

**PROCEDURES FOR COMPLEX CHAPTER 11 CASES
IN THE SOUTHERN DISTRICT OF TEXAS
(Effective February 24, 2020)**

Pursuant TO BANKR. LOC. R. 1075-1, these procedures apply to the administration of complex chapter 11 cases (a “Complex Case”). A Complex Case is a case or group of affiliated cases in which (i) the total debt owed by the debtors¹ exceeds \$10 million; (ii) there are more than 50 parties-in-interest; or (iii) any claims against the debtors are publicly traded. A Complex Case includes a case that meets the foregoing criteria and is initiated by the filing of an involuntary petition under 11 U.S.C. § 303.

The Texas Procedures for Complex Chapter 11 cases do not apply in a Complex Case unless otherwise ordered. The Administrative Procedures for the Filing, Signing, and Verifying of Documents by Electronic Means in Texas Bankruptcy Courts apply in a Complex Case. The most current version of the procedures may be found at:

http://www.txs.uscourts.gov/sites/txs/files/adminproc_1.pdf.

A. FIRST DAY HEARINGS AND COMPLEX CASE DESIGNATION

1. Albert Alonzo, case manager for Chief Judge David R. Jones, is designated as the initial point of contact for all pre-filing matters for anticipated Complex Cases. Mr. Alonzo may be contacted at (713) 250-5467 (office), (832) 993-7656 (mobile), or by electronic mail at Albert_Alonzo@txs.uscourts.gov. Counsel for proposed debtors in a Complex Case should contact Mr. Alonzo as early as possible prior to filing a Complex Case to obtain a setting for first day hearings. Mr. Alonzo will provide first day hearing times for both judges assigned to the Complex Chapter 11 Panel of Judges. Once a judge has been assigned, the applicable setting can then be used. If Mr. Alonzo is not available, the point of contact is LinhThu Do, case manager for Judge Marvin Isgur, who may be contacted at (713) 250-5421 (office), (832) 544-6597 (mobile), or by electronic mail at Linhthu_Do@txs.uscourts.gov.

2. A “Notice of Designation of a Complex Case” must be filed in a Complex Case. The notice of designation must be filed with the petition if filed by the debtor. If the petition is filed under 11 U.S.C. § 303, the notice of designation may be filed by a petitioning creditor or the debtor within 14 days of service of the petition. The petition must be electronically filed. **When filing the petition, the chapter should be designated on the first CM/ECF screen as “111.”**

B. MASTER SERVICE LIST

3. The debtors must maintain a consolidated master service list identifying the parties that must be served whenever a motion or other pleading requires notice. Unless otherwise required by the Bankruptcy Code or Rules, notices of motions and other matters will be limited to the parties on the master service list. The master service list must initially include (a) the Office of the United States Trustee for the Southern District of Texas; (b) the debtors; (c) the attorneys for the debtors; (d) the debtors’ secured lenders; (e) the debtors’ thirty (30) largest unsecured

¹ The term “debtors” is used herein for convenience and includes a single debtor as well as a group of affiliated debtors whose cases are jointly administered.

creditors; (f) those persons who have formally appeared in the chapter 11 case and requested service pursuant to FED. R. BANKR. P. 2002; (g) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; and (h) any known counsel for (d) – (g). Any party in interest that files a Notice of Appearance will be added to the master service list.

- a. Parties on the master service list who appear through counsel or submit a request for service by CM/ECF will be served with pleadings and orders through the CM/ECF notification system. No other form of notice will be required.
- b. All other parties on the master service list must be served, at the server's option, by e-mail or regular mail.
- c. The initial master service list must be filed within three (3) days after entry of an order granting complex case treatment. A revised list must be filed seven (7) days after the initial master service list is filed. The debtors must update and file a copy of the updated master service list (i) at least every seven (7) days during the first thirty (30) days of the case; (ii) at least every fifteen (15) days during the next sixty (60) days of the case; and (iii) at least every thirty (30) days thereafter.

C. CLAIMS AGENTS AND CREDITOR LISTS

4. Motions seeking to employ a claims or noticing agent (“Claims Agent”) should use the official form of order located on the Court’s website. If circumstances require deviation from the official form, the motion requesting approval of the engagement should identify the deviations with specificity.

5. The lead debtor in a jointly administered Complex Case must:
 - a. file a single, consolidated list of creditors on Official Form B 204 consisting of the 30 largest creditors of all jointly administered debtors; and
 - b. if a Claims Agent has been appointed, use a Court-approved modified version of the Official Form 309F (Notice of Chapter 11 Case) to reflect the procedures approved for the services provided by the Claims Agent.

D. COMPLEX HEARING DATES

6. Unless otherwise directed by the Court, omnibus settings and non-omnibus hearing dates may be obtained by contacting the Court’s case manager. In addition, the Court may establish omnibus settings that can be viewed at:

<http://www.txs.uscourts.gov/bankruptcy/bankruptcy-judges-procedures-schedules>.

7. All motions and other matters requiring hearing, but not requiring emergency consideration, must be noticed for hearing (i) on the next omnibus hearing date that is at least twenty-one (21) days after the notice is served; or (ii) a date obtained from the Court’s case manager. Motions requesting a hearing that do not require emergency 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 _____ at _____ am/pm in Courtroom ____, _____ floor, _____(courthouse address)_____. If you object to the relief requested, you must respond in writing, specifically answering each paragraph of this pleading. unless otherwise directed by the Court, you must file your response with the clerk of the bankruptcy court within twenty-one days from the date you were served with this pleading. 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.

8. All motions seeking relief on less than 21-days' notice will be treated as "emergency" motions. An emergency motion must contain the word "emergency" in the title of the motion and must be filed using the CM/ECF code for an emergency motion.

9. Emergency motions may be filed without a designated hearing date. Alternatively, an emergency motion may be calendared for hearing on (i) a previously established omnibus hearing date; or (ii) a date obtained from the Court's case manager. For motions that seek emergency consideration, the Court will determine at the scheduled hearing as an initial matter whether to allow emergency consideration. Motions that require emergency consideration must state, just below the case caption and in lieu of the language required by any Local Bankruptcy Rule, the following:

Emergency relief has been requested. A hearing will be conducted on this matter on _____ at _____ am/pm in Courtroom ____, _____ floor, _____(courthouse address)_____. If you object to the relief requested or you believe that emergency consideration is not warranted, you must either appear at the hearing or file a written response prior to the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

Relief is requested not later than [date].

10. Motions that do not request a hearing or emergency consideration should comply with BANKR. LOC. R. 9013-1(b) and (e) as applicable.

11. Continuances or adjournments of scheduled hearings must be coordinated with the Court's case manager by email with a copy to all anticipated hearing participants. Scheduled hearings will be reset upon the case manager's filing a certificate of notice 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.

12. Notwithstanding BANKR. LOC. R. 9003-1, applications to retain professionals must be served on all persons reflected on the master service list in accordance with BANKR. LOC. R. 9013-1.

E. PROCEDURES FOR REMOTE HEARING PARTICIPATION

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

The dial-in number for Judge Isgur is **832-917-1510**; conference room number 954554.

The dial-in number for Judge Jones is **832-917-1510**; conference room number 205691.

The dial-in number should be used regardless of the location of the hearing.

You will be asked to key in the conference room number. Once the conference room number is entered, 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.

At each hearing, the Court will either (i) unmute all participants' lines; or (ii) selectively unmute participants' lines once they 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. Once completed, the Court may re-mute your line.

Hearing participants may connect on-line to view documents and presentations that are broadcast onto the courtroom's monitors. To view on-line, you may connect through the website located at <https://www.join.me>. Click on "Join a Meeting." The password for the meeting is "judgeisgur" or "judgejones" as the case may be. If you are attempting to view the broadcast on mobile device, you will be required to download a free app.

Audio recordings of substantive hearings will normally be made available on CM/ECF using CourtSpeak. The audio file will be reflected on the docket as an .mp3 filed embedded within a .pdf document. The .pdf file will contain basic instructions for accessing the audio file.

F. AUTOMATIC BRIDGE ORDER FOR EXTENSIONS OF TIME

14. Unless otherwise provided in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or Court order, if a motion is filed that complies with BANKR. LOC. R. 9013-1 to extend the time to take any action before the expiration of the period prescribed by the Bankruptcy Code, the Bankruptcy Rules, or the Local Bankruptcy 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 require the issuance or entry of an order extending the time.

G. SETTLEMENT

15. 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 case manager 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 the settlement, (i.e., that the terms of the settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated) the Court may approve the settlement at the hearing without further notice.

H. PROOFS OF CLAIM AND OMNIBUS CLAIM OBJECTION PROCEDURES

16. Unless a different date is subsequently 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) for all other entities, 90 days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a). The debtors must provide notice of the bar date to all creditors on or before the first date set for the meeting of creditors.

17. Omnibus claim objections must conform with FED. R. BANKR. P. 3007(d) and (e) and BANKR. LOC. R. 3007-1 absent further order.

18. Parties may file a motion to approve procedures for handling omnibus claim objections. Such procedures may not shift the burden of proof, discovery rights or burdens, or pleading requirements.

19. Parties may obtain claim objections hearing dates consistent with the above **Section D.** Adjournments or continuances of claim objections must either (i) be agreed and reflected in a claims objection hearing agenda that is filed at least 24 hours prior to the scheduled hearing; or (ii) ordered by the Court on motion of any party.

I. CASH COLLATERAL AND FINANCING ORDERS

20. On motion by the debtors, a hearing (the "Initial Financing Hearing") will routinely be conducted within three business days to consider either cash collateral use and/or interim debtor-in-possession financing (the "Initial Financing").

21. At the Initial Financing Hearing, the debtors must 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 3 weeks of the case (a "First Budget").

- a. 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.
- b. The debtors must provide a copy of the First Budget in native file format upon request.

22. At the Initial Financing Hearing, the Court will consider the Initial Financing pursuant to 11 U.S.C. §§ 363, 364 and FED. R. BANKR. P. 4001, subject to the following:

- a. The Court will set a hearing to consider permanent financing through use of cash collateral and/or debtor-in-possession financing in accordance with 11 U.S.C. §§ 363, 364 and FED. R. BANKR. P. 4001 (a “Permanent Financing Hearing”).
- b. If further interim financing relief is appropriate prior to a Permanent Financing Hearing, notice of a Permanent Financing Hearing is adequate notice of a request for further interim relief.
- c. At the Permanent Financing Hearing, the debtors must introduce a cash flow projection for sources and uses of cash for the period of cash collateral use or debtor-in-possession financing that is proposed (a “Permanent Financing Budget”). The Court will consider at the Permanent 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 Permanent Financing Budget in accordance with 11 U.S.C. §§ 363, 364 and FED. R. BANKR. P. 4001.
- d. The Permanent Financing Budget must be filed on the Exchange Date provided in BANKR. LOC. R. 9013-2. The debtors must provide a copy of the Permanent Financing Budget in native file format upon request.

23. Debtors’ counsel should highlight provisions of proposed orders issued under 11 U.S.C. §§ 363 or 364 that contain the following:

- a. Sale or plan confirmation milestones;
- b. Cross-collateralization;
- c. Roll ups (including (i) provisions deeming pre-petition debt to be post-petition debt; and (ii) provisions requiring the proceeds of post-petition loans to be used to repay-pre-petition debt);
- d. Liens on avoidance actions or proceeds of avoidance actions;
- e. Default provisions and remedies (including (i) provisions terminating the automatic stay without further order, (ii) provisions waiving rights to challenge lenders’ ability to exercise post-default remedies; and (iii) provisions limiting required proof or altering the burden of proof at post-default hearings);
- f. Releases of claim against lender or others;
- g. Limitations on the use of cash collateral other than general “carve-outs” to pay approved fees and expenses of advisors to official committees or future trustees.
- h. Priming liens;

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

24. If a motion to approve financing under 11 U.S.C. §§ 363 or 364 seeks to include any of the terms listed above, 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 in an interim or emergency order will require an extraordinary showing.

25. Cash collateral and financing orders that contain a release of claims against lenders and other third parties by the debtors 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.

J. SALE ORDERS AND BID PROCEDURES

26. 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.

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

28. If a sale is proposed to be "free and clear," the debtors must demonstrate that the requirements of 11 U.S.C. § 363(f) have been satisfied.

29. 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.

K. PLAN CONFIRMATION

30. If the debtors 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.

31. If the debtors 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.

32. 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.

L. JOINT HEARINGS ON APPROVAL OF DISCLOSURE STATEMENTS AND CONFIRMATION OF PLANS/CONDITIONAL APPROVAL OF DISCLOSURE STATEMENTS

33. A plan proponent may propose to combine the disclosure statement and plan into a single document. The Court encourages combination where appropriate.

34. 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.

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

- a. identify the proposed balloting agent; and
- b. identify any voting procedures in addition to those required in these procedures; and
- c. identify the proposed hearing date for final approval of the disclosure statement and confirmation of the proposed plan (the “Combined Hearing”).

36. The motion must include a proposed order that, in addition to setting the Combined Hearing date: (A) finally approves the balloting and voting procedures to be utilized; (B) finally approves the form of notice to be provided to creditors and interest holders; (C) finally approves the form of ballot which will be provided to creditors and interest holders entitled to vote on the proposed plan; (D) establishes a record date pursuant to FED. R. BANKR. P. 3017(d) and 3018(a); and (E) establishes a voting deadline.

M. SUBMISSION OF PROPOSED ORDERS, CERTIFICATE OF NO OBJECTION AND CERTIFICATE OF COUNSEL

37. After the expiration of one business day after an objection deadline has passed, and with no objection filed, counsel for the movant should file a Certificate of No Objection (“CNO”), stating that no objection was filed. By filing the CNO, counsel for the movant represents to the Court that the movant is unaware of any objection to the motion or application and that counsel has reviewed the Court’s docket and no objection appears thereon. Upon receipt of the CNO, the Court may enter the order without further notice or hearing. Once the order is entered, the hearing scheduled on the motion is cancelled.

38. Objection(s) to a motion, application, objection to claim or other pleading filed with the Court may be resolved by filing an agreed form of order filed with a Certificate of Counsel (“CoC”) consistent with this paragraph. The CoC must be signed by counsel with a certification

that all known objections have been resolved by the agreed form of order. A CoC should not be filed if it resolves less than all filed objections. If there is an applicable objection deadline, the CoC may not be filed until twenty-four (24) hours after that deadline. Upon receipt of the CoC, the Court may enter the order attached to the CoC without further notice or hearing.

39. **Every motion, CNO and CoC should include a proposed form of order.** Proposed orders should be filed as a separate attachment and have no cover page. Proposed orders should also attach copies of any referenced exhibits. Any CNO or CoC that includes a proposed form of order that varies from the original proposed order must include (a) a redline of the revised form of order against the order filed with the subject motion and (b) a clean copy of the form of order without a cover page.

N. PROFESSIONAL RETENTION

40. Applications to retain professionals pursuant to FED. R. BANKR. P. 2014 are governed by BANKR. LOC. R. 2014-1. *Nunc pro tunc* relief is not required unless the application is filed later than 30 days after the later of (i) the date the order for relief is entered and (ii) the commencement of work by the professional. BANKR. LOC. R. 9013-1 applies to applications to retain professionals. BANKR. LOC. R. 9003 does not apply to applications to retain professionals in a Complex Case. No hearing should be self-calendared for an application to retain a professional.

O. FINAL ORDERS AT FIRST-DAY HEARINGS

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

- a. 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 debtors' business. If relief is also sought for payments outside of the ordinary course of business or that implicates § 503(c), a separate motion seeking that additional relief should be filed.
- b. Motions to pay pre-petition and post-petition taxes that are (i) secured by property of the estate; (ii) held in trust by the debtors pursuant to state or federal law; or (iii) entitled to priority pursuant to 11 U.S.C. § 507(a)(8).
- c. Motions to pay (i) oil and gas royalties; or (ii) mineral liens, or mechanic and material liens that meet the criteria of 11 U.S.C. § 546(b);
- d. Applications to retain a Claims Agent;
- e. Motions to limit or modify the notice requirements of FED. R. BANKR. P. 2002;
- f. Motions to approve adequate assurance procedures under 11 U.S.C. § 366 that (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 30 days after the petition date on any timely filed objection to the adequate assurance.

P. DISFAVORED PROVISIONS

42. These provisions are disfavored:
- a. 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.
 - b. Except for relief sought under 11 U.S.C. § 1121(d), the inclusion of a provision in any order that terminates or limits the debtors' exclusive right to propose or seek acceptance of a plan.
 - c. 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 the debtors' actual performance under a plan support agreement, including without limitation, the debtors' post-petition agreement to include performance deadlines in various financing orders.

Q. MEDIATION

43. Matters Subject to Mediation. The Court may order mediation of any dispute arising in an adversary proceeding, contested matter or otherwise. Parties may agree to mediate any dispute without Court approval. No matter may be mediated by a sitting judge without first obtaining an order from the Court.

44. 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.

45. 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 recover any alleged avoidable transfer pursuant to 11 U.S.C. §§ 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 and (2) in all other matters, the fees and costs of the mediator will be shared equally by the parties.

46. Time and Place of Mediation. The mediator will schedule a time and place for the mediation and any pre-mediation conferences.

47. Submission Materials. Each party must submit directly to the mediator such materials (the "Submission") in form and content as the mediator directs. Prior to the mediation, the mediator may talk with the participants to determine what materials would be helpful. The Submission must not be filed with the Court.

48. 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 the 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: (A) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (B) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (C) proposals made or views expressed by the mediator; (D) statements or admissions made by a party in the course of the mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the mediation. Without limiting the foregoing, the parties are bound by (i) FED. R. EVID. 408, and (ii) 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 in evidence, merely by being used by a party in the mediation.

49. Discovery from 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.

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

51. 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.

52. 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.

R. AGENDAS

53. Hearing agendas should be filed using the CM/ECF "agenda" code at least 24 hours prior to the scheduled hearing.

S. REVISION

54. These Complex Case Procedures may be revised periodically.