



GETTING THE BALL TO THE GOAL Trial Fundamentals in § 362(c) hearings

Susan Tran
 Judge David R. Jones

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So you want something. Now what...?

- It all starts with your pleadings. Pleadings are the court's road map to your case.



Make the Pleading *Effective!*

- Short and sweet is usually best.
- Reciting the rights facts is key.
- Have a theory. Consider a summary of the pleading at the beginning.
- Lengthy boilerplate and legalese – RESIST THEM.
- A good pleading tells a story.



You are set for trial ...

- Outline a plan of action.
- Determine what elements you need to prove:
 - What witnesses will you need?
 - What exhibits are probative to each element?
 - How will you get your exhibits into evidence?
- Witnesses – What about proffers?

Using Proffers

- Know your judge's policies and preferences. BE PREPARED to put your witness on the stand.
- If motion is opposed, have a discussion with counsel regarding the use of a proffer.
- Separate statements of counsel from those of your witness.
- 1st person vs. 3rd person delivery.
- From whom do you want the Court to hear the negatives?
- Review proffer with the witness prior to the hearing.
- Again, remember, the goal is to tell your story! Use plain English.

11 U.S.C. § 362(c)(3)

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(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

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(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

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A Proffer Example – Which do you think is more effective?

- Facts:
 - Current case filed August 1, 2017. Motion to extend the stay filed on August 20, 2017. The motion did not contain a certificate of service.
 - First case filed March 1, 2017. Plan confirmed on May 15, 2017.
 - Case dismissed July 20, 2017 due to non-payment
 - Counsel did not attend the dismissal hearing as she was attending the Galveston consumer conference.
 - Motion to lift stay filed by Totem Notes, Inc. seeking to repossess BMW 750i was pending at the time of dismissal.
 - Debtor's mother died on July 15, 2017 after a six month battle with cancer.
 - Debtor was arrested on July 15, 2017 for DWI while driving the BMW. Debtor had no insurance at time of incident. Debtor now has insurance that requires weekly payments.



Questions?

(Applause for Susan)