

JUDGE WALLACE'S PROCEDURES FOR DISCLOSURE STATEMENT HEARINGS AND PLAN CONFIRMATION HEARINGS

This outline of procedures is intended to assist counsel in preparing for Chapter 11 disclosure statement hearings and plan confirmation hearings before Judge Mark S. Wallace. These procedures are not inflexible. The Court may modify them to accommodate the needs of counsel and any particular Chapter 11 case.

1. DISCLOSURE STATEMENT HEARINGS

a. Format

A plan should be filed separately from the disclosure statement. In addition, a copy of the plan should be attached to the disclosure statement as an exhibit.

b. Request to Continue Hearing on Disclosure Statement

Prior to the disclosure statement hearing the Court reviews each proposed disclosure statement (whether or not objections have been filed). To request continuance of a disclosure statement hearing, counsel must file a request for continuance with the court, upload an order regarding the request, and notify chambers of the filing by calling 714.338.5470 no later than seven days before the scheduled hearing.

c. Objections and Filing Amended Disclosure Statement Prior to Hearing

If one or more objections to a disclosure statement are filed, the Court will not consider an amended disclosure statement filed prior to the scheduled hearing date *unless* the debtor and the objecting party or parties have stipulated or otherwise agreed *in writing* (e.g., an email can suffice) to the changes in the disclosure statement. Counsel must personally serve a chambers copy of the disclosure statement in Santa Ana to ensure that the Court has sufficient time to review the changes.

d. Attendance at Hearing

If one or more objections to a disclosure statement are filed, the Court *may* require counsel to appear in Santa Ana if the case in question is a Riverside Division case.

e. Revisions Ordered at Hearing

The Court may present a checklist of deficiencies in the proposed disclosure statement at the disclosure statement hearing. Assuming no other objections have been filed and depending on the extent of the revisions required, the Court will either continue the disclosure statement hearing or allow conditional approval of the disclosure statement. When the Court has conditionally approved the disclosure statement, the plan proponent will need to file and serve an amended disclosure statement together with a proposed order approving the amended disclosure statement that conforms to Official Form 13.

If the plan proponent amends its proposed disclosure statement to correct for deficiencies noted by the Court or in response to objections that have been filed, a “red-lined” version and a clean, non-red-lined version of the amended disclosure statement both should be filed with the Court and served on opposing counsel no later than 7 days prior to the scheduled disclosure statement hearing. If the plan proponent will require a continuance to prepare the amended disclosure statement, it should notify opposing counsel and the Court not later than 7 days prior to the scheduled disclosure statement hearing. If objections cannot be resolved by stipulation and/or amendment of the proposed disclosure statement, the Court will consider any unresolved objections at the disclosure statement hearing.

Once a disclosure statement has been approved, the Court will schedule the confirmation hearing at the conclusion of the disclosure statement hearing. The plan proponent should prepare a proposed order approving the disclosure statement that conforms to Official Form 13 with the dates supplied by the Court at the disclosure statement hearing.

2. PLAN CONFIRMATION HEARINGS

a. Nonvoting Classes

Prior to confirming any proposed plan of reorganization, the Court will require evidence of compliance with each requirement of 11 U.S.C. § 1129(a) and, when applicable, § 1129(b). Counsel are cautioned that the failure of a class to vote does not constitute acceptance of the plan. Bell Road Inv. Co. v. M. Long Arabians (In re M. Long Arabians), 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989). A class must vote affirmatively to accept the plan. *See* In re Townco Realty, Inc., 81 B.R. 707, 708 (Bankr. S.D. Fla. 1987).

b. Ballot Results

A completed tabulation of ballots should be filed by the plan proponent not later than 7 days prior to the confirmation hearing. If no objections to confirmation have been filed, the plan proponent should file declarations in support of confirmation addressing the elements of § 1129.

c. Objections

If objections to confirmation have been filed, the Court will either rule on the objections or treat the confirmation hearing as a scheduling conference. In the event the confirmation hearing is treated as a scheduling conference, the Court will establish a briefing schedule, if appropriate, and set a further evidentiary hearing during which live testimony may be presented.

If the objecting parties and the plan proponent so stipulate, the objections may be resolved based on written evidence and briefs filed with the Court prior to the confirmation hearing. The Court may also allow live testimony and cross-examination, time permitting, at the initial confirmation hearing upon stipulation of the parties.

d. Preparing Order Confirming Plan

A Plan Confirmation Order must conform to Rule 3020 of the Federal Rules of Bankruptcy Procedure. According to that rule, there are two (2) orders that must be lodged with the court:

- (1) an order confirming a chapter 11 plan must be completed on Official Form 15, which can be located at the US Courts website (by CTRL + click to the following link) <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>; or follow the sample as follows:

[Sample] Order Confirming Plan

The plan under chapter 11 of the Bankruptcy Code filed by *[Name of Plan Proponent]* on *[Date Plan Filed]* *[If Applicable; as modified by a modification filed on [Date Modification of Plan Filed],]* or a summary thereof, having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that the requirements for confirmation set forth in *[Select: 11 U.S.C. § 1129(a) or 11 U.S.C. § 1129(b)]* have been satisfied;

IT IS ORDERED that:

The plan filed by *[Name of Plan Proponent]*, on *[Date Plan Filed]*, *[If Appropriate, Include Dates and Any Other Pertinent Details of Modifications to the Plan]* is confirmed. *[If the Plan Provides for an Injunction Against Conduct Not Otherwise Enjoined Under the Code, Include the Information Required by Rule 3020.]*

A copy of the confirmed plan is attached.

Dated: _____

BY THE COURT

[Name of Judge]
United States Bankruptcy Judge

Instructions regarding how to attach a copy of the confirmed plan:

If a confirmed plan is 10 pages or under, please upload it as an exhibit and/or attachment to your electronic order. Please refer to Section 4.2.(g) of the *Court Manual*, which can be located at the Court's website <http://www.cacb.uscourts.gov/>, then please select Forms/Rules/General Orders, then Court Manual.

If a confirmed plan is 10 pages or over, please refer to paragraph 2.e below regarding Filing Copy of Confirmed Plan.

- (2) an order setting forth findings of fact and conclusions of law. An example of Findings of Fact and Conclusions of Law re Confirmation of Debtor's Plan of Reorganization is available in Collier on Bankruptcy, Vol. 16, Forms, Form 23.23-2 (16th ed. 2011).

e. Filing Copy of Confirmed Plan

A copy of the plan actually confirmed by the Court (including all changes approved at the confirmation hearing) must be filed as a separate, stand alone document.

IF THE CASE IS A RIVERSIDE DIVISION CASE, COUNSEL AND WITNESSES WILL BE REQUIRED TO APPEAR IN SANTA ANA AND WILL NOT BE PERMITTED TO APPEAR IN RIVERSIDE BY VIDEO.