

## **PROCEDURES FOR DISCLOSURE STATEMENT AND CONFIRMATION HEARINGS**

**This outline of procedures is intended to assist counsel in preparing for Chapter 11 disclosure statement and confirmation hearings before Judge Peter H. Carroll. 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**

Prior to the disclosure hearing the court reviews each proposed disclosure statement (whether or not objections have been filed). Accordingly, counsel are requested to notify chambers not later the Monday prior to the scheduled hearing if the disclosure statement will be continued.

The court may present a checklist of deficiencies in the proposed disclosure statement at the disclosure 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 present an amended disclosure statement together with a proposed order approving the disclosure statement that conforms to Official Form 13.

If the plan proponent intends to amend its proposed disclosure statement in response to objections that have been filed, a “red-lined” version of the amended disclosure statement should be filed with the court and circulated to opposing counsel not later than the Monday 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 the Monday 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. Confirmation Hearings**

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

(9th Cir. BAP 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).

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

If objections to confirmation have been filed, the court will normally treat the confirmation hearing as a scheduling conference. At that hearing, 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.