

OFFICE OF THE CHAPTER 13 TRUSTEE

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Update to Trustee's Policy Regarding Unclaimed Funds

Effective May 14, 2012

The following constitutes an update to the Trustee's Unclaimed Funds policy as of the date of this Memorandum. Bradford W. Caraway, Chapter 13 Trustee ("Trustee"), disburses funds in a Chapter 13 case to creditors and other parties pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Debtor's plan, the Confirmation Order, and other Orders of the Court. From time to time, multiple distribution checks issued by the Trustee to a particular creditor are not presented for payment in a timely manner under circumstances such as:

- Three (3) distribution checks issued by the Trustee to a creditor pursuant to the confirmed plan and the creditor's allowed proof of claim are not presented for payment to the Trustee's bank within 90 days of the date that the checks were issued ("Stale-Dated Checks").
- Three (3) distribution checks mailed by the Trustee to a creditor pursuant to the confirmed plan and the creditor's allowed proof of claim are returned to the Trustee as undeliverable by the U.S. Postal Service ("Undeliverable Checks").

When these situations arise, the Trustee will take the following steps pursuant to 11 U.S.C. § 347(a) and Fed. R. Bankr. P. 3011:

1. After three (3) distribution checks to a particular creditor become Stale-Dated, the Trustee will proceed to Step 3 below at least 90 days after the date that the Trustee issued the third distribution check to the creditor.
2. After three (3) distribution checks are returned as Undeliverable, the Trustee's office will attempt to locate and contact the payee-creditor for 21 days. If the creditor is not located, the Trustee will proceed to Step 3 below at least 21 days after the date that the Trustee received the third Undeliverable Check from the U.S. Postal Service.
3. After the time periods in Steps 1 and 2 have lapsed, the Trustee will cancel the distribution checks, place the creditor's claim on "accrue" status in his case management software, and will issue no further distribution checks to that creditor. Funds from the canceled checks and all future distributions for that claim will be set aside and held in trust for that creditor as unclaimed funds until the end of the case. The Disbursement Code column on the Trustee's interim statement will reflect an "A" for accrue status and the unclaimed funds will be held in trust with

other plan funds. All plan funds, including unclaimed funds, will be listed in the “Less Available” field of the Trustee’s interim statement.

4. At the end of the case following plan completion, dismissal, or conversion, the Trustee will pay these unclaimed funds to the U.S. Bankruptcy Clerk pursuant to 11 U.S.C. § 347(a). The Trustee will also file a list of entities and the unclaimed amounts with the Court pursuant to Bankruptcy Rule 3011.
5. If the Trustee has placed a claim on accrue due to a Stale-Dated Check or an Undeliverable Check and he is holding unclaimed funds in trust for that creditor, the Trustee maintains that these unclaimed funds are not available to any entity besides the designated payee. They cannot be paid to the debtor, the debtor’s attorney, or another creditor in the case because the Trustee is required as a fiduciary to hold these funds in trust as a distribution under the confirmed plan for the benefit of the creditor who filed the proof of claim.
6. Please be aware that the Trustee places claims on accrue in his software for other reasons not related to unclaimed funds, such as claim objections or Court Orders. If you have questions about unclaimed funds, claims on accrue, or a case where the Trustee is holding available funds, please contact an attorney or an accountant in the Trustee’s office.