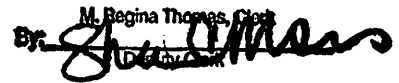


NOV - 4 2019

By M. Regina Thomas, Clerk  


UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA

IN RE:

PROCEDURES FOR  
COMPLEX CHAPTER 11 CASES

GENERAL ORDER NO. 26-2019

AMENDED AND RESTATED  
ORDER

This Order establishes procedures for use throughout the District in Chapter 11 cases that are designated by the Court as “Complex Chapter 11 Cases.” The procedures set forth in this Order shall apply to all Complex Chapter 11 Cases filed in this District after the entry of this Order.

**A. Definition and Designation of Complex Chapter 11 Cases**

1. A “**Complex Chapter 11 Case**” is a voluntary case filed in this District under Chapter 11 of the Bankruptcy Code that requires special scheduling and other procedures because of a combination of the following factors:
  - a. The size of the case (usually total debt or total assets of more than \$25 million, excluding debt held by an insider (as defined in Section 101 of the Bankruptcy Code));
  - b. The large number of parties in interest in the case (excluding current and former employees);
  - c. Claims against the Debtor and/or equity interests in the Debtor are publicly traded (with some creditors possibly being represented by indenture trustees); or
  - d. Any other circumstances justifying complex case treatment.
  - e. A Complex Chapter 11 Case cannot be a case filed by (1) an individual or (2) a debtor owning “single asset real estate” (as defined in Section 101 of the Bankruptcy Code), unless circumstances justify Complex Chapter 11 Case treatment.

A case that is jointly administered with a Complex Chapter 11 Case or jointly administered cases that together are treated as Complex Chapter 11 Cases will be referred to hereafter in the singular as a Complex Chapter 11 Case.

2. If a Debtor filing a Chapter 11 bankruptcy petition requests that the case be designated as a Complex Chapter 11 Case, it shall file with the bankruptcy petition a Notice of Designation as Complex Chapter 11 Case in the form attached hereto as Exhibit A, together with an affidavit of an authorized officer of the Debtor setting forth the specific facts supporting the request.
3. When a Debtor has filed a Chapter 11 case and a Notice of Designation as Complex Chapter 11 Case, the Clerk of Court shall:
  - a. If the case is filed in the Atlanta Division, assign the case randomly to a judge on the Panel, as defined below;
  - b. If the case is filed in a division in this District other than Atlanta, the case shall be assigned to a judge in that division in accordance with the usual procedures and general orders of the District or division;
  - c. Immediately notify the judge assigned to the case about the case and any First Day Matters (as that term is defined below); and
  - d. Serve counsel for the Debtor with the order entered by the Court relating to the complex case treatment.
4. **Complex Chapter 11 Case Treatment Granted.** If the judge determines that the case should be treated as a Complex Chapter 11 Case, Chambers shall contact counsel for the Debtor regarding the date and time for hearings on the First Day Matters and the Court shall issue an Order Granting Complex Chapter 11 Case Treatment and Scheduling Hearing on First Day Matters in the form attached hereto as Exhibit D. If an Order is entered granting Complex Chapter 11 Case treatment, the procedures set forth in this General Order shall apply.
5. **Complex Chapter 11 Case Treatment Denied.** If the judge assigned to the case determines that the case does not qualify as a Complex Chapter 11 Case, the Court shall issue an Order Denying Complex Case Treatment in the form attached hereto as Exhibit C. With respect to such a case filed in the Atlanta Division for which Complex Chapter 11 Case treatment is sought, if the judge initially assigned to the case determines that it does not qualify as a Complex Chapter 11 Case, it shall be reassigned to a judge in the Atlanta Division in accordance with the usual procedures and general orders of the District. With respect to a case filed in a division other than Atlanta for which Complex Chapter 11 Case treatment is sought, if the judge initially assigned to the case determines that it does not qualify as a Complex Chapter 11 Case, it shall not be reassigned to another judge. If Complex Chapter 11 Case treatment is denied, the case shall not proceed according to these procedures unless the judge orders otherwise.

## **B. Designation of Panel of Judges and Complex Case Assignment**

1. **Case Filed in Atlanta Division.** A case filed in the Atlanta Division for which the Debtor has requested Complex Chapter 11 Case treatment shall be assigned randomly to a judge on a panel of two bankruptcy judges (the "**Panel**"). The Panel shall be designated by the Court from time-to-time. Judges shall be assigned to the Panel for a three-year term, except that one of the judges on the initial panel shall only have a two-year term and shall be replaced thereafter by a judge who shall serve a three-year term. If a judge on the Panel dies, retires, or resigns from the Panel, the Court will appoint a replacement for a term it determines appropriate under the circumstances.
2. **Case Filed in Other Divisions.** A case filed in a division other than the Atlanta Division for which the Debtor has requested Complex Chapter 11 Case treatment shall be assigned to a judge in that division according to the usual procedures and general orders of the District and the division.
3. The judges on the Panel shall be identified in a separate General Order as selected by the judges serving in the District. At least six months prior to the expiration of the term of a judge on the Panel, the replacement for that judge shall be designated in a General Order.
4. This procedure for assigning Complex Chapter 11 Cases governs over any conflict with the usual procedures and general orders of the Court regarding the assignment of Chapter 11 cases.
5. This Procedure is issued pursuant to 28 U.S.C, § 154(a). It is effective on entry.

## **C. Joint Administration of Complex Chapter 11 Cases**

1. An order of joint administration may be entered without notice and an opportunity for hearing upon the filing of a motion for joint administration pursuant to Fed. R. Bankr. P. 1015 if it is supported by an affidavit, declaration or verification which establishes 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 under this procedure is for procedural purposes only and shall not cause a "substantive" consolidation of the respective Debtors' estates.
2. If joint administration is sought, the Debtors shall file in the proposed lead case a List of the 30 Largest Unsecured Creditors on a Consolidated Basis.

#### **D. Procedures for Limited Service Lists in Complex Chapter 11 Cases**

1. **Applicability of Limited Service List.** The Debtor may establish a limited service list (the “**Limited Service List**”) to be used as set forth in these procedures. The proceedings with respect to which notice would be limited to the Limited Service List include (a) all matters covered by Bankruptcy Rule 2002, with the express exception of the following: (i) notice of the first meeting of creditors pursuant to Section 341 of the Bankruptcy Code; (ii) the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c); (iii) the time fixed for filing objections to, and the hearing to consider approval of, a disclosure statement or confirmation of a plan of reorganization; and (iv) notice and transmittal of ballots for accepting or rejecting a plan of reorganization (collectively, the “**Excluded Matters**”) and (b) any other pleadings that may be required to be served upon all parties-in-interest by the Local Rules. Unless otherwise ordered by the Court, notice of the Excluded Matters shall be provided to all known creditors and other parties-in-interest at their last address known to the Debtor.
2. **Contents of Limited Service List.** The Limited Service List shall include the following: (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtor; (c) counsel for the Debtor; (d) counsel for the official committee of unsecured creditors (the “**Creditors Committee**”), or if a Creditors Committee has not been appointed, the Debtor’s twenty (20) largest unsecured creditors (or in the case of jointly administered Chapter 11 cases, the Debtors’ thirty (30) largest unsecured creditors on a consolidated basis); (e) counsel for any other committee appointed by the Court; (f) counsel to the Debtor’s pre-petition secured lender(s); (g) counsel to Debtor’s debtor-in-possession lender, if any; (h) any other party asserting a security interest in assets of the Debtor or their counsel who has appeared in the case; (i) those persons who have filed a request for service in this case; (j) the Internal Revenue Service; (k) the Georgia Department of Revenue, (l) the Attorney General for the State of Georgia; (m) the United States Attorney for the Northern District of Georgia; (n) the Securities and Exchange Commission if claims against or interests in the Debtor are publicly traded and (o) any other applicable government agency or party in interest the Debtor believes should be on the list or that the Court directs should be included on the list.
3. **Monthly Update of Service List.** The Debtor shall update the Limited Service List not less than monthly and shall file an updated Limited Service List with the Court if it includes changes from the last Limited Service List filed with the Court.
4. **Service of Pleadings on Limited Service List.** Unless the Bankruptcy or Local Rules permit service on fewer parties in interest, any person filing a pleading in this case shall serve such pleading on (a) all parties-in-interest listed on the most recent Limited Service List, and (b) any creditor or other party-in-interest whose interests are likely to be affected directly by the pleading or proceeding.

5. **Consent to Electronic Service.** Electronic service of pleadings and papers in this District is governed by General Order 25-2018 and any amendments thereto or replacements thereof, including the form of certificate of service which is to be used, and is applicable to Complex Chapter 11 Cases; provided, however, that notices required by Bankruptcy Rule 2002(a)(1), (5), and (7), and (b)(1) and (2) are required to be served conventionally in hard copy. Parties on the Limited Service List who are not served electronically pursuant to General Order 25-2018 must be served with a hard copy of the applicable document.
6. **Notice of Appearance.** Any person filing a Notice of Appearance shall include the person's (1) name, (2) mailing address, including street address for overnight and hand delivery, (3) telephone number, (4) facsimile number, if any, (5) email address, if any, and (6) party represented, if any.

**E. Procedures for Obtaining Hearings in Complex Chapter 11 Cases**

1. **Hearing on First Day Matters: Official Form for Request for Expedited Consideration of Certain First Day Matters.**
  - a. **First Day Hearing Request.** If the Debtor has filed pleadings that require immediate consideration on or near the first day of the case ("**First Day Matters**"), the Debtor shall file a "Request for Expedited Consideration of Certain First Day Matters" using the form attached hereto as Exhibit B, together with an affidavit of an authorized officer of the Debtor setting forth the specific facts supporting the request for expedited hearing and the motions to be heard on an expedited basis ("**First Day Hearing Request**"). Counsel for the Debtor shall contact the Chambers for the judge to whom the Complex Chapter 11 Case has been assigned regarding the First Day Hearing Request and Chambers shall notify counsel for the Debtor of the date and time of the hearing. The Court shall hold a hearing within two (2) business days of the First Day Hearing Request.
  - b. **Service of Notice of Hearing on First Day Matters.** Upon entry of an Order Granting Complex Chapter 11 Bankruptcy Case Treatment and Scheduling Hearing on First Day Matters (the "**First Day Order and Notice**"), counsel for the Debtor shall promptly serve a copy of the First Day Order and Notice by hand delivery, facsimile, electronic mail, overnight courier (where a street address is available) or by next-day United States mail upon (1) the Office of the United States Trustee, (2) counsel for the pre-petition senior secured lender(s), (3) counsel to any proposed debtor-in-possession lender, (4) any other party asserting a security interest in assets of the Debtor that are the subject of a First Day Matter, and (5) the twenty (20) largest unsecured creditors (or the thirty (30) largest unsecured creditors on a consolidated basis in a jointly administered case), and file a certificate of such service prior to the hearing. If any of the parties under (4) or (5) are represented by counsel known to the Debtor, service of the First Day Order and Notice should also be served on said counsel.

- c. **Service of Pleadings on First Day Matters.** Pleadings that are the subject of First Day Matters shall be served as follows:
- i. **Website maintained by a Claims and Noticing Agent.** If the Debtor has filed an application to retain a claims and noticing agent, the Debtor may post the First Day Matters on the claims and noticing agent's website. Such a posting, together with service of the First Day Order and Notice as otherwise required herein, shall be sufficient notice of the First Day Matters and the hearing to consider those matters, but only if the First Day Order and Notice (1) contains a link to the pleadings on the agent's website and (2) provides the contact information, including the name, phone number and email address, of the person or persons that a party in interest can contact to obtain a copy of the First Day Matters in another format, including paper, if so desired, at the expense of the Debtor;
  - ii. **Website maintained by the Debtor or Debtor's attorney.** If the Debtor does not seek approval to retain a claims and noticing agent, the Debtor may post the First Day Matters on a website maintained by it or its attorney. Such a posting, together with service of the First Day Order and Notice as otherwise required herein, shall be sufficient notice of the First Day Matters and the hearing to consider those matters, but only if the First Day Order and Notice (1) contains a link to the pleadings on the website and (2) provides the contact information, including the name, phone number and email address, of the person or persons that a party in interest can contact to obtain a copy of the First Day Matters in another format, including paper, if so desired, at the expense of the Debtor; or
  - iii. If the Debtor does not serve the pleadings pursuant to (i) or (ii) above, then service shall be effectuated pursuant to the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Local Rules of this Court (the "**Local Rules**") or as otherwise directed by the Court.
2. **Omnibus Hearing Dates.** The Debtor may request (as one of its First Day Matters or otherwise) that the Court establish a weekly/bi-monthly/monthly date and time for hearings in a case (e.g., every Wednesday at 1:30 p.m.) ("**Omnibus Hearing Dates**"). The Court will accommodate this request for Omnibus Hearing Dates if it appears justified and shall adjust the frequency of the dates as necessary based on the progress of the case. After Omnibus Hearing Dates are established, all matters in the case (whether initiated by the Debtor or another party in interest) will be set on Omnibus Hearing Dates that are at least 14 days after the service of a particular pleading (unless a different period is specifically required by the Bankruptcy Rules or Local Rules, or is otherwise requested by a party or ordered by the Court, and except for claims objections for which at least 30 days' notice is required) and the movant shall indicate the hearing date and time on the face of the pleading below the case/adversary proceeding number. If the movant believes the matter will require testimony or will otherwise take longer than 30 minutes, movant shall advise the

Courtroom Deputy of all such matters prior to filing the pleading, and the Courtroom Deputy will either advise the movant that the Omnibus Hearing Date is suitable or propose to the movant some other dates and times on which there will be enough time to hear the matter.

3. **Notice of Hearing.** Notice of hearing of matters scheduled for Omnibus Hearing Dates shall be prepared and served by the moving party, who shall file a certificate that the notice has been served in accordance with these Procedures, the Bankruptcy Code and the Bankruptcy Rules.
4. **Matters Requiring Expedited Consideration (Other Than First-Day Matters).** If a party in interest files a motion that it contends requires consideration on less than 14 days' notice (or such other notice as is required by the Bankruptcy Rules or Local Rules), the party must file and serve a separate, written motion for expedited hearing with respect to the underlying motion which must comply with the Court's usual requirements for explanation and verification of the need for an expedited hearing. The movant shall also email a copy to Chambers and call Chambers about the motion. The Court will make its best effort to rule on the motion for expedited hearing within one business day from the time it is presented. If the Court grants the motion for an expedited hearing, the underlying motion will be set for hearing by the Courtroom Deputy on the next available Omnibus Hearing Date or at some other appropriate date and time approved by the Court. Motions for expedited hearings will only be granted for clear cause shown with particularity in the body of the motion.
5. **Telephonic Participation.** Unless otherwise directed by the Court, parties in interest may participate telephonically at the hearing on First Day Matters and hearings on Omnibus Hearing Dates and Case Emergencies whenever (and to the extent) practicable. Debtor's counsel will be responsible for coordinating the telephonic participation with Chambers, including the method to be used for parties to participate telephonically. The call-in information should be included in the notice of the hearing on the matter. A party in interest who intends to appear telephonically shall email Chambers prior to the hearing of its intent to appear telephonically. Parties in interest who appear telephonically are deemed to have agreed not to record or otherwise transcribe the proceedings, understand that they will not be able to examine witnesses unless otherwise ordered by the Court under the circumstances of the case and bear the risk of technological difficulties or failure, such as dropped calls or poor reception, etc.

#### **F. Agenda Procedures for Hearings in Complex Chapter 11 Cases**

If three or more matters are noticed for the same hearing date (including, but not limited to, an Omnibus Hearing Date), counsel for the Debtor shall file and serve an agenda describing the nature of the items set for hearing on that date.

1. **Timing of Filing.** An agenda must be filed at least 24 hours prior to the date and time of the hearing of the first matter on that day and contemporaneously be served (or confirm electronic service of the agenda has been effectuated) upon all attorneys who have filed papers with respect to the matters scheduled for hearing and upon the Limited Service List.
2. **Sequence of Items on Agenda.** Uncontested matters shall be listed ahead of contested matters in the order they appear on the Court's docket. Contested matters shall also be listed in the order in which they appear on the Court's docket.
3. **Status Information on Agenda.** For each matter on the agenda, the agenda shall indicate the moving party, the nature of the matter, the docket number of the pleading and any response or objection, if known, the response deadline (if any), and the status of the matter. The status description shall indicate whether the matter is settled, going forward, whether a continuance is requested (and any opposition to the continuance, if known), and any other pertinent information. If any person has not filed a responsive pleading but has engaged in written or oral communications with counsel for the Debtor, and counsel for the Debtor believes that person may appear at the hearing to object or respond to the pleading, that fact shall be indicated on the agenda, as well as the status or outcome of those communications. For an omnibus objection to claims, responses to the objection that have been continued by consent may be listed collectively (e.g., "the following objections and responses have been continued by consent:").
4. **Changes in Agenda Information.** After the filing of the agenda, counsel shall notify chambers, preferably by email, but by telephone if necessary, of additional related pleadings that have been filed and changes in the status of any agenda matter.
5. **Not Exclusive.** The requirements listed above should not be construed to prohibit other information of a procedural nature that counsel thinks would be helpful to the Court.

#### **G. Cash Collateral and Financing Motions and Orders**

1. **Motions.** Except as provided herein and elsewhere in these procedures, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014 ("**Financing Motions**").
  - a. **Provisions to be Highlighted.** All Financing Motions must (1) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (2) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement and (3) justify the inclusion of such provision:
    - i. Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e.,

clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);

- ii. Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters;
  - iii. Provisions that seek to waive, without notice, whatever rights the estate may have under 11 U.S.C. § 506(c);
  - iv. Provisions that grant to the prepetition secured creditor liens on the Debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549;
  - v. Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);
  - vi. Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the Debtor with respect to a professional fee carve-out;
  - vii. Provisions that prime any secured lien without the consent of that lienor; and
  - viii. Provisions that seek to affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)(1).
- b. **Provisions to be Summarized.** All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364).
2. **Interim Relief.** When Financing Motions are filed with the Court on or shortly after the petition date, the Court may grant interim relief at an expedited hearing pending further review by interested parties and consideration at a further or final hearing.
3. **Final Orders.** A final order shall be entered only after notice and a hearing under Fed. R. Bankr. P. 4001.

## **H. Sale and Sale Procedures Motions**

1. **Applicability of the Procedure.** Except as otherwise provided in these procedures or ordered by the Court, the following procedures apply to motions to sell property of the estate under 11 U.S.C. § 363(b) (“**Sale Motion**”) and motions seeking approval of sale, bid or auction procedures in anticipation of or in conjunction with a Sale Motion. Unless otherwise directed by the Court, General Order 24-2018, and any amendments thereto or replacements thereof, regarding voluntary notice procedures shall only apply to a Sale Motion pursuant to these procedures if the sale is for less than substantially all of the assets of the Debtor.
2. **Sale Motions.** Except as otherwise provided in these procedures, the Code, the Bankruptcy Rules or an Order of the Court, a Sale Motion shall include the following:
  - a. A copy of the proposed purchase agreement, or a form of such agreement substantially similar to the one the Debtor reasonably believes it will execute in connection with the proposed sale;
  - b. A proposed form of sale order; and
  - c. A request, if necessary, for the appointment of a consumer privacy ombudsman under 11 U.S.C § 332.
3. **Provisions to be Highlighted.** The Sale Motion must highlight material terms, including but not limited to (a) whether the proposed form of sale order and/or the underlying purchase agreement contains any provision of the type set forth in (i) through (vii) below, (b) the location of any such provision in the proposed form of order or purchase agreement and (c) with respect to subparagraphs (i), (ii), (iii), (iv) and (vii) below, the justification for the inclusion of such provision:
  - i. **Sale to Insider.** If the proposed sale is to an insider, as defined in 11 U.S.C § 101, the Sale Motion must (1) identify the insider, (2) describe the insider’s relationship to the Debtor, and (3) set forth any measures taken to ensure the fairness of the sale process and the proposed transaction;
  - ii. **Agreements with Management.** If a proposed buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment, the Sale Motion must disclose (1) the material terms of any such agreements and (2) what measures have been taken to ensure the fairness of the sale and the proposed transaction in light of any such agreements;

- iii. **Releases.** The Sale Motion must disclose any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied;
- iv. **Private Sale/No Competitive Bidding.** The Sale Motion must disclose whether an auction is contemplated and highlight any provision in which the Debtor has agreed not to solicit competing offers for the property subject to the Sale Motion or to otherwise limit shopping of the assets to be sold;
- v. **Closing and Other Deadlines.** The Sale Motion must disclose any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction;
- vi. **Good Faith Deposit.** The Sale Motion must disclose whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which such deposit may be forfeited; and
- vii. **Interim Arrangements with Proposed Buyer.** The Sale Motion must disclose any provision regarding an interim arrangement with a proposed buyer.

## **I. Chapter 11 Plans and Disclosure Statements**

### **1. Approval of Disclosure Statement; Solicitation of Voting Procedures**

- a. **Hearing on Disclosure Statement.** Except as provided in the section I.2 below, upon the filing of a disclosure statement, the proponent of the plan shall obtain hearing and objection dates from the Court and shall provide notice of those dates in accordance with Fed. R. Bankr. P. 3017. Unless the Court orders otherwise, the hearing date shall be at least thirty-five (35) days following service of the disclosure statement and the objection deadline shall be at least twenty-eight (28) days from service of the disclosure statement.
- b. **Voting and Solicitation Procedures.** Except as provided in the section I.2.b.i below, the plan proponent shall file a motion to be heard at the disclosure statement hearing for approval of the solicitation and voting procedures, including the form of ballots, the proposed manner of solicitation, the voting agent and the time and manner of voting. The proposed order shall contain, inter alia, the following provisions:
  - i. Unless the Court directs otherwise, establishment of a record date pursuant to Fed. R. Bankr. P. 3017(d) and 3018(a); and
  - ii. Establishment of a voting deadline not less than five (5) days prior to the combined hearing.

- c. **Form of Ballots.** If a proposed plan seeks consensual releases/injunctions with respect to claims creditors may hold against non-Debtor parties, then the ballot must inform the creditors of such releases/injunctions and disclose the manner in which to indicate assent or opposition to such consensual releases/injunctions.
- d. **Cost of Service of Disclosure Statements.** When a party in interest makes a written request of a plan proponent for service of a copy of the disclosure statement or plan under Fed. R. Bankr. P. 3017(a), service of that disclosure statement or plan shall be at the expense of the plan proponent.
- e. **Redline or Blackline of Plan and Disclosure Statement.** Parties filing an amended disclosure statement or plan (or any related document thereto that is amended post filing) shall include in the filing a document showing all changes made to the last version of the document on file in redline or blackline form.

## **2. Approval of Disclosure Statement and Confirmation of Plan in Liquidating Complex Chapter 11 Cases**

- a. **Applicability.** This procedure shall be applicable where the following requirements are met:
  - i. All or substantially all of the assets of the Debtor[s] were or will be liquidated pursuant to a sale under 11 U.S.C. § 363;
  - ii. The plan of liquidation proposes to comply with 11 U.S.C § 1129(a)(9);
  - iii. The plan of liquidation does not seek non-consensual releases/injunctions with respect to claims creditors may hold against non-Debtor parties; and
  - iv. The Debtor's combined assets to be distributed pursuant to the proposed plan of liquidation are estimated, in good faith, to be worth less than \$25 million (excluding causes of action).
- b. **Interim Approval of the Disclosure Statement; Approval of Solicitation Procedures and Scheduling Combined Hearing on Approval of the Adequacy of Disclosure Statement and Confirmation of Plan.** In the event that the requirements of subsection 2.a above are satisfied, upon the filing of a disclosure statement and proposed plan of liquidation, a plan proponent may file a motion requesting (1) interim approval of the disclosure statement; (2) approval of solicitation and voting procedures, including a summary of the treatment of all impaired classes of claims and interests under the plan to be transmitted to holders of impaired claims and interests (the "Plan

**Summary**”); and (3) the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of the proposed plan of liquidation. This motion may be granted without notice and a hearing if:

- i. **Notice.** The motion provides at least fourteen days' notice to the United States Trustee and the creditors' committee (or the twenty largest unsecured creditors or thirty largest unsecured creditors on a consolidated basis in a jointly administered case, if no creditors' committee is formed), and all parties on the Limited Service List. If an objection is timely filed within such notice period, a hearing on the motion will not occur less than seven days after expiration of the notice period;
- ii. **Provisions to be Highlighted.** All motions under this rule requesting a joint disclosure statement and confirmation hearing must: (1) recite whether the proposed form of order and/or plan of liquidation contains any provision of the type indicated below and (2) identify the location of any such provision in the proposed form of order and/or plan of liquidation:
  - (a) Provisions that seek consensual releases/injunctions with respect to claims creditors may hold against non-Debtor parties;
  - (b) Provisions that seek to release any claims the Debtor[s] may have against non-Debtor parties who are or were insiders of a Debtor; and
  - (c) Any provision that seeks an exemption under 11 U.S.C. § 1146.
- iii. The motion identifies the proposed balloting agent, which may include counsel to the plan-proponent;
- iv. The motion identifies any voting or solicitation procedures in addition to those required in these procedures;
- v. The requested hearing date will not occur earlier than thirty-five (35) days after entry of an order scheduling the combined hearing to consider the final approval of the adequacy of the disclosure statement and confirmation of the plan of liquidation; and
- vi. The motion is accompanied by a proposed order which provides for a hearing date and approves: (1) on an interim basis, the disclosure statement; (2) the solicitation and voting procedures to be utilized; (3) the form of notice to be provided to creditors and interest holders of the Debtor[s]; (4) the form of ballot that will be provided to creditors and interest holders entitled to vote on the proposed plan of liquidation and (5) the Plan Summary. The proposed order may further provide that the failure of a party in interest to object to the relief

requested under (2), (3) or (4) of this subparagraph at the time of the hearing on the motion may result in a waiver of such objection at the combined hearing on the disclosure statement and plan.

- c. **Combined Confirmation Hearing.** The order approving the solicitation and voting procedures shall provide for a combined hearing on the final approval of the disclosure statement and confirmation of the plan not less than thirty-five (35) days from the entry of the order approving the voting procedures and the objection deadline shall be at least twenty-eight (28) days from such date.
- d. **Service of Plan and Disclosure Statement.** If pleadings in the case are being posted on a website maintained by a claims and noticing agent or the Debtor or the Debtor's attorney, service of the order approving the disclosure statement (whether conditional or final) and scheduling a hearing to consider confirmation of a plan (the "**Confirmation Order and Notice**") shall constitute service of the underlying plan and disclosure statement and all exhibits thereto if they are posted on the that website, provided that (1) the solicitation documents to be served with the Confirmation Order and Notice include a court approved Plan Summary and (2) the Confirmation Order and Notice includes a link to the aforementioned website and provides contact information, including the name, phone number and email address, of a person who a party in interest can contact to obtain a copy of the plan and disclosure statement in another format, including paper, if so desired, at the expense of the Debtor.
- e. **Other.** The provisions of Section I.1 apply to the approval of a disclosure statement and confirmation of a plan of liquidation under Section I.2 except as modified therein.

#### **J. Professional Compensation and Reimbursement of Expenses**

- 1. **Scope.** This procedure applies to any application of a professional person employed under 11 U.S.C. § 327, 328 or 1103 requesting approval for compensation and/or reimbursement of expenses. Any request for payment shall comply in all respects with the Bankruptcy Code and the Bankruptcy Rules applicable to the filing and the contents of such an application or request, as supplemented by the following procedures.
- 2. **Monthly Compensation Procedures.** To streamline the professional compensation process and more effectively enable the Court and all other parties to monitor the professional fees incurred, the following procedures shall apply, unless otherwise ordered by the Court:
  - a. 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) counsel for the Debtor; (2) counsel for the pre-petition secured lender(s); (3) counsel

for any post-petition lender; (4) counsel to all official committees; (5) the Office of the United States Trustee; and (6) any other party the Court designates (collectively, the **“Professional Fee Notice Parties”**).

- b. Each Monthly Statement shall contain a list of individuals and their respective titles who provided services during the statement period, their respective 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 disbursements incurred.
- c. In the event that a Professional Fee Notice Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, it shall, within ten (10) days after service of the Monthly Statement, serve upon the professional whose statement is objected to and the other Professional Fee Notice Parties a written “Notice of Objection to Fee Statement,” setting forth the nature of the objection and the amount of fees or expenses at issue.
- d. After the expiration of the ten (10) day period described above, and subject to (l) below, the Debtor shall be authorized to pay 100% of the fees and expenses identified in each Monthly Statement to which no objection has been served.
- e. If counsel for the Debtor receives an objection to a particular professional’s Monthly Statement, the Debtor shall withhold payment of that portion of the Monthly Statement to which the objection is directed and shall, after the expiration of the ten (10) day period described above, and subject to (l) below, be authorized to promptly pay the remainder of the fees and expenses set forth in the Monthly Statement.
- f. 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 written notice on the Professional Fee Notice Parties that the objection is withdrawn and shall describe the terms of the resolution. Subject to (l) below, the Debtor is authorized to pay that portion of the Monthly Statement at issue that is no longer subject to an objection.
- g. Any objection that is not resolved by the parties shall be preserved and presented to the Court at the next interim or final fee application hearing.
- h. The service or lack of an objection in accordance with paragraph (c) above shall not prejudice the objecting party’s right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Statement shall not be a waiver of any kind or prejudice that party’s right to object to any fee application subsequently made to the Court.

- i. Each professional should serve and file with the Court an application for interim or final approval and allowance of compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2016, 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.
- j. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation or reimbursement of expenses of any professional. All fees and expenses of each professional, 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.
- k. Interim payments received in accordance with the procedures outlined above shall be applied to the fees and expenses itemized, subject to disgorgement or offset if such fees are not approved by the Court.
- l. Notwithstanding the authorization to pay fees and expenses pursuant to these procedures, the payment of fees and expenses as set forth herein shall be paid only to the extent authorized pursuant to an order granting debtor-in-possession financing and/or authority to use cash collateral, if applicable.

**K. Debtor-in-Possession Bank Accounts in a Complex Chapter 11 Case**

- 1. **Bank Accounts and Checks.** If the Debtor uses preprinted checks, upon motion of the Debtor, the Court may, without notice or hearing, permit the Debtor to use its existing checks without the designation "Debtor-in-Possession" and use its existing bank accounts and/or cash management systems. However, once the Debtor's existing checks have been used, the Debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy case number on all such checks. If the Debtor's depository banks have executed a Uniform Depository Agreement with the Office of the United States Trustee, or have otherwise been approved by the Office of the United States Trustee to maintain debtor-in-possession bank accounts, then upon motion by the Debtor, the Court may enter an order that provides, among other things, as follows:
  - a. Each bank at which the Debtor maintained a bank account prior to the petition date is authorized to continue to service and administer such bank account as a depository account of a Debtor as debtor-in-possession, without interruption and in the usual and ordinary course of business, and to receive, process, honor and pay any or all checks, drafts, wire transfers or automated clearing house transfers drawn on such bank account. No bank will be obligated to honor any check, draft, wire transfer, ACH

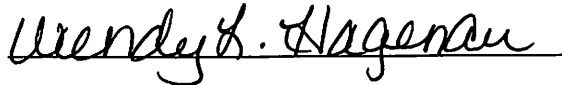
transfer or other payment item drawn on a bank account unless there are sufficient and collected funds in the bank account.

- b. The Debtor is authorized to pay in the ordinary course of business, and each bank is authorized to deduct from the Debtor's cash, all bank fees, costs and charges arising out of the maintenance and use of bank accounts, including, without limitation, service charges and fees, lockbox fees, analysis and processing fees, wire transfer and ACH fees, and fees and reimbursement obligations arising out of overdrafts or returned checks.
  - c. Each bank is authorized to accept and rely upon, without further inquiry, all representations from the Debtor as to which checks, drafts, wire transfers or ACH transfers are dated prior to, on or after the petition date and which checks are to be honored or dishonored, regardless of whether or not such payment or honoring is or is not authorized by an order of the Court. No bank will incur, and each bank will be released from, any liability for relying upon the Debtor's instruction as to which checks, drafts, wire transfers or ACH transfers should be honored or dishonored or for such bank's inadvertence in honoring any check, draft, wire transfer or ACH transfer at variance from the Debtor's instructions unless such inadvertence constituted gross negligence or willful misconduct on the part of the bank.
  - d. The Debtor should (1) submit and implement stop payments with respect to all checks that are to be dishonored by each bank, which checks may include those issued after the petition date as well as those issued prior to the petition date that are not to be honored or paid, and/or (2) provide a list of checks to each bank for each bank account maintained at the bank, specifying by check sequencing number, dollar amount and payee information, all of the checks that should not be honored or paid and direct the bank to stop payment on such checks. Each bank may honor all other checks for which a stop payment has not been properly implemented by the Debtor.
2. **Section 345 Waiver.** A Debtor is relieved from the requirements of 11 U.S.C. § 345(b) where money of the estate is invested in an open-end management investment company, registered under the Investment Company Act of 1940, that is regulated as a "money market fund" pursuant to Rule 2a-7 under the Investment Company Act of 1940; so long as the debtor has filed with the Court (i) a statement identifying the fund; and (ii) the fund's certification, which shall be accompanied by its currently effective prospectus as filed with the Securities and Exchange Commission, shows that the fund:
- a. Invests exclusively in United States Treasury bills and United States Treasury Notes owned directly or through repurchase agreements;
  - b. Has received the highest money market fund rating from a nationally recognized statistical rating organization, such as Standard & Poor's or Moody's;

- c. Has agreed to redeem fund shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, except in the event of an unscheduled closing of Federal Reserve Banks or the New York Stock Exchange; and
- d. Has adopted a policy that it will notify its shareholders sixty (60) days prior to any change in its investment or redemption policies under (a) and (c) above.

Except as provided above, no waiver of the investment requirements of 11 U.S.C. § 345 shall be granted by the Court without notice and an opportunity for hearing in accordance with these procedures. However, if a motion for such a waiver is filed, the Court may grant an interim waiver until a hearing on the Debtor's motion can be held.

IT IS SO ORDERED, this 4<sup>th</sup> day of November, 2019.



WENDY L. HAGENAU, CHIEF JUDGE  
United States Bankruptcy Court  
For the Court

# Exhibit A: Notice of Designation as Complex Chapter 11 Bankruptcy Case

## **Filing a Notice of Designation as Complex Chapter 11 Case**

In order for a Debtor to request that its case be classified as a Complex Chapter 11 Case, it shall file concurrently with the bankruptcy petition a Notice of Designation as Complex Chapter 11 Case in following form:

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
\_\_\_\_\_ DIVISION

IN RE:

§  
§  
§  
§  
§

CASE NO.

DEBTOR.

### **NOTICE OF DESIGNATION AS COMPLEX CHAPTER 11 BANKRUPTCY CASE**

This bankruptcy case was filed on \_\_\_\_\_, 20\_\_\_. The Debtor believes that this case qualifies as a Complex Chapter 11 Case because:

\_\_\_\_\_ The Debtor has total debt or total assets of more than \$25 million, excluding claims of insiders (as defined in 11 U.S.C. § 101);

\_\_\_\_\_ There are \_\_\_\_\_ parties in interest in this case, excluding former and current employees;

\_\_\_\_\_ Claims against or interests in the Debtor are publicly traded; or

\_\_\_\_\_ Other (Substantial explanation is required. Attach additional sheets if necessary.); and

\_\_\_\_\_ The Debtor is not an individual; and

\_\_\_\_\_ The Debtor does not own single asset real estate, or it does own single asset real estate but treatment as a Complex Chapter 11 Case is justified (attach explanation explaining the circumstances).

\_\_\_\_\_  
[Name]

[Address]

[Telephone, Fax Numbers, and Email]

# Exhibit B: Request to Set Expedited First Day Hearings

## **Submitting a Request for Expedited Consideration of Certain First Day Matters**

If the Debtor has First Day Matters requiring expedited consideration by the Court, it should file a Request for Expedited Consideration of First Day Matters in the following form:

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
\_\_\_\_\_ DIVISION

IN RE:

§  
§  
§ CASE NO.  
§  
§  
DEBTOR.

**REQUEST FOR EXPEDITED CONSIDERATION  
OF CERTAIN FIRST DAY MATTERS**

On \_\_\_\_\_, 20\_\_\_\_, Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. Debtor asserts that the case qualifies as a "Complex Chapter 11 Case" and that it needs expedited consideration of the following initial case matters (check those that apply):

- \_\_\_\_\_ JOINT MOTION FOR JOINT ADMINISTRATION
- \_\_\_\_\_ MOTION FOR ORDER EXTENDING TIME TO FILE SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS
- \_\_\_\_\_ MOTION RE MAINTENANCE OF BANK ACCOUNTS AND EXISTING CASH MANAGEMENT
- \_\_\_\_\_ MOTION TO PAY PRE-PETITION WAGES, SALARIES, *ET AL.*,
- \_\_\_\_\_ MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
- \_\_\_\_\_ MOTION FOR INTERIM APPROVAL OF POST-PETITION SECURED AND SUPER PRIORITY FINANCING PURSUANT TO SECTION 364(c) OF THE BANKRUPTCY CODE
- \_\_\_\_\_ MOTION PURSUANT TO 11 U.S.C. § 366, FOR ENTRY OF INTERIM ORDER (1) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES AND (2) RESTRAINING UTILITY COMPANIES FROM DISCONTINUING, ALTERING, OR REFUSING SERVICE

- \_\_\_\_\_ MOTION TO ESTABLISH INTERIM NOTICE PROCEDURES
- \_\_\_\_\_ MOTION FOR ORDER APPROVING INTERIM RETENTION OF PROFESSIONALS
- \_\_\_\_\_ MOTION FOR ORDER APPROVING PAYMENT OF PRE-PETITION CLAIMS OF CERTAIN CRITICAL VENDORS
- \_\_\_\_\_ OTHERS (LIST):

\_\_\_\_\_  
[Name]

[Address]

[Telephone, Fax Numbers, and Email]

• NOTE: The Court expects the parties to exercise judgment regarding which motions are applicable.

# Exhibit C: Order Denying Complex Case Treatment

## **Order Denying Complex Case Treatment**

If the Court determines that the case does not qualify as a Complex Chapter 11 Case, the Court shall issue an Order Denying Complex Case Treatment in the following form.

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
\_\_\_\_\_ DIVISION**

IN RE:

§  
§  
§  
§  
§

CASE NO.

DEBTOR.

**ORDER DENYING COMPLEX  
CASE TREATMENT**

This bankruptcy case was filed on \_\_\_\_\_, 20\_\_\_\_. A Notice of Designation as Complex Chapter 11 Case was filed. After review of the initial pleadings filed in this case, the Court concludes that the case does not appear to qualify as a Complex Chapter 11 Case. Therefore, the case will proceed under the local bankruptcy rules and procedures generally applicable to bankruptcy cases. The Court may reconsider this determination on motion, after hearing.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
United States Bankruptcy Judge

Distribution List:  
Debtor  
Debtor's Counsel  
U.S. Trustee



- \_\_\_\_\_ MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
- \_\_\_\_\_ MOTION FOR INTERIM APPROVAL OF POST-PETITION SECURED AND SUPER PRIORITY FINANCING PURSUANT TO SECTION 364(c) OF THE BANKRUPTCY CODE
- \_\_\_\_\_ MOTION PURSUANT TO 11 U.S.C. § 366, FOR ENTRY OF INTERIM ORDER (1) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES AND (2) RESTRAINING UTILITY COMPANIES FROM DISCONTINUING, ALTERING, OR REFUSING SERVICE
- \_\_\_\_\_ MOTION TO ESTABLISH INTERIM NOTICE PROCEDURES
- \_\_\_\_\_ MOTION FOR ORDER APPROVING INTERIM RETENTION OF PROFESSIONALS
- \_\_\_\_\_ MOTION FOR ORDER APPROVING PAYMENT OF PRE-PETITION CLAIMS OF CERTAIN CRITICAL VENDORS
- \_\_\_\_\_ OTHERS (LIST):

Copies of the First Day Matters shall be made available as follows: (i) upon written request to the Debtor's proposed counsel of record; (ii) at the website of the Debtor, Debtor's attorney or Debtor's proposed claims and noticing agent, [insert website address]; (iii) by request via email to [\_\_\_\_]; (iv) by request via telephone to [\_\_\_\_\_] and/or (v) in the Office of the Clerk, U.S. Bankruptcy Court between 8:00 a.m. and 4:00 p.m. or online anytime at <http://ecf.ganb.uscourts.gov> (registered users) or at <http://pacer.psc.uscourts.gov> (unregistered users). No further notice shall be required.

[Telephonic appearance information.]

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
United States Bankruptcy Judge

Distribution List:  
Debtor  
Debtor's Counsel  
U.S. Trustee