

FILED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO

In re)
CLERK OF COURT)
U.S. BANKRUPTCY COURT) **GENERAL ORDER 30-2**
ORDER REGARDING COMPLEX)
CHAPTER 11 CASES)

This Order, effective October 10, 2019 supersedes all prior Orders of this Court on Complex Chapter 11 Cases.

(a) Definition of Complex Case. A case is eligible to be a complex case if (1) it is filed under chapter 11 of the Code; (2) it is not filed by an individual debtor, as a single asset real estate case, or as a small business case as defined in § 101(51C) of the Code; and (3) the debt of the debtor or the aggregate debt of all affiliated debtors is at least \$10 million or it involves a debtor with publicly traded debt or equity.

(b) Election and Verification. A debtor whose case is eligible to be treated as a complex case may file a notice of election as a complex case. The debtor shall file a notice of election concurrently with the petition. Upon the filing of the notice of election, the case shall be deemed to be a complex case unless and until otherwise ordered. Verification of a case as a complex case shall be acknowledged in the case management order entered in the case. Only cases that are verified as complex cases shall be treated as complex cases. If a case fails to be verified as a complex case, the case shall be reassigned to a judge pursuant to LBR 1071-1.

(c) Election and Verification in an Involuntary Case. An involuntary debtor whose case is eligible to be treated as a complex case may file a notice of election as a complex case. The involuntary debtor shall file a notice of election concurrently with the filing of an answer or other responsive pleading to the petition or within twenty-one (21) days after service of the summons, whichever is earlier. Upon the filing of the notice of election, the involuntary case shall be deemed

to be a complex case unless and until otherwise ordered. Verification of an involuntary case as a complex case shall be acknowledged in the case management order entered in the case. Only involuntary cases that are verified as complex cases shall be treated as complex cases. If an involuntary case fails to be verified as a complex case, the case shall not be reassigned. If an involuntary case is verified as a complex case, the case shall be reassigned to a designated judge consistent with (f) below. The filing of a notice of election is not a consent to the order for relief.

(d) CM/ECF Procedures. Instructions for selecting a complex case when filing a petition are available on the court's website at www.ohsb.uscourts.gov.

(e) Affiliated Debtors. If one or more affiliated debtors files a complex case in this district, the cases of all of the affiliated debtors shall be treated as complex cases.

(f) Judge Assignment. Complex cases shall be randomly assigned between two designated judges. The two designated judges shall be chosen by the court from a majority vote of the judges. One designated judge shall sit in the Eastern Division and one designated judge shall sit in the Western Division. The names of the designated judges and term lengths are available on the court's website. Initially, one designated judge shall serve a term of four years and one designated judge shall serve a term of three years. Thereafter, the terms shall be three-year terms. The judge assigned to a complex case shall retain the case independent of term length.

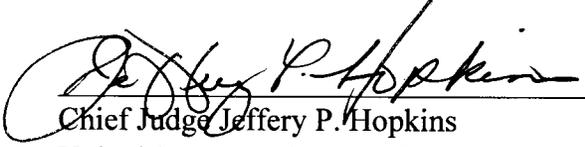
(g) Filing Location. The filing location and judge assignment in a complex case are not determined by LBR 1071-1.

(h) Failure to Elect. A debtor whose case is eligible to be treated as a complex case but chooses not to file a notice of election shall not be eligible to be treated as a complex case. The case shall be assigned a judge pursuant to LBR 1071-1.

(i) Procedures for Complex Cases. A complex case shall be subject to procedures set forth in Appendix A attached hereto. In the event of a conflict between a complex case procedure and another local rule, the complex case procedure shall control.

SO ORDERED.

Dated: 10/10/19



Chief Judge Jeffrey P. Hopkins
United States Bankruptcy Court
Southern District of Ohio

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PROCEDURES FOR COMPLEX CHAPTER 11 CASES

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APPENDIX A

PROCEDURES FOR COMPLEX CHAPTER 11 CASES

APPLICABILITY

These procedures shall be applicable in a complex case as defined in General Order 30-2.

VENUE

Debtor Domiciled in Ohio. Any debtor with its domicile in the State of Ohio for the last one hundred eighty (180) days immediately preceding commencement of the case, or for a longer portion of such one hundred eighty (180) day period than its domicile was located in any other state, may file in either division of this district. Judge assignment will be made pursuant to General Order 30-2.

Debtor Domiciled Elsewhere. Any debtor domiciled outside the State of Ohio with its principal place of business or principal assets located in this district for the last one hundred eighty (180) days immediately preceding commencement of the case, or for a longer portion of such one hundred eighty (180) day period than its principal place of business or principal assets were located in any other district, may file in the division of this district where the principal place of business or principal assets are located. Judge assignment will be made pursuant to General Order 30-2.

NOTICE OF ELECTION

A form notice of election as a complex case is attached. Use of this form is mandatory.

ADVANCE NOTICE TO UNITED STATES TRUSTEE AND CLERK OF FILING OF COMPLEX CASE

Unless there are exigent circumstances, the debtor's attorney shall contact the United States trustee and the clerk at least two (2) business days prior to the filing of a petition for a complex case. The debtor's attorney shall identify all matters that require consideration on or near the first day of the case. The debtor's attorney shall not disclose the identity of the debtor.

JOINT ADMINISTRATION

Order Required. An order of joint administration may be entered without notice and opportunity for a hearing upon the filing of a motion for joint administration pursuant to Rule 1015 if it is supported by an affidavit, declaration or verification establishing that the joint administration of the cases is warranted and will ease the administrative burden for the court and the parties. An order of joint administration entered in accordance with this procedure may be reconsidered upon motion of any party in interest at any time. An order of joint administration is for procedural purposes only and shall not cause a substantive consolidation of the respective debtors' estates.

Schedules and Statements of Financial Affairs. Notwithstanding the entry of an order for joint administration, schedules and statements of financial affairs and any amendments thereto shall be filed for each debtor and docketed in that debtor's case and in the lead case. The statistical information requested by CM/ECF upon docketing shall be filled out for each separate debtor.

MASTER SERVICE LIST

Required Parties. The debtor shall maintain a master service list identifying the parties to be served whenever a motion or other document requires notice. Unless otherwise required by the Code or Rules, notices of motions and other matters shall be limited to the parties on the master service list. The master service list shall initially include:

- (1) the debtor;
- (2) the debtor's attorney;
- (3) the United States trustee;
- (4) any pre-petition secured lender;
- (5) any post-petition secured lender;
- (6) the debtor's twenty (20) largest unsecured creditors;
- (7) any committee appointed under the Code and its attorney;
- (8) any party who specifically requested notice;
- (9) any applicable government agencies to the extent required by the Rules;
- (10) any indenture trustee; and
- (11) any petitioning creditors.

Updates. The initial master service list shall be filed with the petition. The debtor shall file an updated master service list at least every seven (7) days during the first thirty (30) days of the case and at least every thirty (30) days thereafter throughout the case; provided, if there are no changes to the list, an updated master service list need not be filed.

Jointly Administered Cases. If joint administration is sought, the debtor shall file a consolidated list of unsecured creditors of no less than 30 and no more than 50 largest unsecured creditors. The list shall be filed in the proposed lead case.

CASE MANAGEMENT ORDER

Contents. A case management order shall be entered in every complex case. The case management order shall include, but is not limited to, the following:

- (1) acknowledgment of verification of the case as a complex case;
- (2) a recitation of the “Master Service List” procedure as set forth in these Procedures for Complex Chapter 11 Cases;
- (3) a recitation of the “Hearing Procedures” and “Hearing Agenda” procedures as set forth in these Procedures for Complex Chapter 11 Cases;
- (4) instructions for arranging telephonic appearances at hearings;
- (5) claims and noticing agent contact information;
- (6) a recitation of the “Professional Compensation and Reimbursement of Expenses” procedures as set forth in these Procedures for Complex Chapter 11 Cases;
- (7) a recitation of the “Certificates of Service” procedure as set forth in these Procedures for Complex Chapter 11 Cases;
- (8) a recitation of the “Proposed Orders” procedure as set forth in these Procedures for Complex Chapter 11 Cases;
- (9) a recitation of the “Bridge Orders” procedure as set forth in these Procedures for Complex Chapter 11.

Service. The debtor shall serve the case management order as soon as practicable.

Optional Form. A form order is attached. Use of the form is optional.

HEARING PROCEDURES

First Day Hearings

Request. If the debtor files motions or other documents that require consideration on or near the first day of the case (the “First Day Matters”), the debtor shall file a motion for expedited consideration. The debtor’s attorney shall contact the chambers of the judge assigned to the case regarding the request. Chambers shall notify the debtor’s attorney of the hearing date and time. First Day Matters shall be heard within two (2) business days of the request.

Notice of Hearing. Upon the entry of an order granting the request for expedited consideration of certain First Day Matters (the “First Day Order and Notice”), the debtor’s attorney shall promptly serve a copy of the First Day Order and Notice by hand delivery, facsimile, electronic mail, overnight mail or by next day United States mail on the parties on the Master Service List and any other party asserting a security interest in the assets of the debtor that are the subject of a First Day Matter.

Service of Documents. The debtor may post the First Day Matters on the noticing agent’s website. Such a posting, together with service of the First Day Order and Notice, shall be sufficient notice of the First Day Matters and the hearing to consider those matters, provided the First Day Order and Notice includes a website URL to the documents on the website and the contact information, including the name, telephone number and email address of the person or persons whom a party may contact to obtain a copy of the First Day Matters in another format, including paper, at the expense of the debtor. If service is not made as set forth in this paragraph, service shall be made in the same manner as set forth in the paragraph above titled Notice of Hearing.

Paper Copies to Chambers. The debtor’s attorney shall provide paper copies of all First Day Matters and a proposed agenda to chambers as soon as practicable following the filing of the petition.

Omnibus Hearings

Request. The debtor may request that the court establish weekly, bi-monthly or monthly dates and times for omnibus hearings (the “Omnibus Hearings”). This may be a first day motion. The court shall accommodate this request if it appears justified. The court shall adjust the frequency of the dates as necessary based on the progress of the case.

Matters to Be Heard. After the Omnibus Hearing dates are established, any matter in the case, whether initiated by the debtor or another party, shall be set on an Omnibus Hearing date. Unless otherwise ordered, any matter filed at least fourteen (14) days before the next Omnibus Hearing date shall be heard on the next Omnibus Hearing date. Objections, if any, shall be filed at least seven (7) days before the Omnibus Hearing date. Replies, if any, shall be filed at least three (3) days before the Omnibus Hearing date. The motion or other initiating document shall include the Omnibus Hearing date and time, the deadline for objections, and the deadline for replies.

Notice of Hearing. Service of the agenda as set forth herein shall constitute service of notice of matters to be heard at Omnibus Hearings.

General

Expedited Hearings. If a party files a motion or other document that it contends requires consideration on less than fourteen (14) days' notice, the party shall file a separate motion for expedited hearing which shall include an explanation of the need for an expedited hearing. Motions for expedited hearings shall only be granted for cause shown. If the court grants the motion for an expedited hearing, the underlying motion or document will be set on the next Omnibus Hearing date or other date as determined by chambers. The agenda shall clearly denote any matter that is scheduled to be heard on an expedited basis.

Evidentiary Hearings. Every hearing is presumed to be an evidentiary hearing. The agenda shall clearly denote any matter that is scheduled to be heard as an evidentiary hearing.

Telephonic Appearances. A motion for a telephonic appearance is not necessary. The case management order entered in the case shall include instructions for arranging a telephonic appearance. Unless otherwise ordered, testimony and exhibits may not be offered by an attorney appearing telephonically.

Electronic Devices. Use of cellular telephones, laptops and other electronic devices in the courtroom by attorneys and parties shall be permitted, except recording devices. All devices shall be set to silent.

HEARING AGENDAS

Filing and Service. At least two (2) business days before the hearing, the attorney for the debtor or trustee shall file an agenda and serve it on the Master Service List.

Sequence of Matters. Uncontested matters shall be listed before contested matters.

Contents. For each matter, the agenda shall indicate the following:

- (1) moving party's name;
- (2) docket number of the initiating document; and
- (3) status, e.g., settled, going forward, continuance requested, continuance opposed, continued by consent.

For each matter going forward or where a request for continuance is opposed, the agenda shall also include the following:

- (4) docket number of any objections, responses, replies and documents in support; and
- (5) filing party's name.

Settlements. Chambers shall be promptly notified of a settlement.

Omnibus Objections to Claims. The agenda may list responses continued by consent collectively.

Expedited and Evidentiary Hearings. The agenda shall clearly denote any expedited hearings and evidentiary hearings.

Amended Agendas. Amended agendas shall be filed. Amendments shall be highlighted in some fashion. Only amendments from the most recently filed prior agenda shall be highlighted.

Not Limiting. The requirements listed above do not prohibit the inclusion of other procedural information that would be helpful.

CLAIMS AND NOTICING AGENTS

Unless otherwise ordered, claims agents and noticing agents shall be retained. This may be a first day motion.

CASH COLLATERAL/POSTPETITION FINANCING

Motion Required. Except as provided herein and elsewhere in the Local Rules, in a complex case, all cash collateral and financing requests under § 363 and 364 of the Code shall be by motion filed pursuant to Rules 2002, 4001, and 9014. Stipulations or agreed orders regarding the use of cash collateral or financing requests are subject to these procedures.

Concise Statement. The motion shall include a concise statement meeting the requirements set forth in Rule 4001(b)(1)(B) and Rule 4001(c)(1)(B), as applicable.

Provisions to be Highlighted. If the proposed relief, form of order and/or stipulation contains any of the following, the motion must (1) recite which of the following is included, (2) identify and highlight the location of any such provision in the proposed order and/or stipulation, (3) state the justification for the inclusion of such provision, and (4) identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2).

(1) Cross-collateralization clauses (i.e., clauses that secure the repayment of prepetition debt with postpetition assets in which the secured lender would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law).

(2) Roll-up clauses (i.e., clauses that provide for the use of property of the estate or the proceeds of a postpetition loan to make cash payments on prepetition debt).

(3) Provisions or findings of fact that release, waive, or limit any claim or other cause of action belonging to the estate or the trustee, including but not limited to (4), (5), (6), and (7) below:

- (4) the release, waiver, or limitation of claims or other causes of action against any secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the interim order and the creditors' committee, if appointed, at least sixty (60) days from the date of its appointment to investigate such matters;
- (5) the release, waiver or limitation of claims or other causes of action against any secured creditor for alleged prepetition torts or breaches of contract;
- (6) the waiver of avoidance actions under the Code; or
- (7) any modification of the statute of limitations or other deadline to commence an action.
- (8) Provisions or findings of fact that determine the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim.
- (9) Provisions that grant a lien on property of the estate that is not otherwise subject to a lien, grant a junior lien on property of the estate that is subject to a lien, or create a lien senior or equal to any existing lien without the consent of that lienholder.
- (10) Provisions that release, waive or limit any right under § 506(c) of the Code.
- (11) A budget that does not provide for the payment of all accrued and unpaid administrative expense claims.
- (12) Provisions that release, waive or limit any right under § 552(b) of the Code.
- (13) Provisions that grant a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 727(a) of the Code.
- (14) Provisions that provide disparate treatment with regard to professional fee carveouts for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor.
- (15) Provisions that prime administrative expenses of the kind described in § 503(b) or 507(a) of the Code.
- (16) Provisions that waive or modify any entity's authority or right to file a plan or seek an extension of time in which the debtor has the exclusive right to file a plan or otherwise operate to divest the debtor of any discretion in the administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.
- (17) Provisions that establish deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order.
- (18) Provisions providing for the indemnification of any entity.

(19) Provisions waiving or modifying provisions of the Code or applicable Rules relating to the automatic stay.

(20) Provisions that waive or modify the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien.

(21) Provisions that waive or modify the debtor's right to move for a court order pursuant to § 363(c)(2)(B) of the Code authorizing the use of cash collateral or § 364 of the Code to obtain credit.

(22) Provisions that grant a lien in an amount in excess of the dollar amount of cash collateral authorized under the applicable cash collateral order.

(23) Findings of fact on matters extraneous to the approval process.

(24) Provisions that bar the debtor from future bankruptcy filings.

Checklist. The motion shall be accompanied by a checklist identifying the location and type of each highlighted provision. A form checklist is attached. Use of the form checklist is mandatory. Compliance with this subsection negates the need to file a separate checklist under Rule 4001.

Documents. The motion shall be accompanied by copies of all documents evidencing postpetition financing or by which the interest of all entities in the cash collateral was created or perfected. If any documents are unavailable or it is unduly burdensome to attach the documents, the motion shall include an explanation. The debtor shall use its best effort to obtain and file any documents that are unavailable as soon as possible after the motion is filed and unless otherwise approved by the court, not later than seven (7) business days after the filing of the motion.

Interim Relief at Outset of Case. When a motion is filed on or shortly after the date of the entry of the order for relief, the court may grant interim relief pending review of the proposed financing arrangements by the interested parties. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court will not approve interim financing orders that include any of the highlighted provisions identified above.

Immediate Relief During Pendency of Case. If, during the pendency of the case, the debtor asserts an immediate need for the use of cash collateral, the court may schedule a preliminary hearing on the motion after notice has been provided to any entity claiming an interest in the cash collateral. Notice may be by telephone, facsimile or email if time does not permit notification by mail.

SALE OF SUBSTANTIALLY ALL ASSETS

A motion to sell substantially all the debtor's assets may be considered on an expedited basis.

CRITICAL VENDORS

A motion to pay critical vendors may be filed as a first day motion. The motion shall include the aggregate interim and final payment amounts requested.

DISCLOSURE STATEMENT AND CONFIRMATION

For cause, a party may request a combined hearing on approval of the disclosure statement and confirmation of the plan.

PROFESSIONAL COMPENSATION AND REIMBURSEMENT OF EXPENSES

Purpose. To streamline the professional compensation process and more effectively enable the court and all parties to monitor the professional fees incurred, the following procedures shall apply, unless otherwise ordered.

Service of Monthly Statement. After the end of a month for which compensation is sought, each professional seeking compensation may serve a monthly statement (the “Monthly Statement”) on (1) the debtor’s attorney, (2) the United States trustee (3) any pre-petition secured lender, (4) any post-petition secured lender, (5) the attorney for any committee appointed under the Code, and (6) any other party the court designates (collectively, the “Professional Fee Notice Parties”).

Contents. The Monthly Statement shall contain a list of individuals and their job titles who provided the services during the statement period, their billing rates, the aggregate hours spent by each individual, contemporaneously maintained time entries for each individual in increments of tenths of an hour, and a reasonably detailed breakdown of expenses incurred. The Monthly Statement shall include a notice that any objections shall be filed within ten (10) days of service of the Monthly Statement. After the expiration of the ten (10) day period, the Debtor shall be authorized to pay 90% of the undisputed fees and expenses identified in the Monthly Statement.

Filing of Summary. If a Monthly Statement is served, a summary of the total fees and expenses requested shall be filed.

Objections. Any objection to a Monthly Statement shall be served on the affected professional and the other Professional Fee Notice Parties. The objection shall state the nature of the objection and the amount of fees or expenses at issue. After expiration of the ten (10) day period, the debtor shall be authorized to pay the remainder of the fees and expenses identified in the Monthly Statement.

Resolutions. If any objecting party resolves a dispute with a professional, the objecting party or the debtor with the consent of the objecting party, shall serve a notice on the Professional Fee Notice Parties that the objection is withdrawn. The notice shall describe the terms of the resolution. The debtor shall be authorized to pay the portion of the fees and expenses identified in the Monthly Statement that is no longer subject to an objection.

Preservation of Objections. Any objection that is not resolved shall be preserved and presented to the court at the next interim or final fee application hearing.

No Waiver. Whether a party objects to a Monthly Statement or not, any party may object to any fee application filed with the court in accordance with the Code. The failure to object to a Monthly Statement shall not be a waiver of any kind or prejudice that party's right to object to any subsequently filed fee application.

Applications. Each professional shall file an application for interim or final approval of allowance of compensation and reimbursement of expenses pursuant to §§ 330 and 331 of the Code, including compensation previously paid by the debtor on the basis of a Monthly Statement, every one hundred and twenty (120) days, unless the court orders a different frequency.

Court Approval. Neither the payment of nor the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses shall have any effect on the court's interim or final allowance of compensation or reimbursement of expenses. All fees and expenses, whether or not paid or objected to in connection with a Monthly Statement, remain subject to review and approval by the court in connection with interim and final fee applications. All fees and expenses are subject to disgorgement or offset if not approved by the court on a final basis.

Standard Hourly Rates. Professionals, including attorneys, may request and be awarded compensation at their standard hourly rates.

Committee Members. These procedures may be used for reimbursement of expenses for members of a committee appointed under the Code. The attorney for the committee shall collect and submit statements of expenses, with supporting vouchers, from the committee members.

Investment Bankers. An investment banker may file an application for employment under § 328 of the Code.

UNSECURED CREDITORS' COMMITTEE

The United States trustee shall file the solicitation form. The United States trustee shall use best efforts to file a notice of appointment within fourteen (14) days of the petition date.

PRO HAC VICE ADMISSION

Motions for admission pro hac vice may be considered ex parte. A form motion and form order are attached. Use of these forms is optional.

SERVICE AND CERTIFICATES OF SERVICE

Service. Any party whose interest is directly affected by the relief sought in a filed document shall be served with all filed documents relating to that interest.

Certificates of Service. Certificates of service may be filed separately from the served document. A separately filed certificate of service shall be filed but does not need to be served.

PROPOSED ORDERS

Every motion or other request for relief shall include a proposed order as an attachment. If the proposed order is not attached, the motion shall include an explanation.

AUTOMATIC BRIDGE ORDERS

If a motion to extend the time to take any action is filed before the expiration of the period presumed by the Code, the Rules, the Local Rules, the Federal Rules of Civil Procedure or court order, the time shall be automatically extended until the court acts on the motion, without the necessity of a bridge order.