AMERICAN BANKRUPTCY INSTITUTE

2020 Alexander L. Paskay Memorial Bankruptcy Seminar

Business Bankruptcy Legal Update

CONCURRENT SESSION

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2020

BUSINESS BANKRUPTCY LEGAL UPDATE

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CANNABIS AND BANKRUPTCY

- Recent Cannabis Business Bankruptcy Cases
  - In re Way to Grow, 597 B.R. 111 (Bankr. D. Colo. 2018)
  - In re Basrah Custom Design, 600 B.R. 368 (Bankr. E. D. Mich. 2019)
  - Garvin v. Cook Invs., 922 F.3d 1031 (9th Cir. 2019)
  - In re Cwnevada, LLC, 2019 Bankr. LEXIS 1770 (Bankr. D. Nev. May 15, 2019)
- Practical workarounds
  - ABC – Assignment for the Benefit of Creditors
    - See Fla. Stat. § 727.101- 727.116

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D&O LIABILITY ISSUES AND UPDATES

- Rights and duties of Corporate Directors
  - Zone of insolvency
- Standing to sue with respect to D&O Policies
  - Side A coverage
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  - Side C coverage
  - Insured v. Insured Exclusion
  - Bankruptcy court's ability to enjoin third parties from pursuing D&O policies
- Obtaining bar orders in settlements before the bankruptcy court
  - Justice Oaks factors (*In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990))
  - *In re Munford*, 97 F.3d 449 (11th Cir. 1996)
  - *In re Fundamental Long Term Care, Inc.*, 873 F.3d 1325 (11th Cir. 2017)
  - *In re U.S. Oil & Gas Litig.*, 967 F.2d 489 (11th Cir. 1992)
  - *In re Superior Homes & Invs., LLC*, 2013 WL 2477057 (11th Cir. June 10, 2013)

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CHAPTER 12 ISSUES AND UPDATES

- Family Farmer Relief Act of 2019
  - Increased the debt limit from $4.4 million to $10 million
- Issues facing farmers
  - Natural disaster
  - Pricing and over supply
  - Trade tariffs
  - Rising interest rates
- What unique remedies does chapter 12 offer (as compared to other bankruptcy chapters)?

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CHAPTER 9 ISSUES AND UPDATES

- Eligibility
- Recent Chapter 9 Filings
  - Sanitary and Improvement District No. 240, Sarpy County (Bankr. D. Nev., No. 19-80107)
  - City of Perla, Arkansas (Bankr. W.D. Ark., No. 19-71447)
  - Clearwater Cay Community Development District (Bankr. M.D. Fla., No. 19-05320)
  - Puerto Rico Public Buildings Authority (PBA) (Bankr. D.P.R., No. 19-05523)
  - Targhee Regional Public Transportation Authority (Bankr. D. Idaho, No. 19-41151)
- Common concerns for municipalities that could lead to bankruptcy
  - Pension
  - Reduced tax revenue stream
    - Aging population
    - Suburbanization
    - Demographic shifts
  - What unique remedies does chapter 9 offer? How does PROMESA differ?

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CHAPTER 9 ISSUES AND UPDATES

Title XIV TAXATION AND FINANCE	Chapter 218 FINANCIAL MATTERS PERTAINING TO POLITICAL SUBDIVISIONS

- **218.01 Authority to accept benefits of bankruptcy acts.**—For the purpose of rendering effective the privilege and benefits of any amendments to the bankruptcy laws of the United States that may be enacted for the relief of municipalities, taxing districts and political subdivisions, the state represented by its legislative body gives its assent to, and accepts the provisions of any such bankruptcy laws that may be enacted by the Congress of the United States for the benefit and relief of municipalities, taxing districts and political subdivisions and its several municipalities, taxing districts and political subdivisions, at the discretion of the governing authorities thereof, may institute and conduct and carry out, by any appropriate bankruptcy procedure that may be enacted into the laws of the United States for the purpose of conferring upon municipalities, taxing districts and political subdivisions, relief by proceedings in bankruptcy in the federal courts.
- **History.**—s. 1, ch. 15878, 1933; CGL 1936 Supp. 1365(2).

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COMPLEX CHAPTER 11 PROCEDURES

- Choice of Venue: Why are they relevant?
  - Predictability
  - Perception
  - Uniform Policies and Procedures
  - "Safe" Choice
- Districts adopting complex chapter 11 procedures:
  - Bankr. N.D. Tex.
  - Bankr. S.D. Tex.
  - Bankr. N.D. Ga.
  - Bankr. W.D. Pa.
  - Bankr. E.D. La.
  - Bankr. S.D. Ohio

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Sample Complex Chapter 11 Procedures

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF	§	
	§	GENERAL ORDER 2019-4
PROCEDURES FOR COMPLEX	§	
CHAPTER 11 CASES	§	

GENERAL ORDER REGARDING PROCEDURES FOR COMPLEX CHAPTER 11 CASES

This Order establishes procedures for use in the Bankruptcy Court in the Eastern District of Louisiana in cases that the undersigned have designated as "Complex Chapter 11 Cases." The procedures set forth in this Order shall apply to all Complex Chapter 11 Cases filed in the Eastern District of Louisiana.

IT IS ORDERED that the Court adopts the attached Procedures for Complex Chapter 11 Cases, effective immediately.

This 4th day of December, 2019.

MEREDITH S. GRABILL
UNITED STATES BANKRUPTCY JUDGE

JERRY A. BROWN
UNITED STATES BANKRUPTCY JUDGE

PROCEDURES FOR COMPLEX CHAPTER 11 CASES FILED IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF LOUISIANA

I. FIRST-DAY HEARINGS AND COMPLEX CASE DESIGNATION

A. A complex Chapter 11 case ("Complex Case") is defined as a case filed in this District under Chapter 11 of the Bankruptcy Code that requires special scheduling and other procedures because of a combination of one or more of the following factors:

(1) The size of the case (usually the total debt owed by the debtor(s) exceeds $10 million);

(2) The large number of parties in interest in the case (usually more than 50 parties in interest);

(3) The fact that claims against the debtor and/or equity interests in the debtor are publicly traded (with some creditors possibly being represented by indenture trustees); or

(4) Any other circumstance justifying complex case treatment.

B. Chrystal Brooks-Raymond, Courtroom Deputy for Judge Grabill, is designated as the initial point of contact for all pre-filing matters for anticipated Complex Cases in Section A. Ms. Brooks-Raymond may be contacted at (504) 589-7805 or by e-mail at Chrystal_Raymond@laeb.uscourts.gov. Counsel for proposed debtor(s) in a Complex Case should contact Ms. Brooks-Raymond as early as possible prior to filing a Complex Case to obtain a setting for first-day hearings.

C. Lisa Matrana, Courtroom Deputy for Judge Brown, is designated as the initial point of contact for all pre-filing matters for anticipated Complex Cases in Section B. Ms. Matrana may be contacted at (504) 589-7811 or by e-mail at Lisa_Matrana@laeb.uscourts.gov. Counsel for proposed debtor(s) in a Complex Case should contact Ms. Matrana as early as possible prior to filing a Complex Case to obtain a setting for first-day hearings

D. If a party filing a Chapter 11 bankruptcy petition believes that the case should be classified as a Complex Case, the party shall file as a separate document on the docket, but contemporaneously with the bankruptcy petition, a *Notice of Designation of a Complex Case* in the form attached as **Exhibit A**.

E. Upon receipt of notice of entry of an Order regarding Complex Case treatment, counsel for the debtor shall (a) serve the Order granting or denying designation of the case as a Complex Case on all parties in interest within seven days and (b)

provide notice of the first-day emergency hearings in accordance with the Bankruptcy Code, Bankruptcy Rules, and these procedures.

F. If a debtor(s) has first-day matters requiring emergency consideration (*i.e.*, motions seeking relief on less than required notice periods), it should submit a *Request for Emergency Consideration of Certain "First-Day" Matters* in the form attached as **Exhibit B**. Each judge shall arrange his or her calendar so that first-day emergency hearings can be conducted consistently with the Bankruptcy Code and Rules, including Bankruptcy Rule 4001, as required by the circumstances, with best efforts to hear first-day matters not more than two (2) business days after the request for emergency first-day hearings.

G. All first-day motions should be accompanied by an affidavit of a corporate officer or chief restructuring officer of the debtor, providing the history of the debtor(s), the debtor(s)'s corporate and capital structure, events leading to bankruptcy, and an overview of evidentiary support for all of the first-day relief requested.

H. It is expected that debtor(s)'s counsel will have consulted in advance with the United States Trustee regarding all relief to be requested at the first-day hearing.

II. LIMITED SERVICE LIST

A. The debtor(s) may establish by motion 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 all matters covered by Bankruptcy Rule 2002 and any pleadings that may be required to be served upon all parties-in-interest by the Local Rules, with the express exception of the following (collectively, the "Excluded Matters"):

(1) Notice of the first meeting of creditors pursuant to 11 U.S.C. § 341;
(2) The time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c);
(3) 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
(4) Notice and transmittal of ballots for accepting or rejecting a plan of reorganization.

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 or available to the debtor(s).

B. The Limited Service list must include:

(1) the Office of the United States Trustee for the Eastern District of Louisiana;

(2) the debtor(s);

(3) counsel for the debtor(s);

(4) counsel for any official committees;

(5) the debtor(s)' prepetition and post-petition secured lenders, including any other party asserting a security interest in assets of the debtor or their counsel who has appeared in the case;

(6) the debtor(s)' twenty (20) largest unsecured creditors (or, in the case of jointly administered cases, the debtors' thirty (30) largest unsecured creditors);

(7) those persons who have formally appeared in the chapter 11 case and requested service pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure;

(8) all applicable governmental agencies to the extent required by the Bankruptcy Rules and the Local Rules; and

(9) any known counsel for (4)–(8).

C. Unless the Bankruptcy or Local Rules permit service on fewer parties in interest, any person filing a pleading in a Complex 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 pleadings or proceeding.

D. Electronic service of pleadings and papers in this District is governed by Bankruptcy Standing Order 2006-4 and any amendments thereto or replacement thereof, and is applicable to Complex Cases; provided, however, that notices required by Bankruptcy Rule 2002(a)(1) 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 Bankruptcy Standing Order 2006-4 must be served with a hard copy of the applicable document.

E. The initial Limited Service List must be filed within three (3) days after entry of an Order granting Complex Case treatment and a revised list must be filed as needed for the duration of the case.

III. COMPLEX CASE HEARING DATES

A. The Debtor may request (through one of its first-day motions or otherwise) that the Court establish a weekly/bi-monthly/monthly date and time for hearings in a case (*i.e.*, every third Thursday at 9 a.m.) ("Omnibus Hearing Date"). 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 and unless otherwise ordered by the Court, all matters in the case (whether initiated by the Debtor or another

party in interest) will be set on Omnibus Hearing Dates that accommodate required notice periods 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 any motion will require testimony or will otherwise take longer than 30 minutes, movant shall advise the Courtroom Deputy of 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 alternative dates and times.

B. 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.

C. Motions that do not require expedited consideration must state, just below the case caption and in lieu of the language required by any Local Bankruptcy Rule, the following:

A HEARING WILL BE CONDUCTED ON THIS MATTER ON [MONTH/DATE/YEAR], AT _____ A.M./P.M. IN COURTROOM ____, [COURTHOUSE ADDRESS]. IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PLEADING, YOU MUST RESPOND IN WRITING. UNLESS DIRECTED OTHERWISE BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT NO LATER THAN SEVEN (7) DAYS BEFORE THE HEARING DATE. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

D. All motions seeking relief on less than the required notice periods will be treated as "expedited" motions. An expedited motion must contain the word "expedited" in the title of the motion.

E. If a party in interest files a motion that it contends requires consideration on less than the required notice period, 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 e-mail a copy to the Court's Courtroom Deputy 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 date and time approved by the Court. Motions for expedited hearings will only be granted for good cause shown with particularity in the body of the motion.

F. Upon the Court granting a motion to expedite hearing and setting a deadline to file responses, the Movant must serve notice of the expedited hearing, including the following language just below the case caption and in lieu of the language required by any Local Bankruptcy Rule, and file a certificate that the notice has been served in accordance with these Procedures, the Bankruptcy Code, and the Bankruptcy Rules:

EXPEDITED RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON __[MONTH/DATE/YEAR]__, AT _____ A.M./P.M. IN COURTROOM _____, __[COURTHOUSE ADDRESS]__. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EXPEDITED CONSIDERATION IS NOT WARRANTED, YOU MUST FILE A WRITTEN RESPONSE ON OR BEFORE __[RESPONSE DEADLINE]__. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

G. Continuances or adjournments of scheduled hearings must be coordinated by e-mail with the Court's law clerk assigned to the case, with a copy to all anticipated hearing participants. Scheduled hearings will be reset upon the Courtroom Deputy's filing of a Memo to Record on the case docket with the new time and date of the hearing. The movant must promptly file and serve a notice of reset hearing in accordance with these procedures.

H. Notwithstanding Local Rule requirements, applications to retain professionals must be served on all persons on the Limited Service List.

IV. PROCEDURES FOR TELEPHONIC PARTICIPATION

A. No motion is required to utilize telephonic participation. Dial-in information and participation information is as follows:

(1) The dial-in information for Judge Grabill is **1-302-202-1110**; conference code **305868**. You will be responsible for your own long-distance charges.

(2) The dial-in information for Judge Brown is **1-302-202-1104**; conference code **277688**. You will be responsible for your own long-distance charges.

B. Once the dial-in process is completed, you will be connected live to the courtroom. Once you are connected, you will be able to hear persons speaking in the courtroom and other persons on the call addressing the Court.

C. For Complex Cases filed in Section B, telephonic participation is limited to a "listen only" service. Parties in interest and attorneys will able to listen to hearings, but will not be allowed to make arguments via telephone.

D. For Complex Cases filed in Section A, at each hearing, the Court will either (i) unmute all participants' lines; or (ii) request that participants indicate that they wish to address the Court by pressing 5*. Do not press 5* until you need to address the Court. Within five (5) seconds, the Court will receive a signal that you wish to speak. When the Court calls on you, you will hear a recorded message that your line has been unmuted. At that time, you can be heard. When you are done, the Court will leave your line active and unmuted.

(1) Witnesses may not be presented by telephone and witnesses may not be examined by telephone, except in emergency situations if the Court determines to waive that prohibition for good cause. Parties may not participate by speakerphone.

(2) Hearing participants may connect online to view documents that are broadcast onto the courtroom's monitors. To view online, you may connect through the Web site located at https://www.join.me. Click on "Join a Meeting." The password for the meeting is "judgegrabill". If you are attempting to view the broadcast on an iPad, iPhone, or similar device, you will be required to download a free app.

E. If a technological problem arises, the hearing will continue without the participation of dial-in participants. The Court will not delay hearings for signal problems or interference. Accordingly, persons choosing to attend a hearing by dial-in do so at their own risk of a technological failure.

V. AGENDA PROCEDURES

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

B. The 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 Master Service List.

C. Uncontested matters shall be listed ahead of contested matters in the order in which 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.

D. For each matter on the agenda, the agenda shall indicate (1) the moving party; (2) the nature of the matter; (3) the response deadline; (4) the docket number of the motion and any filed response(s) or objection(s); and (5) 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), and any other pertinent information. If any person has engaged in written or oral communications with counsel for the debtor(s), but has not filed a responsive pleading, that fact shall be indicated on the agenda with 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 (*i.e.*, "the following objections and responses have been continued by consent:").

E. After the filing of the agenda, counsel shall notify the Courtroom Deputy by e-mail of additional related pleadings that have been filed and changes in the status of any agenda matter.

VI. AUTOMATIC BRIDGE ORDER FOR EXTENSIONS OF TIME

A. Unless otherwise provided in the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules, or Court Order, if a motion is filed to extend the time to take any action before the expiration of the period prescribed by the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, the time for taking the action is automatically extended until the Court rules on the motion. An automatic extension under this rule does not requires the issuance or entry of an Order extending the time.

VII. SETTLEMENT

A. If a matter is properly noticed for hearing, and the parties reach a settlement of the dispute prior to the hearing thereon, **the parties should promptly notify the Court's law clerk assigned to the case that the matter is settled**. The parties may announce the settlement at the scheduled hearing. If the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of settlement, the Court may approve the settlement at the hearing without further notice.

VIII. PROOFS OF CLAIM AND OMNIBUS CLAIM OBJECTION PROCEDURES

A. Unless a different date is ordered by the Court, the bar date for the filing of proofs of claim and proofs of interest is (i) 180 days after the Petition Date for governmental units; and (ii) 90 days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a) for all other entities. The debtor(s) must provide notice of the bar date to those listed on the mailing matrix on or before the first date set for the meeting of creditors.

B. Omnibus claim objections must conform with Rules 3007(d) and (e) of the Federal Rules of Bankruptcy Procedure unless otherwise ordered by the Court.

C. Proposed orders on motions to approve omnibus claim objections procedures may not shift the burden of proof, discovery rights or burdens, or pleading requirements.

IX. CASH COLLATERAL AND FINANCING ORDERS

A. On motion by the debtor(s), the Court will use best efforts to conduct an interim hearing on a motion to use cash collateral use and/or a motion to obtain interim debtor-in-possession financing ("Initial Financing") not more than two (2) business days after the request (the "Initial Financing Hearing").

B. At the Initial Financing Hearing, the debtor(s) should introduce a cash flow projection showing its sources and uses of cash necessary for ongoing operations on a weekly basis for not less than the first three (3) weeks of the case (a "First Budget").

(1) The First Budget must be filed with the Court and be served no later than noon on the first business day after the filing, or on the date of the filing if the Initial Financing Hearing is to occur before the second business day after the Petition Date.

(2) The debtor(s) must provide a copy of the First Budget in native file format upon request.

C. At the Initial Financing Hearing, the Court will consider the Initial Financing pursuant to 11 U.S.C. §§ 363 and 364 and Bankruptcy Rule 4001, subject to the following:

(1) The Court will presumptively grant replacement liens on post-petition collateral to secure the Initial Financing on the same types of collateral and to the same extent as the prepetition lender has on the prepetition collateral.

(2) The Court will set a final hearing to consider financing through use of cash collateral and/or debtor-in-possession financing in accordance with 11 U.S.C. §§ 363 and 364 and Bankruptcy Rule 4001 (a "Final Financing Hearing").

(3) At the Final Financing Hearing, the debtor(s) should introduce a cash flow projection for sources and uses of cash ("Financing Budget") for the next thirteen-week period of cash collateral use or debtor-in-possession financing and plan to update the Financing Budget with the Court on a monthly basis or sooner if needed. The Court will consider at the Final Financing Hearing whether it is appropriate to order either long term use of cash collateral or long-term debtor-in-possession financing pursuant to the Financing Budget in accordance with 11 U.S.C. §§ 363 and 364 and Bankruptcy Rule 4001.

(4) The Financing Budget must be filed by 5 p.m. on a day that allows two full business days prior to the Final Financing Hearing (*i.e.*, if the hearing is scheduled for Thursday, then the budget must be filed by 5 p.m. on Monday). The debtor(s) must provide a copy of the Financing

Budget and all updates of the Financing Budget in native file format upon request.

D. If a motion to approve financing under 11 U.S.C. §§ 363 and 364 or proposed order seeks to include any of the terms listed in subpart (E) below, the motion should list all such provisions in a separate section or chart and provide specific reasons why each such provision should be approved. The inclusion of these types of provisions will require an extraordinary showing at any interim hearing.

E. Debtor(s)'s counsel should highlight provisions of motions and proposed orders submitted pursuant to 11 U.S.C. §§ 363 and 362 that contain the following:

(1) Sale or plan confirmation milestones;

(2) Cross-collateralization protection (other than replacement liens) to the prepetition secured creditors (*i.e.*, clauses that secured prepetition debt by post-petition assets in which the secured creditors would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);

(3) 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 official creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters;

(4) Provisions that seek to waive, with or without notice, whatever rights the estates may have under 11 U.S.C. § 506(c);

(5) Roll-ups;

(6) Liens on avoidance actions or proceeds of avoidance actions;

(7) Default provisions and remedies;

(8) Releases of claims against lender or others;

(9) Limitation on fees for advisors to official committees;

(10) Priming liens;

(11) Provisions that seek to affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)(1); and

(12) Any other provision that limits the ability of estate fiduciaries to fulfill their duties under the Bankruptcy Code and applicable law.

F. Unless otherwise ordered by the Court, cash collateral and financing orders that contain a release of claims against lenders and other third parties by the debtor(s) should provide that an official committee of unsecured creditors has at least 60 days from the date of the committee's formation to investigate claims against the lenders

and challenge the extent and validity of any liens or the appropriateness of such release.

X. SALE ORDERS AND BID PROCEDURES

A. The debtor(s) must demonstrate that the requirements of 11 U.S.C. § 363(f) have been satisfied.

B. Bid procedures motions should provide for input from or consultation with any official committees and secured lenders with liens on the property being sold. Notwithstanding the foregoing, secured lenders or committee members who are potential bidders may not participate in the adoption or implementation of bidding procedures and may not receive information that is not generally available to all potential bidders.

C. 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(s), and (3) set forth any measures taken to ensure the fairness of the sale process and proposed transaction.

D. If a proposed buyer has discussed or entered into any agreements with management, insiders, or key employees regarding compensation or future employment, the sale motion must disclose (a) the material terms of any such agreements and (b) what measures have been taken to ensure the fairness of the sale and the proposed transaction in light of such agreements.

E. The sale motion must disclose whether an auction is contemplated and highlight any provision in which the debtor(s) 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.

F. Any creditor opposing a sale motion on the basis that the proposed sale constitutes a *sub rosa* plan must identify with specificity in its objection what rights or protections under 11 U.S.C. §§ 1121–1129 are being violated.

G. The proponents of a sale motion must respond specifically to any objection asserting that at proposed sale pursuant to 11 U.S.C. § 363 will constitute a *sub rosa* plan

XI. PLAN CONFIRMATION

A. If the debtor(s) file a disclosure statement and plan before the Initial Financing Hearing, then at the Initial Financing Hearing, the Court will set the date for the disclosure statement hearing and related objection deadlines and will consider setting a date for the confirmation hearing and related voting and objection deadlines.

B. If the debtor(s) file a plan and disclosure statement before the Permanent Financing Hearing, then at the Permanent Financing Hearing, the Court will set the date for the disclosure statement hearing and related objection deadlines and will consider setting a date for the confirmation hearing and related voting and objection deadlines.

C. If a proposed plan seeks consensual releases with respect to claims that creditors may hold against non-debtor parties, then a ballot must be sent to creditors entitled to vote on the proposed plan and notices must be sent to non-voting creditors and parties in interest. The ballot and the notice must inform the creditors of such releases and provide a box to check to indicate assent or opposition to such consensual releases together with a method for returning the ballot or notice.

D. 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.

XII. COMBINED HEARING ON APPROVAL OF DISCLOSURE STATEMENTS AND CONFIRMATION OF PLANS/CONDITIONAL APPROVAL OF DISCLOSURE STATEMENTS

A. A plan proponent may propose to combine the disclosure statement and plan into one document or propose to hear the disclosure statement and plan at one hearing.

B. Contemporaneously with the filing of a disclosure statement and proposed plan, a plan proponent may file a motion requesting:

(1) conditional approval of the disclosure statement;

(2) approval of solicitation procedures;

(3) the scheduling of a hearing on shortened notice to consider conditional approval of the proposed disclosure statement; and

(4) the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of the proposed plan.

C. All motions requesting a joint disclosure statement and confirmation hearing must:

(1) identify the proposed balloting agent;

(2) identify any voting procedures in addition to those required in these procedures; and

(3) identify the proposed hearing date for final approval of the disclosure statement and confirmation of the proposed plan (the "Combined Hearing").

D. The motion must include a proposed order that, in addition to setting the Combined Hearing date:

(1) finally approves the balloting and voting procedures to be utilized;

(2) finally approves the form of notice to be provided to creditors and interest holders of the debtor(s);

(3) finally approves the form of ballot which will be provided to creditors and interest holders entitled to vote on the proposed plan;

(4) establishes a record date pursuant to Bankruptcy Rules 3017(d) and 3018(a); and

(5) establishes a voting deadline not less than five (5) days prior to the combined hearing.

XIII. PROFESSIONAL RETENTION, COMPENSATION, AND REIMBURSEMENT OF EXPENSES

A. Applications to retain professionals pursuant to Bankruptcy Rule 2014 are governed by Local Rule 2014-1. *Nunc pro tunc* relief is not required unless the application is filed later than thirty (30) days after the later of (i) the date the Order for Relief is entered or (ii) the commencement of work by the professional. Local Rule 9013-1 applies generally to applications to retain professionals.

B. 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 without the need to file a separate motion, unless otherwise ordered by the Court:

(1) After the end of a month for which compensation is sought, each professional seeking compensation may serve a monthly statement (the "Monthly Fee Statement") on (a) counsel for the debtor(s); (b) counsel for the prepetition secured lender(s); (c) counsel for any post-petition lender(s); (d) counsel to all official committees; (e) the Office of the United States Trustee; and (f) any other party the Court designates (collectively, the "Professional Fee Notice Parties").

(2) 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 tenth of an hour, and a reasonably detailed breakdown of disbursements incurred.

(3) Any objections to a particular Monthly Fee Statement must be in writing and set forth the nature of the objection with specificity and the amount of fees or expenses at issue, and must be served upon all Professional Fee Notice Parties within fourteen (14) days after service of the Monthly Fee Statement.

(4) After the expiration of the fourteen (14)-day period described above and subject to subpart (12) below, the debtor(s) shall be authorized to pay 80% of fees and 100% of expenses identified in each Monthly Fee Statement to which no objection has been served.

(5) If counsel for the debtor(s) receives an objection to a particular professional's Monthly Fee Statement, the debtor shall withhold payment of that portion of the Monthly Fee Statement to which an objection has been lodged, but shall pay after the expiration of the fourteen (14)-day period 80% of the remaining fees and 100% of the expenses to which no objection has been lodged (subject to subpart (12) below).

(6) If any objecting party resolves a dispute with a professional, the objecting party (or the debtor(s) 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 subpart (12) below, the debtor(s) is authorized to pay that portion of the Monthly Fee Statement at issue that is no longer subject to objection.

(7) 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.

(8) The service or lack of an objection pursuant to subpart (3) above shall not prejudice the objecting party's right to object to any fee application made to the Court on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Fee 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.

(9) Each professional shall serve and file with the Court every 120 days (unless the Court orders otherwise) an application for interim or final approval and allowance of compensation and reimbursement of expenses pursuant to 11 U.S.C. §§ 330 and 331 and Bankruptcy Rule 2016, including compensation previously paid by the debtor(s) on the basis of Monthly Fee Statements.

(10) 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 Fee Statement, remain subject to review and approval by the Court in connection with interim and final fee applications.

(11) Interim payments received in accordance with the procedures outlines above shall be applied to the fees and expenses itemized, subject to disgorgement or offset if such fees are not approved by the Court.

(12) 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.

XIV. FINAL ORDERS AT FIRST-DAY HEARINGS

A. Final Orders, rather than interim Orders subject to final Orders at subsequent hearings, should be sought for the following types of relief:

(1) Motions to pay employee wages and benefits that do not include relief of the nature specified in 11 U.S.C. § 503(c) or that do not otherwise contain a request outside the ordinary course of the debtor(s)'s business. If relief is also sought for payments outside the ordinary course of business or that implicates § 503(c), a separate motion seeking that additional relief should be filed.

(2) Motions to pay prepetition and post-petition taxes that are (i) secured by property of the estate; (ii) held in trust by the debtor(s) pursuant to state or federal law; or (iii) entitled to priority pursuant to 11 U.S.C. § 507(a)(8).

(3) Applications to retain a Claims Agent.

(4) Motions to limit or modify the notice requirements of Bankruptcy Rule 2002.

(5) Motions to approve adequate assurance procedures under 11 U.S.C. § 366 and (i) do not prejudice the right of a utility to propose alternative procedures after notice and hearing; and (ii) provide for a hearing not later than thirty (30) days after the Petition Date on any timely filed objection to the adequate assurance.

XV. DISFAVORED PROVISIONS

A. The following provisions are disfavored by the Court:

(1) Except for relief sought under 11 U.S.C. § 362(d), the inclusion of a provision in any Order that (i) provides for the termination of the automatic stay without notice and hearing; or (ii) alters the evidentiary burden with respect to the termination of the automatic stay.

(2) Except for relief sought under 11 U.S.C. § 1121, the inclusion of a provision in any Order that terminates or limits a debtor(s)'s exclusive right to propose or seek acceptance of a plan.

(3) Except as contained in a confirmed plan, the assumption of a plan support agreement as an executory contract or otherwise; provided, the Court does not disfavor a debtor(s)'s actual performance under a plan support agreement, including without limitation, the debtor(s)'s post-petition agreement to include performance deadlines in various financing orders.

XVI. MEDIATION

A. Matters Subject to Mediation. Parties may agree to mediate without Court approval any dispute arising in an adversary proceeding, contested matter, or otherwise, but no matter may be mediated by a sitting judge without first obtaining and Order from the Court. The Court may order *sua sponte* mediation of any dispute.

B. Effects of Mediation on Pending Matters. Unless otherwise ordered by the Court, the assignment to mediation does not delay or stay discovery, pretrial hearing dates, or trial schedules.

C. Cost of Mediation. Unless otherwise ordered by the Court, or agreed by the parties, (1) in an adversary proceeding that includes a claim to avoid and recovery any alleged avoidable transfers pursuant to 11 U.S. §§ 544, 547, 548 or 550, the bankruptcy estate (or if there is no bankruptcy estate, the plaintiff in the adversary proceeding) will pay the fees and costs of the mediator, if any and (2) in all other matters, the fees and costs of the mediator, if any, will be shared equally by the parties.

D. Time and Place of Mediation. The mediator will schedule a time and place for the mediation.

E. Submission Materials. Each party may submit directly to the mediator such materials (the "Submission") in form and content as the mediator directs, but parties must not file any Submission into the record.

F. Protection of Information Disclosed at Mediation. The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties in the course of mediation.

No person may rely on or introduce as evidence in any arbitral, judicial, or other proceeding, evidence pertaining to any aspect of the mediation effort, including, but not limited to: (1) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (2) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (3) proposals made or views expressed by the mediator; (4) statements or admissions made by a party in the course of the mediation; and (5) documents prepared for the purpose of, in the course of, or pursuant to the mediation. Without limiting the foregoing, the parties are bound by Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediations, or other alternative dispute resolution procedures. Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible as evidence, merely by being used by a party in the mediation.

G. Discovery from the Mediator. The mediator may not be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications, or other documents received or made by the mediator while serving in such capacity. The mediator may not testify or be compelled to testify regarding the mediation in connection with any arbitral, judicial, or other proceeding. The mediator will not be a necessary party in any proceedings relating to the mediation. Nothing contained in this paragraph prevents the mediator from reporting the status, but not the substance, of the mediation effort to the Court.

H. Protection of Proprietary Information. The parties, the mediator, and all mediation participants shall protect proprietary information.

I. Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

J. Service of process. No party may be served with a summons, subpoena, notice, or other pleading during the mediation or at the location where the mediation is occurring.

XVII. REVISION

A. These Complex Case Procedures may be revised periodically. These Complex Case Procedures do not apply to a case after it has been converted to a case under chapter 7 of the Bankruptcy Code.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO

19 DEC -4 PM 3:35

In re	)	
	)	**GENERAL ORDER 30-3**
ORDER REGARDING COMPLEX	)	
CHAPTER 11 CASES	)	

This Order, effective December 4, 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

30-3

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: 12/4/19

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

APPENDIX A

PROCEDURES FOR COMPLEX CHAPTER 11 CASES

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FORMS

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. If multiple, affiliated complex cases are filed, the notice of election need only be filed in the lead case.

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. If the case is to be filed in Columbus or Dayton, the assistant United States trustee assigned to that location shall be contacted. If the case is to be filed in Cincinnati, the assistant United States trustee assigned to that location shall be contacted. 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

Location of Hearings. The hearing on First Day Matters shall be heard in the location where the case was filed. Subsequent hearings shall be held where the judge assigned to the case sits, provided, if the judge assigned to the case sits in Dayton, subsequent hearings shall be held at the Cincinnati court location unless otherwise ordered, after notice and hearing, based upon a motion filed by a party in interest.

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 of an order granting motion for admission pro hac vice by the clerk's office shall be limited to the debtor, the debtor's attorney, the United States trustee, the movant's attorney, and the attorney for the creditors' committee, if appointed.

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.

HISTORY

The following procedures were amended by General Order 30-3: NOTICE OF ELECTION (notice need only be filed in lead case); ADVANCE NOTICE TO UNITED STATES TRUSTEE AND CLERK OF FILING OF COMPLEX CASE (assistant United States trustee to be contacted clarified); HEARING PROCEDURES (subsection titled Location of Hearings added); and PRO HAC VICE ADMISSION (service of order granting motion specified).

Cannabis and Bankruptcy

USTP MARIJUANA ENFORCEMENT ACTIONS
BY DISTRICT AND CHAPTER

DISTRICT & CHAPTER	2010	2011	2012	2013	2014	2015	2016	2017	2018	1Q 2019	TOTALS
Ariz. 7									1	1	2
Ariz. 11					1					1	2
Cal. Central 11		1	1	1		1	1		2		7
Cal. Central 13									1		1
Cal. Eastern 7						1		2			3
Cal. Northern 11	1				1			2	2	1	7
Cal. Northern 13								1			1
Cal. Northern 7									1		1
Cal. Southern 11			1								1
Colo. 11			3				1		1		5
Colo. 12									1		1
Colo. 13				1		2	1	5	3	1	13
Colo. 7					1		1		1		3
Fla. Southern 7						1					1
Ill. Central 11								1			1
Me. 13								2			2
Me. 7						1					1
Mich. Eastern 13								1			1
Mich. Eastern 7								1	3		4
Mich. Eastern11										1	1
Mich. Western 13						1					1
Mich. Western 7						1					1
Miss. Northern 13								1			1
N.J. 11					1						1
N.J. 7								1			1
Ore. 11							2	1			3
Ore. 13							1	4		1	6
P.R. 13								1			1
Pa. Eastern 11									1		1
Penn. Eastern 13									1		1
USVI 7								1			1
Wash. Eastern 7									1	1	2

USTP MARIJUANA ENFORCEMENT ACTIONS
BY DISTRICT AND CHAPTER

DISTRICT & CHAPTER	2010	2011	2012	2013	2014	2015	2016	2017	2018	1Q 2019	TOTALS
Wash. Eastern 11					1						1
Wash. Eastern 13					1	1			1	1	4
Wash. Western 11							2				2
Wash. Western 13								5	3		8
Wash. Western 7						1	1		1		3
Action Case Totals	1	1	5	2	6	10	10	29	24	8	96
Action Cases By Chapter											
7					1	5	2	5	8	2	23
11	1	1	5	1	4	1	6	4	6	3	32
13				1	1	4	2	20	9	3	40
12									1		1

Why Marijuana Assets May Not Be Administered in Bankruptcy

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Marijuana continues to be regulated by Congress as a dangerous drug, and as the Supreme Court has recognized, the federal prohibition of marijuana takes precedence over state laws to the contrary.[1] The primacy of federal law over state law is hardly a novel proposition and has been the rule since the ratification of the Constitution. Thus, whenever a marijuana business files for bankruptcy relief, a threshold question is whether the debtor can be granted relief consistent with the Bankruptcy Code and other federal law. If the answer to that question is no, the United States Trustee Program (USTP), in its role as the watchdog of the bankruptcy system, will move to dismiss.

Illegal enterprises simply do not come through the doors of the bankruptcy courthouse seeking help to further their criminal activities. To obtain bankruptcy relief, some may try to hide the nature of their business or income, but bankruptcy courts require full financial disclosure and are not a hospitable forum for continuing a fraudulent or criminal scheme.

Marijuana businesses are a unique and unprecedented exception to this rule because they often involve companies that openly propose to continue their illegal activity during and after the bankruptcy. Those cases present a challenge to the bankruptcy system because they generally involve assets that are illegal even to possess. In contrast to other types of cases involving illegal businesses, in which the criminal activity has already terminated and the principal concern of the bankruptcy court is to resolve competing claims by victims for compensation, a marijuana bankruptcy case may involve a company that not only is continuing in its business, but is even seeking the affirmative assistance of the bankruptcy court

[1] Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.* (the "CSA"); *Gonzales v. Raich*, 545 U.S. 1, 12 (2005).

in order to reorganize its balance sheet and thereby facilitate its violations of the law going forward.

The USTP's response to marijuana-related bankruptcy filings is guided by two straightforward and uncontroversial principles. First, the bankruptcy system may not be used as an instrument in the ongoing commission of a crime and reorganization plans that permit or require continued illegal activity may not be confirmed. Second, bankruptcy trustees and other estate fiduciaries should not be required to administer assets if doing so would cause them to violate federal criminal law.

The USTP's policy of seeking dismissal of marijuana bankruptcy cases that cannot lawfully be administered is not a new one, but rather it is a policy that has been applied consistently over two presidential administrations and under three Attorneys General. Nor are these concerns unique to marijuana. These same principles would also guide the USTP's response in a case involving any other type of ongoing criminal conduct or administration of illegal property.

Although a recent ABI Journal article[2] takes the USTP to task for its marijuana enforcement efforts, it is noteworthy that the author fully agrees with the USTP's position as to the first of the two principles described above and appears to agree to a significant extent with the second. As the author concedes, "it hardly needs explanation that a bankruptcy court should not supervise an ongoing criminal enterprise regardless of its status under state law."[3] As to the second principle, "[i]t would obviously violate federal law for the trustee to sell marijuana."[4]

Given these concessions, the author's disagreement with the USTP's position would appear to be limited to a fairly narrow range of cases – those where administration of the estate would not require the trustee to sell marijuana (but would require the trustee to administer other marijuana-derived property), or where the debtor is a "downstream" participant in a marijuana business, such as a lessor of a building used for a marijuana dispensary.[5]

Yet under the CSA, there is no distinction between the seller or the grower of marijuana and the supposedly more "downstream" participants whom the article proposes to protect: all are in violation of federal criminal law. In particular,

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[2] Steven J. Boyajian, "Just Say No to Drugs? Creditors Not Getting a Fair Shake When Marijuana-Related Cases Are Dismissed," *ABI Journal*, September 2017, at 24.
[3] *Id.* at 25.
[4] *Id.*
[5] *Id.* at 74.

section 856 of the CSA specifically prohibits knowingly renting, managing, or using property "for the purpose of manufacturing, distributing, or using any controlled substance;" section 863 of the CSA makes it a crime to sell or offer for sale any drug paraphernalia – which is defined to include, among other things, "equipment, product, or material of any kind which is primarily intended or designed for use" in manufacturing a controlled substance; and section 855 provides for a fine against a person "who derives profits or proceeds from an offense [of the CSA]."[6] Thus, not only would a trustee who offers marijuana for sale violate the law but so, too, would a trustee who liquidated the fertilizer or equipment used to grow marijuana, who collected rent from a marijuana business tenant, or who sought to collect the profits of a marijuana investment.

Although cases involving illicit proceeds of Ponzi schemes and other criminal activities – seen in such notorious cases as Enron, Dreier LLP, and Madoff – are administered in bankruptcy, they deal with the aftermath of fraud, usually after individual wrongdoers had been removed from the business. Such cases are wholly inapposite analogies to a marijuana case where the illegal activity is still continuing through the bankruptcy administration process and where bankruptcy relief may allow the company to expand its violations of law in the future. Nor do any of those cases involve proposed chapter 11 and 13 plans where the feasibility of the plan itself is directly premised on the continued receipt of profits from an illegal enterprise. And none of them requires the courts or trustees to deal with property of the kind described in the CSA, for which mere possession is a federal crime.

Similarly, although the author cites two decades-old decisions in support of his claim that "courts have not always shied away from handling marijuana-related bankruptcies,"[7] it is noteworthy that neither of those decisions involved active marijuana operations or would have required a bankruptcy trustee to administer any illegal marijuana assets.[8] Both *Chapman* and *Kurth Ranch* involved bankruptcy cases that were filed *after* law enforcement had arrested and seized the assets of marijuana growers. The legal issues raised by the current wave of marijuana filings were simply not present in those cases – neither case involved an ongoing violation of law, and in neither case were there any marijuana assets to be administered, because all illegal assets had been seized and disposed of prepetition.

Finally, the article suggests that the "ongoing conflict over marijuana policy" is one that should take place outside the bankruptcy system. The USTP

[6] Controlled Substances Act, 21 U.S.C. §§ 801 *et seq*.
[7] *Id.* at 25.
[8] *See Dep't of Revenue v. Kurth Ranch*, 511 U.S. 767 (1994); *In re Chapman*, 264 B.R. 565 (B.A.P. 2001).

agrees. But that does not mean that the USTP or the courts should turn a blind eye to bankruptcy filings by marijuana businesses. Rather than make its own marijuana policy, the USTP will continue to enforce the legislative judgment of Congress by preventing the bankruptcy system from being used for purposes that Congress has determined are illegal.

Faculty

Hon. Jeffery P. Hopkins is a Bankruptcy Judge for the U.S. Bankruptcy Court for the Southern District of Ohio in Cincinnati, appointed in 1996 and reappointed in 2010. After graduating from law school, he clerked for Hon. Alan E. Norris on the U.S. Court of Appeals for the Sixth Circuit, then worked as an associate with Squire, Sanders & Dempsey, LLP, specializing in complex commercial litigation. In 1990, Judge Hopkins sought appointment as an Assistant U.S. Attorney and advanced to become chief of the Civil Division for the Southern District of Ohio. During his tenure on the bankruptcy court, he has served on several committees of the Judicial Conference of the United States and for bar-related and civic organizations. In 2002, the late Chief Justice William H. Rehnquist appointed Judge Hopkins to the Federal Judicial Center's Education Committee for bankruptcy judges. Chief Justice John G. Roberts, Jr. appointed him to the Advisory Committee on Bankruptcy Rules, for which he chaired its Business Bankruptcy Subcommittee until 2009. Judge Hopkins formerly served on the boards of ABI, the ABA Business Bankruptcy Committee and the Cincinnati Symphony Orchestra, and as chair of the Queen City Foundation. Judge Hopkins is a Fellow of the American College of Bankruptcy and a frequent lecturer on bankruptcy law. He also was an adjunct professor at the University of Cincinnati College of Law. In 2010, Judge Hopkins received the William K. Thomas Distinguished Jurist Award from his alma mater, The Ohio State College of Law. He also is a past president of the National Conference of Bankruptcy Judges. Judge Hopkins received his A.B. in government and legal studies and anthro-sociology from Bowdoin College in 1982 and his J.D. in 1985 from The Ohio State University's Michael E. Moritz College of Law.

Damien H. Prosser is co-managing partner of Morgan & Morgan's Business Trial Group in Orlando, Fla., where he represents clients in state and federal courts throughout the country and has experience in complex commercial litigation, contract actions, professional malpractice, idea theft and trade secret litigation, securities litigation and business torts. He also has experience in the litigation adversary proceedings in federal bankruptcy courts and bankruptcy legal malpractice actions. Mr. Prosser began his legal career with a prestigious national law firm and quickly realized the economic challenge of litigating cases under the billable hour model applied to most commercial litigation. He also realized that an additional problem is the absence of actual trial experience by most lawyers at many of the national firms. He typically tries at least one business case to verdict a year and has obtained jury verdicts in excess of $1 million. Mr. Prosser was named a "Rising Star" in 2010, 2012, 2013, 2014, 2015, 2016 and 2017 by *Florida Super Lawyers* magazine, and he has been recognized as a "Legal Elite Up and Comer" by *Florida Trend* magazine. Prior to joining Morgan & Morgan, he practiced for several years with BakerHostetler and Shutts & Bowen. He received his B.A. *cum laude* and Phi Beta Kappa from Florida State University and his J.D. from Mercer University School of Law.

Scott A. Stichter is a shareholder in Stichter, Riedel, Blain, & Postler, P.A. in Tampa, Fla., a boutique firm specializing in bankruptcy and insolvency proceedings. He has more than 30 years of experience practicing principally in the areas of bankruptcy, commercial litigation, foreclosure defense, workouts and debtor/creditor relations, and specializing in all aspects of chapter 11 representation: debtors, trustees, creditors' committees, secured and unsecured creditors, landlords, purchasers and defendants in adversary proceedings in bankruptcy court. Mr. Stichter has received *pro bono* awards from the Florida Bar Association and Hillsborough County Bar Association. He received his B.A. in 1984 from Vanderbilt University and his J.D. from Wake Forest University School of Law in 1987,

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Edmund S. Whitson III is a partner with Adams & Reese LLP in Tampa, Fla., and has advised clients throughout the U.S. on complex litigation matters in state, district and bankruptcy courts. He is familiar with the needs of financial institutions with regard to loan document enforcement and restructuring and bankruptcy, and he has experience representing banks, receivers and financial institutions in matters involving asset recovery, asset sales and fraudulent-transfer litigation. Mr. Whitson has also worked extensively with insurance company and private-equity group clients in this area. He represents companies in sophisticated collection/garnishment and judgment-recovery litigation and is experienced in creditors' rights, landlord-tenant, commercial lending, and real estate lending and development issues. His experience includes counseling clients in contract negotiation and preparing legal opinions in connection with nonconsolidation and other credit transactions and Transportation Infrastructure Finance and Innovation Act financings. In addition, Mr. Whitson has represented a variety of clients, including large hospitals, physician groups and other health care providers in mergers, acquisitions and affiliation transactions. He received his B.S. from the University of Virginia, McIntire School of Commerce and his J.D. with honors from the University of Florida Frederic G. Levin College of Law.

Steven R. Wirth is a partner with Akerman LLP in Tampa, Fla. He is a commercial litigator who focuses a large percentage of his practice on bankruptcy matters representing debtors, creditors, examiners, trustees, corporate monitors, committees, secured and unsecured creditors' groups/individuals, state and federal court receivers, distressed investors and asset-buyers, and parties to bankruptcy-related litigation. Mr. Wirth has participated in many of the largest bankruptcy cases in the U.S., including WorldCom, Enron Corp., Global Crossing Limited, Refco, Inc., Lehman Brothers, Bernard Madoff Investment Securities, Lyondell Chemical Co. and Winn Dixie Stores, Inc. He is admitted U.S. Court of Appeals for the Eleventh Circuit and the U.S. District Courts for the Middle, Northern and Southern Districts of Florida, the District of New Jersey, and the Eastern and Southern Districts of New York. Mr. Wirth is a member of the Tampa Bay Bankruptcy Bar Association's board of directors, ABI, the American Inns of Court, Ferguson-White Inn, the Florida Bar Association's Business Law Section, the New York City Bar Association and the Tampa Chapter of the Turnaround Underground, of which he is a founding member. He clerked for Chief Judge George L. Proctor of the U.S. Bankruptcy Court for the Middle District of Florida. Mr. Wirth received his B.A. in 1995 from Ursinus College and his J.D. from St. John's University School of Law in 1998, where he was on the dean's list, was a senior member of the *ABI Law Review*, and was a member of the senior board of the St. John's Moot Court Honor Society.