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FINANCIAL RESTRUCTURE FOR BUSINESSES AND GOVERNMENTS

Complex Chapter 11 Case Practice In the Southern District of Texas

Southern District of Texas Complex Bankruptcy Case Rules 4, 5 and 6 establish procedures for efficient due process that permit a debtor to confirm a plan of reorganization in 90 to 120 days, even if trials are necessary about (i) adequate protection to obtain financing during the case, (ii) whether proposed sale procedures are fair, and (iii) whether a plan is fair and equitable and in the best interests of creditors.

These Rules certainly facilitate confirmation within the 180 days that the Bankruptcy Code gives a Chapter 11 debtor to file and confirm a plan without any extension of exclusivity.

Complex Cases filed the Southern District of Texas are assigned 50 percent to Chief Judge Jones and 50 percent to Judge Isgur. *See SDTX Work Order.*

Each has an MBA and has conducted substantial trials concerning cash collateral use, DIP loans, sales, and plan confirmation. Each is an excellent trial judge who has moved cases through his court with efficient due process. Each has conducted the trials necessary to move cases along.

During 2016, when oil prices were low and there were a number of energy cases, Judge Isgur confirmed a plan of reorganization for Southcross Energy in 14 days where there was near unanimous support for the plan.

During 2016, Judge Jones confirmed a plan for SandRidge in 116 days, handling efficiently during that time substantial litigation (i) with the creditors committee about best interests of creditors that was settled, and (ii) with an ad hoc equity group about whether the plan was fair and equitable that was tried to judgment of enterprise valuation issues.

Additionally, SDTX Judges have found jurisdiction in numerous cases for debtors with headquarters in other countries, including TMT (Judge Isgur), Seadrill (Judge Jones) and Yukos Oil Company (Judge Paul, now retired). *See separate memo re: International and Cross Border Cases in the Southern District of Texas.*

Under SDTX Complex Case Rule 6A and B, the Court can use (i) the Initial Finance hearing or (ii) the Permanent Finance Hearing to schedule a disclosure statement hearing to occur about 35 days later (complying fully with FRBP 2002b and 3017a concerning notice).

This encourages the debtor and the U.S. Trustee to create a timeline for prompt filing of schedules and an early bar date and first meeting of creditors. It encourages the U.S. Trustee to make a prompt appointment of a creditors committee, if one is appropriate in the case.

Under Rule 6A, the Court can use either (i) the Initial Finance hearing, (ii) the Permanent Finance Hearing or (iii) the disclosure statement hearing to assess what kinds of issues are being presented for a possible plan confirmation trial. It can then schedule a confirmation hearing to permit due process for those issues based on reasonable discovery, not burdensome discovery propounded for delay.

Additionally, Local Rule 9013-2 provides clear standards for exchange of witness and exhibit lists a couple of days before a hearing, facilitating actual conduct of trials. *See Local Bankruptcy Rules.*

The texts of SDTX Complex Case Rules 4, 5 and 6 are copied below my signature block. These and other local rules are posted on my website at www.zackclement.com. I would be glad to talk with you about them and about complex case practice here in the Southern District of Texas.

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Houston Complex Case Rules 4, 5 and 6

4. **Cash Collateral Use/Debtor in Possession Lending**
 - A. On motion by the Debtor, a hearing (the “Initial Finance 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”).
 - B. At the Initial Finance Hearing, the debtor should introduce a cash flow projection showing sources and uses of cash necessary for the debtor’s operations on a weekly basis for not less than the first 3 weeks of the case (a “First Budget”).
 - i. The First Budget shall be filed with the Court and served no later than noon on the second business day after the filing.
 - ii. Service must be by electronic means to the extent possible.
 - iii. Service shall be made to the United States Trustee, the twenty largest unsecured creditors, all creditors who claim an interest in cash collateral, parties requesting notice, and Committee and all creditors with secured claims exceeding \$1,000,000.
 - C. At the Initial Finance Hearing, the Court will consider the Initial Financing pursuant to Code §§ 363, 364, and Rule 4001, subject to the following:
 - i. The Court may consider additional use of cash if cause is shown under Code §§ 363, 364, and Rule 4001 for such extraordinary additional financing,
 - ii. The Court will consider Initial Financing, presumptively granting replacement liens on post-petition collateral to secure Interim Financing on the same types of collateral and to the same extent as the pre-petition lender has on the pre-petition collateral, substantially in the form of the Standard Initial Cash Collateral/DIP Loan Order attached hereto as Exhibit A (“Standard Terms”).
 - (a) The Court will consider terms in addition to Standard Terms if cause is shown under Code §§ 363, 364 and Rule 4001 for such additional terms.
 - (b) If possible, parties in interest requesting additional terms should file proposed language prior to the commencement of the hearing.
 - iii. The Court will set a hearing to consider permanent financing through use of cash collateral and/or debtor-in-possession lending

in accordance with Code §§ 363, 364 and Rule 4001 (a “Permanent Finance Hearing”).

- iv. In keeping with Rule 4001, a Permanent Finance Hearing shall be set no earlier than 15 calendar days after the motion was served and will presumptively be set on or about the 30th calendar day.
- v. At the Permanent Finance Hearing, the debtor should introduce a cash flow projection for sources and uses of cash for the period of cash collateral use or debtor-in-possession lending that is proposed (a “Permanent Financing Budget”). The Court will consider at the Permanent Finance Hearing whether it is appropriate to order either long-term use of cash collateral or long term debtor-in-possession lending pursuant to the Permanent Financing Budget in accordance with §§ 363, 364 and Rule 4001.
- vi. The Permanent Finance Budget shall be served at least 3 business days before the Permanent Finance Hearing, with service made in accordance with paragraphs 3(b)(2) and 3(b)(3) hereof.
- vii. If a motion to approve Permanent Financing under § 363 and/or 364 seeks to include any of the terms listed in Exhibit B hereto (“Significant Provisions”), the motion shall list all such provisions in a separate section and shall give reasons why each such provision should be approved in this case. The Court will consider each of these Significant Provisions based on §§ 363, 364, Rule 4001 and the facts and circumstances of the case.

5. **Sales of Substantially All Assets.**

- A. If a debtor proposes to sell all, or substantially all, of its assets pursuant to § 363 during the case (a “Substantial Asset Sale”), it will be expected to use the following procedures in order to demonstrate its compliance with §§ 363, 1129, Rule 6004 and applicable Circuit precedent concerning such sales.
- B. Subject to paragraph 3 of these procedures, such a sale shall not be heard on less than 21 days notice.
- C. Such a sale shall be for cash or readily marketable securities that can easily be distributed to creditors under a plan of reorganization (“Complying Proceeds”); unless the proponent establishes that Complying Proceeds are unavailable and the consideration obtained is in the best interest of the estate.
- D. Such proceeds shall be placed into segregated account to be used only (i) pursuant to court order during the case or (ii) distributed to creditors pursuant to a confirmed plan of reorganization (a “Complying Plan”).
- E. Any creditor opposing such a sale on the basis that the proposed sale constitutes a sub rosa plan must identify with specificity in its objection what rights or protections under §§ 1121-1129 are being violated.

- F. At the Substantial Asset Sale Hearing, the debtor will be expected to respond to any objection asserting that the proposed sale of substantially all assets pursuant to § 363 will, under the facts of the case, materially adversely affect the rights of creditors under §§ 1121 - 1129 concerning confirmation of a plan of reorganization. The debtor will be expected to introduce evidence that it is proposing to segregate Complying Proceeds or establish why Complying Proceeds are unavailable. The debtor may, but is not required to, submit a copy of a plan of reorganization complying with § 1129 (a Complying Plan”). The debtor will be expected to demonstrate that all valid, perfected and unavoidable liens will be protected pursuant to § 363(f).
 - G. At the Substantial Asset Sale Hearing, the Court will consider the evidence of Complying Proceeds and any Complying Plan as part of its consideration of whether to approve the sale pursuant to § 363 and Rule 6004.
 - H. If a debtor files and serves a Substantial Asset Sale Motion at least two business days before the Initial Finance Hearing, then at the Initial Finance Hearing the Court will (i) schedule the hearing on the Substantial Asset Sale Motion; and (ii) consider any bid procedures proposed in connection with such sale.
 - I. If a debtor files a Substantial Asset Sale Motion before the Permanent Finance Hearing, then, unless it shall have been done previously, at the Permanent Finance Hearing, the Court will (i) schedule the hearing on the Substantial Asset Sale Motion; and (ii) consider any bid procedures proposed in connection with such sale.
 - J. The Court adopts the Guidelines for the Conduct of Asset Sales that are attached as Exhibit C.
6. **Plan Confirmation.**
- A. If a debtor files a plan of reorganization and disclosure statement before the Initial Finance Hearing, then at the Initial Finance Hearing the Court will set the date for the disclosure statement hearing and related objection deadlines and consider setting a date for the Confirmation hearing and related voting and objection deadlines
 - B. If a debtor files a plan and disclosure statement before the Permanent Finance Hearing, then at the Permanent Finance Hearing the Court will set the date for the disclosure statement hearing and related objection deadlines, and consider setting a date for the plan approval confirmation hearing and related voting and objection deadlines.
 - C. In deciding scheduling for Disclosure Statement and Confirmation Hearings, the Court will consider arguments for and against shortening the time for notice of the Disclosure Statement and/or Plan Confirmation

Hearings, and whether any such notice periods should run simultaneously. In making that determination, the Court will take the following into account:

- i. Whether there is evidence that it is important to the success of the reorganization that the case move expeditiously.
 - ii. Whether the plan proposes to distribute cash proceeds of assets pursuant to the priorities of § 726.
 - iii. If a class is expected to be treated under § 1129(b), a showing why such class is receiving due process if it is not given 25 days notice of a disclosure statement hearing and subsequent 25 days notice of a confirmation hearing.
 - iv. The terms and complexity of the proposed plan.
 - v. The extent to which the proposed plan is consensual.
 - vi. All other factors bearing on the wisdom of shortening the time.
- D. If any sale of assets or auction of rights, including rights to provide financing in connection with the Plan, is proposed in connection with a plan, and the plan proponent proposes procedures for such, then (i) an order to set procedures for such sale or auction shall be considered at or before the hearing at which the date for the disclosure statement hearing is set; or (ii) the Plan may propose to sell assets without the need for such sale or auction procedures if permitted under applicable law.