



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

GUIDELINES FOR CASH COLLATERAL  
AND FINANCING STIPULATIONS

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The judges are often requested to provide guidance to chapter 11 debtors (or chapter 11 trustees) and secured parties concerning the provisions in cash collateral stipulations (see Bankruptcy Code section 363 (c)(2)) or financing stipulations (see section 364(c)) that the court will not normally approve. In response, the judges offer the following guidelines.

All applications for court approval of a cash collateral or financing stipulation must recite whether the stipulation contains any provision that the court will not normally approve, identify any such provision and explain the justification for the provision.

A. **Provisions that will not normally be approved.**

1. Cross-collateralization clauses, *i.e.*, clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement. See Bankruptcy Code section 552.
2. Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt.
3. Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the stipulation. (This would include, for example, an order approving a stipulation providing that the secured party's lien is a "first priority" lien.)
4. Waivers of Bankruptcy Code section 506(c), unless the waiver is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds. (Otherwise a future trustee might be faced with a duty to care for and preserve collateral in the trustee's possession and no financial means for discharging that duty.)
5. Provisions that operate, as a practical matter, to divest the debtor in possession of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.
6. Releases of liability for the creditor's alleged prepetition torts or breaches of contract.
7. Waivers of avoidance actions arising under the Bankruptcy Code.
8. Automatic relief from the automatic stay upon default, conversion to chapter 7,

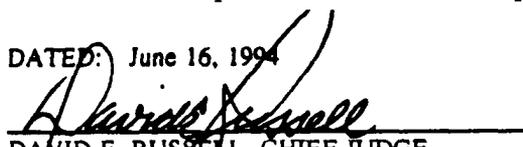
or appointment of a trustee.

9. Waivers of the procedural requirements for foreclosure mandated under applicable non-bankruptcy law.
10. Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code (see sections 506(c), 544, 545, 547, 548, and 549).
11. Waivers, effective on default or expiration, of the debtor's right to move for a court order pursuant to Bankruptcy Code section 363 (c) (2) (B) authorizing the use of cash collateral in the absence of the secured party's consent.
12. Findings of fact on matters extraneous to the approval process. (For example, in connection with an application to borrow on a secured basis, a finding that the debtor cannot obtain unsecured credit would be acceptable, whereas a "finding" that the lender acted in good faith in declaring the prepetition loan in default would not be acceptable.)

**B. Provisions that will normally be approved.**

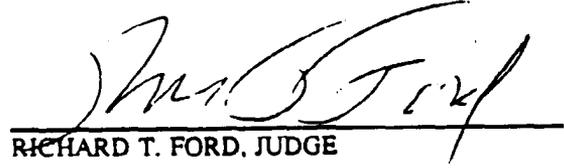
1. Withdrawal of consent to use cash collateral or termination of further financing, upon occurrence of a default or conversion to chapter 7.
2. Securing any postpetition diminution in the value of the secured party's collateral with a lien on postpetition collateral of the same type as the secured party had prepetition, if such lien is subordinated to the compensation and expense reimbursement (excluding professional fees) allowed to any trustee thereafter appointed in the case.
3. Securing new advances or value diminution with a lien on other assets of the estate, but only if the lien is subordinated to all the expenses of administration (including professional fees) of a superseding chapter 7 case.
4. Reservations of rights under Bankruptcy Code section 507(b), unless the stipulation calls for modification of the Code's priorities in the event of a conversion to chapter 7. See Bankruptcy Code section 726(b).
5. Reasonable reporting requirements.
6. Reasonable budgets and use restrictions.
7. Expiration date for the stipulation.

DATED: June 16, 1994

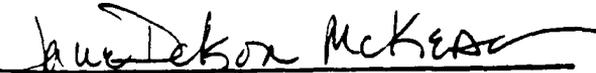
  
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DAVID E. RUSSELL, CHIEF JUDGE

  
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CHRISTOPHER M. KLEIN, JUDGE

  
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MICHAEL S. MCMANUS, JUDGE

  
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RICHARD T. FORD, JUDGE

  
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BRETT DORIAN, JUDGE

  
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JANE DICKSON MCKEAG, JUDGE