IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of :

DANNY L. MASON, : Case No. 91-00882-C J

DENISE R. MASON,

: Chapter 13

Debtor

ORDER DIRECTING FILING OF AMENDED PLAN

On April 29, 1991 the debtors submitted a bar date noticed amended Chapter 13 plan before confirmation. The clerk's office returned the bar date notice and the amended plan to the debtors on April 30, 1991 because a motion to amend, a bar date notice, a certificate of service and a proposed order did not accompany the amended plan. On May 6, 1991 the debtors filed an application asking the court to order the clerk to file the debtors' amended plan.

In accordance with 11 U.S.C. section 1323(a) and (b), the debtors' amended plan should be filed. Although a modified plan filed before confirmation becomes the plan under consideration, the court can not confirm an amended plan without "notice and a hearing". The court would be required to schedule a courtroom hearing on every amended plan but for the bar date procedure utilized in this district and set out in Local Rule 14. If no timely objections to a properly noticed amended plan are filed, a courtroom hearing is unnecessary.

The court points out that the local rule requires a debtor to

¹ The "deemed accepted" concept found in 1323(c) applies only to secured creditors, not to the trustee or unsecured creditors.

file a motion to modify (to amend). As the rule is written, the bar date notice procedure applies to the motion, not to the amended plan per se.² Thus, debtors must submit a motion to modify, a bar date notice regarding the motion, a certificate of service and a proposed order.³

THEREFORE, IT IS ORDERED that the debtors' amended plan be filed as of the date submitted. The debtors shall file a motion to modify, a bar date notice regarding the motion and a certificate of service and a proposed order granting the motion.

Dated this 14th day of May, 1991.

LEE M. JACKWIG CHIEF U.S. BANKRUPTCY JUDGE

Every effort was made to draft the local rules in such a way that they complied with the national rules, addressed concerns raised by the clerk's office, the U.S. Trustee's office and the general bankruptcy practitioner, and yet maintained established and acceptable procedures whenever possible. Unfortunately, the prior practice with respect to modification of Chapter 13 plans both before and after confirmation was never uniform and the new rules have not yet succeeded in correcting that situation.

The proposed order (granting the motion, not confirming the plan) may seem either inappropriate given section 1323(a) and (b) or superfluous insofar as a form confirmation order will be processed by the clerk's office when an amended plan is confirmed. Until the local rules are revised, however, debtors should continue to submit a proposed order granting the motion to modify. Parties in interest who wish to object to the amended plan should do so within the time period set forth in the bar date notice regarding the motion to modify.