

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

JOHN THOMAS CISNE and  
NANCY ANN CISNE,

Case No. DT 09-11491  
Hon. Scott W. Dales

Debtors.

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**ORDER RE: STIPULATION FOR RELIEF FROM STAY**

PRESENT: HONORABLE SCOTT W. DALES  
United States Bankruptcy Judge

The court held a hearing on March 18, 2010 in Traverse City, Michigan to consider the stipulation for relief from the automatic stay filed by Deutsche Bank National Trust Company (the "Bank"). The court set the matter for hearing not because of doubts about the merits of the agreement but rather because of doubts about the process the parties employed to obtain its approval. More specifically, the court was concerned that the parties had not complied with Rule 4001(d). The court took the matter under advisement.

At the hearing, counsel for the Bank indicated that the Bank had served the proposed "Stipulated Agreement" upon the twenty largest creditors as Rule 4001 requires. After reviewing the docket, the court agrees that the Bank in fact served the twenty largest creditors on or about March 9, 2010 -- the day the parties presented the agreement for the court's approval. However, it does not appear that the Debtors or the Bank gave the twenty largest creditors an opportunity to object to the agreement. Rather, by submitting a proposed order on the same date they served the twenty largest creditors, the parties to the agreement potentially foreclosed the opportunity for an objection.

Moreover, the court cannot find that the agreement comes within Rule 4001(d)(4)'s exception to the motion requirement because the original motion for relief from stay (DN 28) did not give the twenty largest creditors notice of the material terms of the agreement modifying the stay (DN 44), including the adequate protection payments the Bank and the Debtors negotiated. In short, the court concludes that in order to obtain approval of this agreement related to the automatic stay and adequate protection, the parties must comply with Rule 4001(d)(1) and LBR 4001-3 by giving the service parties notice of the proposed agreement *and* an opportunity to object. See Fed. R. Bankr. P. 4001(d)(1).

The court does not expect that the agreement will draw any objection, but it remains a possibility. The court does believe, however, that it must protect the process by which a private bargain may become binding on those not present at the negotiation. The brief delay occasioned by compliance with Rule 4001(d) is a small price to pay for the relief embodied in the proposed agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Bank shall:

1. Prepare a motion to approve the agreement modifying the automatic stay and authorizing pre-confirmation adequate protection payments in compliance with Rule 4001(d)(1);
2. Give notice and opportunity to object to the parties specified in Rule 4001(d)(1)(C); and
3. If the motion meets no objection within the time prescribed by local rule, the court will enter an order approving the agreement without additional hearing.

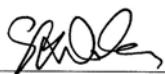
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Michael J. Corcoran, Esq., Dean E. Rietberg, Esq., Elizabeth M. Abood-Carroll, Esq., and Susan Jill Rice, Esq.

[END OF ORDER]

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**IT IS SO ORDERED.**



  
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Scott W. Dales  
United States Bankruptcy Judge

**Dated: March 19, 2010**