On March 7, 2020, the Governor of New York State issued Executive Order Number 202, declaring a disaster emergency for the entire State of New York because of the rapid increase in Coronavirus cases.

Thereafter, on March 13, 2020, the President of the United States declared a national emergency due to the COVID-19 pandemic. Most recently, on March 22, 2020, the Governor of the State of New York issued Executive Order 202.6 which directed all non-essential services to close in-office personnel functions, effective 8:00 p.m. on March 22, 2020.

The District Court also has taken action in light of the public health emergency. On March 10, 2020, the District Court entered Administrative Order 2020-5 setting forth restrictions on entry into the United States Courthouses in the Eastern District of New York. On March 17, 2020, Administrative Order 2020-8 was issued by the District Court further restricting access to the Eastern District of New York Courthouses.

On March 19, 2020, the Supreme Court of the United States extended certain deadlines including the deadline for filing a petition for a writ of certiorari from 90 days under Rule 13 of the Rules of the Supreme Court to “150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing.”

The emergency declarations and judicial responses to this global health crisis are reminiscent of similar responses from state and federal courts in the immediate aftermath of the terrorist attacks on the United States on September 11, 2001.

In response to the declaration of both a national and state health emergency and restrictions put in place on Courthouse access, the United States Trustee issued a notice on March 17, 2020 (the “UST Notice”) rescheduling all in-person section 341 meetings through April 10, 2020 in chapter 7, 12 and 13 cases (the “Reset Date”).

Given that the first date set for the § 341(a) meeting of creditors triggers various deadlines under the Federal Rules of Bankruptcy Procedure and the United States Bankruptcy Code, the continuance of these meetings in numerous bankruptcy cases pursuant to the UST Notice requires an orderly method be put in place to extend these deadlines. Accordingly, the United States Trustee now seeks the entry of a general order extending specific deadlines set forth below, in those chapter 7, 12 and 13 cases in which the first date set for the meeting of creditors under § 341(a) (the “First Date Set”) is March 17, 2020 through April 10, 2020.

BACKGROUND

1. On March 17, 2020, the United States Trustee issued the UST Notice continuing all in-person section 341 meetings through April 10, 2020 in the Districts of Connecticut, New York and Vermont.

2. By this motion, the United States Trustee seeks to extend certain deadlines applicable to the United States Trustee, case and standing trustees, debtors, creditors and other parties in affected bankruptcy cases. In the following paragraphs, the United States Trustee describes certain statutory deadlines that, but for Court intervention, likely will pass without the United States Trustee and others effectively undertaking adequate review of cases. Debtors, creditors, and the bankruptcy system as a whole would be prejudiced by such an outcome. It is for these reasons that the United States Trustee brings this motion.

3. Pursuant to Fed. R. Bankr. P. 1017(e), the deadline for filing a motion, pursuant to § 707 (b) or (c), is within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing such motion.

4. Pursuant to Fed. R. Bankr. P. 4004(a), the deadline for filing a complaint, or a motion under 727(a)(8) or (a)(9), or § 1328, is within 60 days after the first date set for the meeting of creditors under § 341(a).

5. Pursuant to 11 U.S.C. § 704(b)(1) and (2), the United States Trustee is required to file with the court a statement as to whether a debtor's case would be presumed to be an abuse under § 707(b) no later than 10 days after the date of the first meeting of creditors, and further, no later than 30 days after the date of filing such a statement, either file a motion to dismiss or convert or file a statement setting forth the reasons the United States Trustee does not consider a motion to be appropriate.

6. Pursuant to Fed. R. Bankr. P. 4008(a), the deadline for filing a reaffirmation agreement is within 60 days after the first date set for the meeting of creditors under § 341(a).

ARGUMENT

7. In light of the fact that § 341(a) meetings in chapter 7, 12 and 13 cases scheduled to be heard between March 17, 2020 and April 10, 2020 were continued in accordance with the UST Notice, the United States Trustee requests an extension of the time periods set forth below for cause, on the basis that the public health and safety emergency due to the COVID-19 virus and concomitant restrictions placed on individuals within the State of New York has limited the ability of parties in interest from meeting certain timeframes proscribed in the Federal Rules of Bankruptcy Procedure and the United States Bankruptcy Code.

8. Specifically, the United States Trustee requests extensions of time and related relief as follows:

- a. The time to file a motion under § 707 (b) or (c) should be extended to 90 days after the first date set for the meeting of creditors under § 341(a), for all cases in which the First Date Set is March 17, 2020 through April 10, 2020 (the "Affected Cases");
- b. The time to file a complaint under § 727, or a motion under 727(a)(8), (a)(9), or § 1328(f), should be extended to 90 days after the first date set for the meeting of creditors under § 341(a) in all Affected Cases;

- c. The deadline set under Federal Rule of Bankruptcy Procedure 4007(c) for filing a complaint as to the dischargeability of certain debts under section 523(c) should be extended to 90 days after the first date set for the meeting of creditors under § 341(a) in all Affected Cases;
- d. The deadline set under Federal Rule of Bankruptcy Procedure 4008(a) for filing a reaffirmation agreement should be extended to 90 days after the first date set for the meeting of creditors under § 341(a) in all Affected Cases, unless a discharge has been granted before such date; and,
- e. For each Affected Case which is a chapter 7 case, “the date of the first meeting of Creditors” pursuant to Bankruptcy Code § 704(b) shall be the Reset Date for the 341 meeting.

9. In analogous situations, when presented with exigent circumstances and emergent conditions, such the 2018 government shutdown (the “Government Shutdown”), courts have entered general orders tolling deadlines based on their inherent authority. For example, during the Government Shutdown, the United States Bankruptcy Court for the Southern District of New York entered Order M-527 on December 26, 2018 which stayed certain proceedings and tolled deadlines pending the re-institution of federal funding to the Department of Justice.

10. The United States Trustee avers that the Court has such authority to enlarge the foregoing deadlines under Fed. R. Bankr. P. 1001 and 11 U.S.C. §105 and that United States Trustee has set forth sufficient cause for the relief requested herein.

NOTICE

The United States Trustee proposes to provide notice of the Motion by posting the Notice of Motion and Motion on the website maintained by the United States Bankruptcy Court for the Eastern District of New York at www.nyeb.uscourts.gov for a period of fourteen days.

WHEREFORE, the United States Trustee requests that the Court grant this motion and enter an order extending such deadlines and granting relief as enumerated above, and for such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 1, 2020

Respectfully Submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/Marylou Martin
Marylou Martin
Assistant United States Trustee
Office of the United States Trustee
Eastern District of New York
201 Varick Street, Room 1006
New York, New York, 10014
Tel. (212) 510-0500

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
ALL DIVISIONS

-----x

Miscellaneous Proceeding re:
Enlargement of Certain Deadlines in
Pending Bankruptcy Cases Due
to the Exigent Circumstances Created
By COVID-19 Pandemic

Misc. Proceeding
#20

-----x

ORDER

On March 17, 2020, The Office of the United States Trustee issued a notice (the "UST Notice"), rescheduling all in-person section 341 meetings scheduled through April 10, 2020 in chapter 7, 12 and 13 cases (the "Reset Date").

On April 1, 2020, the United States Trustee filed a Motion requesting that this Court to enter an Order enlarging certain time periods and extending certain deadlines in bankruptcy cases in which the first date set for section 341 meetings is March 17, 2020 through April 10, 2020.

Notice of the Motion and relief sought as provided by the United States Trustee is deemed good and sufficient notice.

Pursuant to 11 U.S.C. § 105, in order to carry out the provisions of the Bankruptcy Code and to implement appropriately certain deadlines in the Bankruptcy Code and in the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") during this time of national emergency, it is **ORDERED** as follows:

1. The time to file a motion under § 707 (b) or (c) is extended to 90 days after the first date set for the meeting of creditors under § 341(a), for all cases in which the first date set for the meeting of creditors under § 341(a) is March 17, 2020 through April 10, 2020 ("Affected Cases");

2. The time to file a complaint under § 727, or a motion under 727(a)(8), (a)(9), or § 1328(f), is extended to 90 days after the first date set for the meeting of creditors under § 341(a) in all Affected Cases;
3. The deadline set under Federal Rule of Bankruptcy Procedure 4007(c) for filing a complaint as to the dischargeability of certain debts under section 523(c) is extended to 90 days after the first date set for the meeting of creditors under § 341(a) in all Affected Cases;
4. The deadline set under Federal Rule of Bankruptcy Procedure 4008(a) for filing a reaffirmation agreement is extended to 90 days after the first date set for the meeting of creditors under § 341(a) in all Affected Cases, unless a discharge has been granted before such date; and
5. For each Affected Case which is a chapter 7 case, “the date of the first meeting of Creditors” pursuant to Bankruptcy Code § 704(b) shall be the Reset Date for the 341 meeting.