

July 27, 2020

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:

SLIDEBELTS, INC.,

Debtor.

Case No. 19-25064-A-11

DRB-3, DRB-4

AMENDED MEMORANDUM

Submitted on July 24, 2020

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances:

Daren R. Brinkman, Brinkman Portillo Ronk,
APC for the Official Committee of
Unsecured Creditors

1 As amended December 1, 2019, Federal Rule of Bankruptcy Procedure
2 9036 provides that filing a document with the Clerk of the Court is
3 deemed service of that document on "register user[s]" of that court's
4 electronic filing system. This decision delineates the edges of that
5 rule.¹

6 **I. FACTS**

7 Slidebelts, Inc. manufactures and sells belts for the clothing
8 industry and for consumers. Unable to meet its financial obligations,
9 Slidebelts filed a Chapter 11 bankruptcy. It did not avail itself of
10 the advantages of the Small Business Chapter 11, 11 U.S.C. §§ 1121(e),
11 101(51C)-(51D), or of the Subchapter V Chapter 11, 11 U.S.C. §§ 1181-
12 1195.² The creditors matrix filed in support of the petition contains
13 231 creditors and equity holders.

14 The U.S. Trustee appointed an unsecured creditors committee. The
15 committee retained counsel, Daren R. Brinkman, and a financial
16 advisor, Dundon Advisors, LLC.

17 Slidebelts moved to dismiss its pending Chapter 11. Its stated
18 intention in doing so was to obtain Paycheck Protection Funding under
19 the CARES ACT and then to re-file a Subchapter V Chapter 11 case.
20 This court granted the motion. But it retained jurisdiction over
21 professional fees and set a bar date for filing application for
22 compensation. Order, June 30, 2020, ECF No. 403. Because the
23 debtor's own counsel had been paid, committee counsel had not been
24 paid, and the debtor's contemplated Chapter 11 refiling would

25
26 ¹ This Amended Memorandum corrects typographical errors present in the
original Memorandum. The substance of the decision remains unchanged.

27 ² It appears that Slidebelts was ineligible for relief under Subchapter V of
28 Chapter 11 until the CARES Act raised the applicable debt limit to \$7.5
million. 11 U.S.C. § 1182(1).

1 transform committee professionals fees into general unsecured claims,
2 the court took the unusual step of ordering that all professionals'
3 fees in the Chapter 11 case be paid in full or, absent full payment,
4 be paid pro rata. *Id.* at ¶¶ 3-5; Memorandum 6:5-7:7, July 6, 2020,
5 ECF No. 418.

6 **II. PROCEDURE**

7 Committee counsel, Daren R. Brinkman, and financial advisor,
8 Dundon Advisors LLC, filed timely applications for compensation.
9 Order ¶ 3, June 30, 2020, ECF No. 403. Each application is supported
10 by a certificate of service, which was signed by attorney Brinkman,
11 which states:

12 On July 6, 2020, I filed the foregoing documents with the
13 Court's electronic filing system, which sent notice to all
14 parties of record who have appeared and accepted electronic
15 service through the Court's electronic filing system,
16 including counsel for: the Debtor; the U.S. Trustee;
Advanced CFO; AmTrust North America, Inc; Glad Evergreen
Industry Co., Ltd; EisnerAmper LLP; First U.S. Community
Credit Union; and Cross River Bank.

17 On July 6, 2020, I checked the docket in this case and saw
18 that the only parties requesting special notice are the
19 U.S. Trustee, AmTrust North American, Inc., and Cross River
Bank. **Given that all parties in interest and all parties
requesting special notice are receiving notice through ECF,
I submit that no further notice is necessary.**

20 Certificates of Service, July 6, 2020, ECF No. 417, 427 (emphasis
21 added).³

22 **III. DISCUSSION**

23 The debtor, all creditors, indenture trustee and U.S. Trustee
24 must receive 21-days' notice of "any entity's request for compensation
25

26 ³ The Certificate of Service ECF No. 417 appears only to serve the motion for
27 order shortening time. The Amended Notice of Hearing, which set the matter
28 for August 3, 2020, does not appear to have been served at all and there is
not applicable certificate of service. Presumably, attorney Brinkman would
advance a similar argument, i.e., that Rule 9036 obviates the need for
service by counsel.

1 or reimbursement of expenses if the request exceeds \$1,000." Fed. R.
2 Bankr. P. 2002(a)(6), 9034(e).

3 Effective December 1, 2019, Rule 9036 allows service by filing a
4 document with the Clerk of the Court but only on a "registered user"
5 of the court's electronic filing system and by "other electronic
6 means" on those parties that have consented in writing:

7 Whenever these rules require or permit sending a notice or
8 serving a paper by mail, **the clerk**, or some other person as
9 the court or these rules may direct, **may send the notice**
10 **to--or serve the paper on--a registered user by filing it**
11 **with the court's electronic-filing system. Or it may be**
12 **sent to any person by other electronic means that the**
13 **person consented to in writing.** In either of these events,
service or notice is complete upon filing or sending but is
not effective if the filer or sender receives notice that
it did not reach the person to be served. This rule does
not apply to any pleading or other paper required to be
served in accordance with Rule 7004.

14 Fed. R. Bankr. P. 9036 (emphasis added).

15 No known case has construed Rule 9036 since its most recent
16 amendment. On its face, Rule 9036 contemplates two instances where e-
17 service is proper: (1) "deemed service," where the mere act of filing
18 a document with the Clerk of the Court will be deemed service on a
19 "registered user" of the electronic filing system; and (2) "consensual
20 service," where a party in interest has consented in writing in
21 advance "by other electronic means." "Registered user" is not a
22 defined term but "[p]resumably, it is an entity that has signed up to
23 use the court's electronic filings system." 10 *Collier on Bankruptcy*,
24 ¶ 9036.01 n. 6 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

25 Deemed service has not occurred. In the Eastern District of
26 California attorneys and trustees may register as e-filers. LBR 5005-
27 1(b),(d).⁴ Parties are not registered e-filers, subject to the deemed

28 ⁴ In the pertinent part LBR 5005-1 provides:

1 served rule. *Id.* Since here there are 231 creditors and other
2 parties in interest entitled to notice of the motion for compensation
3 under Rule 2002(a)(6) and since only all small handful of those are
4 entitled to file electronically, LBR 5005-1(b), the vast majority of
5 creditors are not deemed served under Rule 9036.

6 Moreover, consensual electronic service has not occurred. Review
7 of the docket only reveals one party in interest, i.e., the U.S.
8 Trustee, that has actually consented to electronic service. U.S.
9 Trustee's Notice of Appearance, April 20, 2020, ECF No. 286.

10 **IV. CONCLUSION**

11 For these reasons, the court deems the notice required by Federal
12

13 (b) Electronic Filing Mandatory. Except as provided in
14 Subpart (d) below, all documents shall be submitted for
15 filing in electronic form in strict compliance with
16 instructions of the Clerk in a format approved by the
17 Court.

18 ...

19 (d) Exceptions to and Waivers of Requirement to File
20 Documents in Electronic Form.

21 1) Pro Se Exception. Except as provided in Subpart (c),
22 all unrepresented persons, sometimes referenced as "pro
23 se litigants" or as "persons appearing in propria
24 persona," shall file and serve paper documents.

25 2) Attorney and Trustee Waivers. Attorneys who
26 regularly practice and trustees assigned cases in the
27 Eastern District of California shall register as users
28 of the Court's electronic filing system and file
documents in electronic form, provided, however, that
an attorney or trustee may apply for a waiver of this
requirement. A request for waiver shall be submitted as
an ex parte application supported by a declaration
demonstrating cause for relief from the requirement to
file in electronic form. The decision to permit the
filing of paper documents is in the sole discretion of
the Court and may be cancelled at any time upon notice
to the attorney.

1 Rule of Bankruptcy Procedure 2002(a)(6) insufficient and will continue
2 the applications for compensation for attorney Daren R. Brinkman, and
3 a financial advisor, Dundon Advisors, LLC to allow proper notice. The
4 court will issue an order from chambers.

5 Dated: July 27, 2020

6 _____/S/_____
7 Fredrick E. Clement
8 United States Bankruptcy Judge
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

Debtor(s)	Attorney for the Debtor(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
All Creditors and interested parties as listed on the Court Matrix.	