

4/15/2020

Clerk, U.S. Bankruptcy Court
District of Montana
Butte Division

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

**In Re: BANKRUPTCY COURT
OPERATIONS UNDER
EXIGENT
CIRCUMSTANCES
ATTRIBUTABLE TO
COVID-19 AND RELATED
CORONAVIRUS**

**GENERAL ORDER NO.
2020-6-BPH**

O R D E R

At Butte in said District this 15th day of April 2020.

By General Orders No. 2020-4-BPH (“2020-4”) and 2020-5-BPH (“2020-5”) this Court adopted procedures intended to maintain the administration of cases while minimizing opportunities for exposure to the coronavirus (“COVID-19”). The District Court has also entered Orders, most recently Administrative Order 20-18 (“District Court Order”). The Bankruptcy and District Court Orders reflect a coordinated response by the Courts and Clerk of Court’s office to COVID-19. Order 2020-4 was effective “until the sooner of April 16, 2020, or further Order of this Court.”

To date, parties have embraced the restrictions imposed by 2020-4, and prior to any scheduled hearing:

- (1) Counsel have conferred with each other and their clients to determine whether it is imperative that a hearing be held;
- (2) If the parties agreed to a continuance, the parties have filed an agreed or unopposed motion to continue with the Court, as soon as possible;
- (3) If an agreement regarding a continuance has not been reached, the party seeking the continuance has filed a motion with the Court outlining the relief requested, the party opposing it, and the reasons for the alleged objection; and,

(4) The Court has granted such motions without permitting a response or requested a response on shortened notice, and then ruled on the motion.

(“Parties’ Procedures.”) In addition to the Parties’ Procedures, the Court has independently reviewed matters set for hearing and identified “factors” to consider when determining whether a hearing is “essential” or “non-essential.”¹ First day motions in reorganization cases, and any relief which if not considered would undermine the utility and purpose of filing the case, have been deemed essential. In some cases, this has included confirmation hearings when the debtor is using cash collateral under an agreement with a creditor and the agreement is on the verge of lapsing per its terms.

The Court has established a procedure for conducting essential hearings telephonically. However, it has done so out of necessity, while harboring doubts regarding the effectiveness of such hearings when there exists a significant factual dispute, or the need to make credibility findings. In some cases, prior to the hearing, the Court has issued an order outlining its preliminary analysis or conclusions based on the record available to it and directed the parties to clarify their positions or arguments in short supplemental briefs prior to the hearing. The Court has referred to these orders as “Pre-Hearing Orders,” or characterized the order as a “partial tentative ruling,” subject to the admission of evidence at any hearing.² *See In re Dighans*, 2020 Mont. B.R. 110 and *In re Hagadone*, 2020 Mont. B.R. 112.

The Pre-Hearing Orders have been effective in narrowing the issues, clarifying the legal positions of the parties, and contributed to a more “surgical” and precise approach by counsel at

¹ In its prior Order this Court used the word “imperative,” but a better dichotomy is “essential v. non-essential hearings.”

² Parties are required to file a list of exhibits along with the actual exhibits at least 3 days prior to scheduled hearings per applicable Local Bankruptcy Rules.

hearings. *Id.* Collectively, the Parties' Procedures, the Court's essential v. non-essential dichotomy, adoption of telephonic hearing procedures, and the Court's use of Pre-Hearing orders and partial tentative rulings reflect the "Bankruptcy Court's COVID-19 Measures." The Bankruptcy Court's COVID-19 Measures shall remain in effect through May 29, 2020.³

IT IS SO ORDERED.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana

³ For compelling reasons, the District Court ordered that through May 29, 2020:

The federal courthouses in the District of Montana will be CLOSED to the public pursuant to 41 C.F.R. § 102-74.375(b), subject to exceptions allowing the Court to meet its constitutional duties and handle emergencies related to public safety, public health and welfare, and individual liberty. . . .

All jury trials (criminal and civil) and associated final pretrial conferences through May 29, 2020, are vacated, to be reset by order of the presiding judge. This order does not vacate any pending deadlines other than the trial dates and final pretrial conferences. Attorneys seeking to modify any other deadlines should file a motion before the presiding judge.

District Court Order.