

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

**REVISED COMMON DEFAULT
STATEMENT AND EXPANSION OF THE**

**STANDING
ORDER**

**DEFAULT PROCEDURES IN ROCHESTER
AND WATKINS GLEN TO INCLUDE §506(a)
VALUATION MOTIONS**

(A) REVISED “COMMON DEFAULT STATEMENT”

The Common Default Statement is revised to further detail the service of opposing papers. The “Revised Common Default Statement” supersedes the common default statement set forth in the Court’s Standing Order dated August 8, 2000.

- (1) Motion papers subject to the Court’s “default procedures” filed on or after **December 21, 2001** shall include the following Revised Common Default Statement in **bold print**:

“PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN; IF YOU INTEND TO OPPOSE THE MOTION, AT A MINIMUM, YOU MUST SERVE: (1) THE MOVANT AND MOVANT’S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTOR AND DEBTOR’S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS’ COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THE MOTION PURSUANT TO FRBP 9006(a). IN THE EVENT THAT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION UNOPPOSED.”

- (2) With the exception of the revision of the “Common Default Statement” and the addition of a new default procedure for §506(a) valuation motions, the requirements and procedures specific to each default motion type recited in Standing Orders dated August 5, 1992, March 9, 1993 (Revised April 13, 1993), May 20, 1993, July 25, 1994, July 26, 1995, June 1, 1998, June 29, 1999, and August 8, 2000 remain unchanged.

**(C) EXPANSION OF DEFAULT PROCEDURES IN ROCHESTER AND WATKINS
GLEN**

The existing default procedures in Rochester and Watkins Glen are hereby expanded to include valuation motions to determine the status of a secured claim.

- (1) Motion papers filed on or after **December 21, 2001** shall be served on the parties as set forth in Exhibit “A” (attached).
- (2) At least one day prior to the return date of the motion, the Court will accept a consent order and a request to substitute that consent order for the order which accompanied the original motion papers. A cover letter must accompany a substitute consent order. The letter must clearly identify in **bold** the **return date** and **time** of the motion.

- (3) As a result of the Decision by the Honorable John C. Ninfo, II in In re Jeffries, (Case No. 98-20500)(9/28/89, Ninfo, J.), permitting the valuation of a secured claim pursuant to 11 U.S.C. §506(a), in Chapter 13 cases, to be made by motion as a contested matter in the first instance, subject to conversion to an adversary proceeding if appropriate, and the Decision of the Second Circuit in Pond v. Farm Specialist Realty, 252 F.3d 122 (2nd Cir. 2001), it is mandatory that §506(a) valuation motions be brought under the “**default**” procedure unless:
- (a) The movant requests a waiver of the default procedure requirement and the Court grants such request, or
 - (b) The matter is brought on shortened time, in which case the order shortening time shall specifically provide that the matter will be placed on the Court’s regularly scheduled motion calendar at a date and time approved by the Court.
- (4) All responses, including opposition or withdrawal, must clearly identify in **bold** the **return date** and **time** of the motion.

(D) **EXHIBIT “A” - GUIDE TO DEFAULT PROCEDURES FOR MOTIONS HEARD IN ROCHESTER AND WATKINS GLEN**

Exhibit “A” provides a listing of the requirements and procedures for each type of motion covered by the Court’s default procedures and may be revised by the Court from time to time. The only new information in Exhibit “A” is that pertaining to §506(a) motions.

(E) **EXHIBIT “B” - §506(a) MOTION COVER SHEET**

The “Motion Cover Sheet” assists the Court in its review of the motion. The Cover Sheet **MUST** accompany every §506(a) motion and must be served on all parties.

IT IS SO ORDERED.

Dated: November 26, 2001

/s/ _____
Honorable John C. Ninfo, II
Chief United States Bankruptcy Judge

/s/ _____
Honorable Michael J. Kaplan
United States Bankruptcy Judge

/s/ _____
Honorable Carl L. Bucki
United States Bankruptcy Judge