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U.S. DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:)
) **OPERATING ORDER 01-04**
AMENDMENTS TO SOUTH)
CAROLINA LOCAL BANKRUPTCY)
RULES)
_____)

Pursuant to Local Rule 83.X.02 of the United States District Court for the District of South Carolina and South Carolina Local Bankruptcy Rule (SC LBR) 9029-1, *Operating Orders and Amendments to the Local Bankruptcy Rules*, this court hereby adopts and promulgates amendments to the South Carolina Local Bankruptcy Rules (SC LBR), as set forth below. These amendments become effective on October 1, 2001.

Pursuant to Title 28 U.S.C. §2071(e) and Rule 83, Federal Rules of Civil Procedure, public notice of these amendments is hereby provided and an opportunity for comment is hereby given. Any modifications the court deems necessary as a result of public comment will be considered after November 1, 2001, which is the expiration date for receiving said comments.

1. SC LBR 2014-1, *Employment of Professionals*, is amended to read:

An application for an order approving the employment of a professional, and the verified statement of the professional, required to be filed pursuant to Fed.R.Bankr.P. 2014, and a proposed order approving the employment, must be filed with the court and served on the United States Trustee. An objection to the proposed employment may be filed with the court and served on the movant

within twenty (20) days of the filing of the application. Unless otherwise ordered by the court, the employment, upon approval, shall be effective as of the date of the filing of the application.

2. SC LBR 2081-1, *Chapter 11 Requirements*, is amended to add the following new paragraph (e) (formerly in Operating Order 00-01) and to re-letter the subsequent paragraphs accordingly:

(e) Confirmation Order. Pursuant to Fed.R.Bankr.P. 3020(e), an automatic 10-day stay of an order confirming a plan is in effect unless the court enters an order avoiding such stay. An order avoiding such stay may be issued when: (1) a motion or the plan has been filed and served upon the parties which specifically requests that the 10-day stay not apply and to which there has been no response or objection filed; or (2) all parties in interest have given written consent to the avoidance of the stay.

Paragraph (e) becomes (f), paragraph (f) becomes (g), paragraph (g) becomes (h), paragraph (h) becomes (i).

3. SC LBR 3011-1, *Disposition of Unclaimed Dividends*, is amended to add the following paragraph (b) and to denominate the existing paragraph as paragraph (a):

Any indication of fraud by persons/entities filing a motion seeking the release of unclaimed funds will be promptly reported to the United States Attorney.

4. The *Editor's Notes* to SC LBR 3012-1, *Valuation of Security*, are amended to read:

The rule and the forms have been edited to apply to valuation motions filed by parties other than the debtor. The name of the rule and certain wording were edited to reconcile with Fed.R.Bankr.P. 3012. A new provision has been added in accordance with Dewsnup v. Timm, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed2d 903 (1992), Ryan v. Homecoming Financial Network, 253 F.3d 778 (4th Cir. (Md.) June 1, 2001), and In re Virello, 236 B.R. 199 (Bankr. D.S.C. 1999).

5. SC LBR 4001-1, *Proceedings to Modify Stay*, paragraph (g)(1), is amended, a new paragraph is added after the existing paragraph (h), which will be denominated paragraph (i)

(formerly in Operating Order 00-01), and the subsequent existing paragraphs are re-lettered, as follows:

(g) Settlements. Unless otherwise allowed . . . of the following:

(1) If a Consent Order or certified Settlement Order (See Local Official Form 4001-1(c)) and a certificate of no objection by the trustee, if applicable, are in proper form and received by the courtroom deputy clerk twenty-four (24) hours before the scheduled hearing, the parties may be excused from attending the hearing.

(i) Stay of Order. Pursuant to Fed.R.Bankr.P. 4001(a)(3), an automatic 10-day stay of an order granting a motion for relief from the automatic stay made in accordance with Fed.R.Bankr.P. 4001(a)(1) is in effect unless the court orders otherwise. This court may enter an order avoiding the automatic imposition of the 10-day stay when: (1) a motion has been filed and served upon the parties which specifically requests that the 10-day stay not apply and to which there has been no response or objection filed; (2) there is a previous consent order or order of settlement pending which provided for the granting of such relief upon specified conditions and the underlying motion or agreement requested the avoidance of the automatic 10-day stay; or (3) all parties in interest have given written consent to the avoidance of the stay.

Paragraph (i) becomes (j); paragraph (j) becomes (k), paragraph (k) becomes (l).

6. SC LBR 4001-4, *Agreements Relating to Relief from the Automatic Stay, Prohibiting or Conditioning the Use, Sale or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit*, paragraphs (c)(1) and (c)(2) (**Guidelines for 4001(d) notices and orders**) are amended as follows:

(c)(1)(B). Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the stipulation. (This would include, for example, an order approving a stipulation providing that the secured party's lien is a "first Priority" lien);

(c)(1)(C). Waivers of Bankruptcy Code §506(c), unless the waiver is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds;

(c)(1)(E). Cross-collateralization clauses, i.e., clauses that secure pre-petition debt by post-petition assets in which the secured party would not otherwise have a security interest by virtue of its pre-petition security agreement;

(c)(1)(G). Waivers, assignment, transfer or encumbrance of avoidance actions arising under the Bankruptcy Code;

(c)(1)(J). Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code.

(c)(2)(D). Reservations of rights under Bankruptcy Code §507(b), unless the stipulation calls for modification of the Codes' priorities in the event of a conversion to chapter 7;

7. SC LBR 5004-1, *Disqualification of Judge*, is abrogated.
8. SC LBR 5001-1, *Office of the Clerk*, paragraph (c) (**Mailing address of the Court**) is amended to delete subparagraphs (1) and (2), so that it reads:

UNITED STATES BANKRUPTCY COURT
POST OFFICE BOX 1448
COLUMBIA, SC 29202-1448

9. SC LBR 5073-1, *Cameras and Recording Devices*, is amended to include the following as a footnote following the word *videotaping* in the first line:

¹ The court's videoconferencing systems linking its various places of holding court, which can only be operated by an authorized representative of the clerk, is not included in this rule.

10. SC LBR 6004-1, *Sale of Property*, is amended to add language to paragraph (c) (formerly in Operating Order 00-01) so that it reads:

(c) Order Approving Sale. A proposed order approving a sale must specify the terms of the sale and not merely incorporate by reference the terms of the Notice of Sale.

Pursuant to Fed.R.Bankr.P. 6004(g), an automatic 10-day stay of an order

authorizing the use, sale, or lease of property other than cash collateral is in effect unless the court orders otherwise. This court may enter an order avoiding the automatic imposition of the 10-day stay when: (1) a motion or notice has been filed and served upon the parties which specifically requests that the 10-day stay not apply and to which there has been no response or objection filed; (2) there is a previous consent order or order of settlement pending which provided for the granting of such relief upon specified conditions and the underlying motion or agreement requested the avoidance of the automatic 10-day stay; or (3) all parties in interest have given written consent to the avoidance of the stay.

11. New SC LBR 6006-1, *Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease* (formerly in Operating Order 00-01):

Pursuant to Fed.R.Bankr.P. 6006(d), an automatic 10-day stay of an order authorizing the trustee to assign an executory contract or unexpired lease under 11 U.S.C. §365(f) is in effect unless the court orders otherwise. This court may enter an order avoiding the automatic imposition of the 10-day stay when: (1) a motion or notice has been filed and served upon the parties which specifically requests that the 10-day stay not apply and to which there has been no response or objection filed; (2) there is a previous consent order or order of settlement pending which provided for the granting of such relief upon specified conditions and the underlying motion or agreement requested the avoidance of the automatic 10-day stay; or (3) all parties in interest have given written consent to the avoidance of the stay.

12. SC LBR 6007-1, *Abandonment of Disposition of Property*, is amended to add the following footnote after the title of paragraph (b) (**Abandonment at Meeting of Creditors**):

² Abandonment under this paragraph is not permitted in Chapter 11 cases; the Notice of Meeting of Creditors in Chapter 11 cases does not contain the notice requirements of this paragraph.

13. SC LBR 7005-1, *Filing of Discovery*, is abrogated. (See, Fed.R.Bankr.P. 7005, Fed.R.Civ.P. 5(d), amended December 1, 2000, which now prohibits filing of discovery until it is used in a proceeding or the court orders such filing).

14. SC LBR 7026-1, *Discovery*, is amended as follows due to amendments to Fed.R.Civ.P.26 which became effective December 1, 2000:

Paragraph (a), **Limits on Interrogatories**, is abrogated.

Paragraph (b), **Limits on Depositions**, is abrogated.

Paragraph (n), **Opt-Out Provisions**, is abrogated.

Paragraph (c) becomes (a), paragraph (d) becomes (b), paragraph (e) becomes (c), paragraph (f) becomes (d), paragraph (g) becomes (e), paragraph (h) becomes (f), paragraph (i) becomes (g), paragraph (j) becomes (h), paragraph (k) becomes (i), paragraph (l) becomes (j), paragraph (m) becomes (k).

Additional Editor's Note: "Amendments abrogating previous paragraphs (a), (b) and (n) made September __, 2001, as a result of changes to Fed.R.Bankr.P. 7026 (Fed.R.Civ.P. 26)."

15. SC LBR 9010-1, *Practice Before the Court*, paragraph (d), is amended to read as follows:

(d) Extent of an Attorney's Duty to Represent. Except as may be provided in an attorney's written agreement with the client concerning appeals and adversary proceedings, any attorney who files documents for or on behalf of a debtor or party in interest shall remain the responsible attorney of record for all purposes including the representation of the client at all hearings and in all matters that arise in conjunction with the case. Upon motion which details the reasons for the request for withdrawal and which details the portion of any retainer which has been earned, and after notice to the debtor, all creditors and parties in interest and a hearing, the court may permit an attorney to withdraw as attorney of record.

16. New SC LBR 9036-1, *Notice by Electronic Transmission* (formerly in Operating Order 00-02):

The court may provide notice by electronic transmission if an entity entitled to receive the bankruptcy notice requests in writing that the notice be transmitted electronically. This written request requirement is fulfilled through an *Electronic Noticing Agreement* (and *Evidence of Authority Forms*, if applicable).

The terms and procedures for electronic noticing are detailed in the *Electronic Bankruptcy Noticing Agreement* which, upon execution by the entity requesting electronic notice and the clerk of this court, will be provided by the clerk to the Bankruptcy Noticing Center which will serve the electronic notice.

The clerk may, in her discretion, delegate to the Bankruptcy Noticing Center the authority to enter into and monitor *Electronic Noticing Agreements* with entities who are acting solely on their own behalf or, in an instance where an entity is acting as agent for others, those agreements which are executed by both the party and the agent.

17. Local Official Form 4001-1(b), *Certification of Facts*, to SC LBR 4001-1, *Proceedings to Modify Stay*, is replaced by Attachment 1 to this operating order.

18. Local Official Form 4003-1(a), *Motion to Avoid Judicial Liens (11 U.S.C. §522(f))*, to SC LBR 4003-1, *Motions to Avoid Lien*, is replaced by Attachment 2 to this operating order.

AND IT IS SO ORDERED.


WM. THURMOND BISHOP
Chief Judge


JOHN E. WAITES
United States Bankruptcy Judge

Columbia, South Carolina

September 24, 2001

LOCAL OFFICIAL FORM 4001-1(b) TO SC LBR 4001-1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

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)
)
)

CASE NO: _____

CHAPTER: _____

CERTIFICATION OF FACTS

DEBTOR.

In the above-entitled proceeding, in which relief is sought by (name of movant) from the automatic stay provided by 11 U.S.C. § 362, I do hereby certify to the best of my knowledge the following:

- (1) Nature of Movant's Interest.
- (2) Brief Description of Security Agreement, copy attached (if applicable).
- (3) Description of Property Encumbered by Stay (include serial number, lot and block number, etc.).
- (4) Basis for Relief (property not necessary for reorganization, debtor has no equity, property not property of estate, etc.) include applicable subsection of 11 U.S.C. § 362).
- (5) Prior Adjudication by Other Courts, copy attached (Decree of Foreclosure, Order for Possession, Levy of Execution, etc., if applicable).
- (6) Valuation of Property, copy of Valuation attached (Appraisal, Blue Book, etc.):

Fair Market Value	_____
Liens (Mortgages)	_____
Equity Before Exemption	_____
Debtor's Exemption (-)	_____
Net Equity	_____
Source/Basis of Value	_____
- (7) Amount of Debtor's Estimated Equity (using figures from paragraph 6, supra).
- (8) For Lien Holder: List all post-petition payments received by lien holder; date and amount of last payment received; and month for which last payment was applied.

Date: _____, _____

Signature of Attorney

Attorney for:

Typed/Printed Name/Address/Telephone

District Court I.D. Number

ATTACHMENT 1 TO OPERATING ORDER 01-04

LOCAL OFFICIAL FORM 4003-1(a) TO SC LBR 4003-1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

)
) CASE NO: _____
) CHAPTER: _____
)
) MOTION TO AVOID JUDICIAL
) LIEN (11 U.S.C. § 522(f))¹
)
)
)

DEBTOR.

TO THE TRUSTEE (if one is appointed) AND THE JUDGMENT LIEN CREDITOR LISTED BELOW:

Name of Creditor	a) Amt. of Judicial Lien	b) Total Amt. + Of Unavoidable Lien	c) Amt. Of + Exemption = Claimed	d) Enter Amount -	e) Value of = Debtor's Interest In Property	f) Amt. Of Judicial Lien to Be Avoided (to extent d is > e)	g) Amt. Not Avoided

The debtor hereby moves, in accordance with 11 U.S.C. § 522(f)(1)(A), to avoid the judicial lien held by each creditor named above in the amount listed above in the property claimed as exempt by the debtor. Each of the undersigned acknowledges reading and understanding Federal Rule of Bankruptcy Procedure 9011 and certify the following:

- (a) The judicial lien(s) referenced above represent a judgment which has been recorded in a county in which the debtor owns real estate or a levy/attachment on personal property; and
- (b) The property on which the judicial lien is sought to be avoided is owned by the debtor and has been properly exempted according to Schedule C filed herein.

Signature of Movant

Signature of Attorney

Typed/Printed Name/Address/Telephone

District Court I.D. Number

Date: _____

¹ This form is for use only in chapter 7, chapter 11 and chapter 12 cases. See SC LBR 3015-1 for chapter 13 notice.