



## Chapter 13 Hearing Procedures<sup>1</sup>

Effective July 1, 2004 the calendar for hearing Chapter 13 case matters shall be divided into a consent calendar and dispute calendar day each month.<sup>2</sup> The type of case matter to be scheduled for each day is identified on Exhibit A attached hereto and shall be scheduled accordingly by the Court and parties. Matters which are incorrectly scheduled may be stricken, determined, rescheduled or continued at the convenience of the Court and in the interests of justice.

### **CONSENT CALENDAR**

**Definition of Consent Matter and General Procedures.** Matters for the consent calendar are matters that generally are settled or uncontested (See Exhibit A). Consent calendars shall be conducted by the Chapter 13 Trustee (the "Trustee") with the Judge available only on a limited basis. Prior to the consent calendar, the Trustee shall provide notice of deficiencies in a debtor's plan of reorganization (the "Plan").<sup>3</sup> In conducting the consent calendar, the Trustee shall address each scheduled matter and report the Trustee's recommendations to the Court. In doing so the Trustee may discuss Plan deficiencies and objections by parties in interest, examine debtors or other witnesses, identify other information needed for case administration, and report settled and disputed matters. Counsel or parties may also make statements on the record. The Court or Trustee may announce further hearing dates and times for continued matters or matters deemed in dispute. Once a new hearing date is designated, all counsel and parties will be presumed to agree to the date and no conflicts will be accepted. Settlements, Trustee recommendations, and other agreed upon dispositions shall be recorded in the minutes of the hearings, noted in the records of the Court, and acted on by the Judge at a later time. Matters which remain in dispute shall be identified to the Court as stated herein. At the Court's discretion in a matter deemed in dispute, a preliminary hearing may be conducted by telephone, in chambers, or on the record at or following the hearing scheduled on the consent calendar.

**Attendance.** The Court does not require the attendance of debtors or witnesses at a hearing on the consent calendar, but debtor's attendance may be required by the Trustee in order for the Trustee to obtain relevant information and make recommendations to the Court. Accordingly, it is the responsibility of debtors and counsel to inquire with the Trustee as to the need for a particular debtor's attendance.<sup>4</sup> Counsel for debtors and objecting parties are expected to attend unless otherwise excused by the Court (under the Statement of Dispute procedure described herein) or the Trustee upon being satisfied that there are no outstanding issues that require attendance. If counsel has informed the Trustee of a resolution of a matter and the Trustee has agreed, the Trustee may report a resolution on the record and excuse counsel's attendance. The failure to attend by

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<sup>1</sup> At this time, these procedures do not govern the hearing of motions for relief from the automatic stay pursuant to 11 U.S.C. § 362. A separate Operating Order or Guidelines address such motions.

<sup>2</sup> Columbia Division dispute and consent calendars may be scheduled on the same day in some instances.

<sup>3</sup> Trustees typically provide written notice of deficiencies in a debtor's plan of reorganization at a debtor's 11 U.S.C. § 341 meeting of creditors and, if developments require, several days in advance of the hearing on confirmation of a debtor's plan of reorganization.

<sup>4</sup> To assist the bar, Trustees may develop, implement, and publish standard rules and procedures governing attendance by debtors at hearings scheduled on the consent calendar.

counsel when not otherwise excused shall be reported to the Court by the Trustee and may be deemed a failure to prosecute.

If counsel or a party desires to be excused in advance from attending a hearing on the consent calendar because a matter has been determined to require the presentation of testimony or other evidence or oral argument to the Judge, no later than 12:00 p.m. on the day immediately prior to the day of a hearing on the consent calendar, counsel and parties must submit a Joint Statement of Dispute (as discussed below) for the Court's review. Following review, the Court will advise whether the matter will be removed from the consent calendar and attendance excused. The designation of a new hearing date and time by the Court shall be conveyed to the party/counsel submitting the Joint Statement of Dispute. The party/counsel so informed bears the duty to inform all other participating parties/counsel.<sup>5</sup>

**Duty to Consult.** In order to comply with Bankruptcy Rule 9014(e), the Trustee, parties, and counsel that have a matter scheduled for hearing before the Court shall have a duty to timely consult with each other regarding the matter and discuss settlement possibilities. If a scheduled matter is not fully resolved and reported as such prior to the conclusion of the consent calendar, it shall be considered a disputed matter that will require presentation to the Judge for determination and shall be reported as disputed by the parties/counsel and the Trustee.

**Identification of Disputed Matter and Statement of Dispute.** In a disputed matter, parties and counsel shall have the duty to define the issues to be decided by the Court, disclose the witnesses to be called at the hearing, timely exchange any evidence to be presented to the Court, enter into stipulations which may assist the Court at the hearing, and estimate the time needed for hearing.

**By 12:00 p.m. on the day immediately following the day of a hearing on the consent calendar**, parties (through counsel if applicable) involved in matters that could not be settled or that remain in dispute shall report to the Court by submitting a **Joint Statement of Dispute** according to the form attached hereto as **Exhibit B to the following electronic mail address: judgwaitcs\_ch13@scb.uscourts.gov.**<sup>6</sup> Statements of Dispute are **not** to be electronically filed with the Office of the Clerk of Court.

If parties cannot agree to a Joint Statement of Dispute, separate statements shall be submitted to the Court by the same deadline and served upon opposing counsel via electronic mail, telefax, or hand delivery. Upon the failure of a party/counsel to consult regarding the matter before the Court to ensure the timely submission of the Joint Statement, in its separate statement the remaining party shall also indicate efforts (and their timing) made to contact and consult with the opposing party/counsel. The same duty to consult applies with respect to disputed matters involving the Trustee. In the event that the Trustee is a litigant to a disputed matter, the Trustee shall also bear a duty to submit a Statement of Dispute.

<sup>5</sup> Only Joint Statements of Dispute will be considered by the Court in order to remove a matter from the consent calendar on the day prior to the consent calendar.

<sup>6</sup> Parties unable to submit a Statement of Dispute via electronic mail may submit via telefax to 803-253-3464, or via hand-delivery upon notification to chambers.

The failure by any party/counsel to timely submit a Statement of Dispute which is complete and submitted in good faith, or the failure by any party/counsel to timely and fully consult with the Trustee or opposing party/counsel, may be deemed a failure to prosecute which may result in dismissal or denial of the party's position, pleading, or plan of reorganization or may result in other sanctions pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927, or the inherent authority of the Court.

Parties and counsel submitting a Statement of Dispute shall be bound to the position and disclosures provided therein and shall be presumed ready for a hearing at any time after the submission of the Statement of Dispute upon reasonable notice.

### **DISPUTE CALENDAR**

Matters identified in Exhibit A to be originally scheduled on the dispute calendar are matters which are likely to require the presentation of testimony or other evidence or oral argument before the Judge. Parties and counsel should be fully prepared to proceed with a dispositive hearing on such matters unless removed by the Court upon a report of settlement or withdrawal as stated below or unless counsel are otherwise advised by the Court. In order to comply with Bankruptcy Rule 9014(e), the same duty to consult as previously referenced applies to a matter scheduled on the dispute calendar and settlement possibilities are to be discussed. A Statement of Dispute is **not** required prior to the hearing with respect to those matters originally scheduled on the dispute calendar.<sup>7</sup> However, if a party's pleadings are not in specific form such that the Court can clearly identify all of the grounds for the dispute and fully ascertain each party's position, a Joint Statement of Dispute (as set forth above and in the form attached hereto as Exhibit B) should be submitted by **12:00 p.m.** on the day prior to the hearing scheduled on the dispute calendar. Settlement of disputed matters or withdrawal of pleadings should be immediately reported to Judge Waites' Chambers so as to permit efficient preparation for matters scheduled before the Court. Submission of settlement orders and withdrawal of pleadings are to be formally submitted to the Clerk of Court as set forth below.

### **WITHDRAWALS/SETTLEMENTS**

Pre-hearing settlement orders and withdrawal of pleadings to obtain removal from the calendar and to be excused from attendance at the hearing require submission of the settlement order or withdrawal to the Clerk of Court, accompanied by an electronic calendar removal request, prior to 12:00 p.m. the day prior to the hearing.<sup>8</sup>

### **CONTINUANCES**

Continuances of matters on either calendar may be allowed if requested as follows:

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<sup>7</sup> For all matters continued from the consent calendar to the dispute calendar as set forth herein, the Court should receive a Statement of Dispute.

<sup>8</sup> This deadline is necessary in order to permit the courtroom deputies to reasonably identify, review, and finalize the calendar.

1. Submission of a consent proposed order of continuance in compliance with Local Rule 9014-3(b)(2) not later than three (3) business days before the scheduled date for hearing;

2. No later than **12:00 p.m.** the day prior to the hearing, you may request a continuance via electronic mail, **judgewaites\_ch13@scb.uscourts.gov**. You must have the consent of all objecting parties (and the Trustee if it is a generally noticed matter), indicate the reason for the continuance and time needed before a rescheduled hearing. If approved, a matter in which all noticed parties have agreed to a continuance may be removed from the calendar. If the matter has been generally noticed (such as a confirmation hearing, sale, motions to dismiss, etc.) the matter shall remain on the calendar and will be announced at the hearing as continued by the Court or Trustee; or

3. Demonstration of extraordinary circumstances such as illness or family emergency.

**The following information will be required in order to obtain a continuance: the nature of the dispute, the reason for the continuance, whether consents to the continuance have already been obtained and from whom, the time needed before the next hearing and specifics regarding the dispute.<sup>9</sup>**

Counsel participating in an approved continuance must timely advise their clients so that they do not appear. Likewise, counsel agreeing to the continuance bear the risk of other parties appearing at a generally noticed hearing and must be available if telephoned by the Court or the Trustee at the time of the hearing to address the issue raised by an appearing party.

Upon approval, the continued date and time will be provided to the counsel/party initiating the request. That counsel/party bears the responsibility of relaying the new date and time to all other parties. (Generally noticed matters will also be announced at the hearing). Once a matter is continued, all counsel and parties will be presumed to agree to the continued date and no conflicts will be accepted to the rescheduled date.

Repeated continuances of the same matter will not be allowed.

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<sup>9</sup> **You must receive actual approval before the matter will be continued.** If you do not receive a response, then you should appear at the hearing.

**EXHIBIT A**

**LIST OF MATTERS FOR SCHEDULING**

<u>Consent Calendar</u>	<u>Dispute Calendar</u>
<p>Confirmation Hearings Motions to Value Motions to assume or reject Motions to avoid judicial lien Wage Order Request Amended Plan Objections (after confirmation hearing) Trustee's Petition to Dismiss – various kinds non-payment with prejudice* Application for Compensation Application for Administrative Expense Motions to Incur Debt * Motions to Sell* Motions for Moratorium* Motions to Withdraw as Attorney Motions to Approve Settlement* Motions to Substitute Collateral Motions to Separate Case* Motions to Collect Child Support* Motions to use Cash Collateral Motions for hardship discharge</p>	<p>Expedited Hearings (set by Chambers) 362 Stay Motions** Co-debtor Stay Motions Motion to Reconsider Stay Rules to Show Cause (set by Chambers) Pro se Motions Claims Objections Motion to Reconsider Dismissal, Reopen or to Vacate Dismissal Motions by U.S.Trustee such as Sanctions, Dismiss or Convert, Disgorgement Motion to Change Venue Petition to Convert or Dismiss by Creditor Motion by Trustee to Convert or for Sanctions Adversaries – pretrials (set by Chambers) Motions to Compel Compliance Motions for Contempt “CATCH ALL” – motions not otherwise listed or as set by the Court. Motion to establish priority or tax claim Motion to Return Fees or for Disgorgement</p>
<p>Objection to IRS setoff Objection to exemptions</p>	
<p>*Indicates motions on passive notice list – (Set by Counsel)</p>	<p>**The scheduling of § 362 hearings shall be governed by the § 362 calendar published on the Court's Web page. In the Columbia division, dates for § 362 hearings in Chapter 13 cases are typically available twice monthly – on the same date as the dispute calendar day and on a general docket day. In the Spartanburg division, dates for § 362 hearings in Chapter 13 cases are also available twice monthly – on the same date as the dispute calendar day and on the date of the § 362 hearings held by Judge Bishop in Spartanburg.</p> <p>The procedures required for continuances, withdrawals or to report a settlement of § 362 motions are those stated on the Judge's Corner of the Web page on July 31, 2003 or by subsequent Operating Order.</p>

**EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Debtor.

C/A No.        -W

**(JOINT) STATEMENT OF DISPUTE<sup>1</sup>  
AND STIPULATION  
Chapter**

The undersigned hereby certify that after consultation, the hearing on [type of hearing] originally scheduled for [date and time], after good faith efforts cannot be settled and remains contested so as to require the presentation of evidence and/or argument to the Court for determination. The following information is presented by way of stipulation of the parties:

1. Issues to be decided by the Court.
2. Position of Party/Parties (state w/ specificity).
3. Names of Witnesses to be called at the hearing.
4. Exhibits/Evidence to be presented.
5. Statutory, Case Law or other Applicable Authority.
6. Estimated Length of Hearing.
7. Telephone and Facsimile Number, Electronic Mail address of Counsel/Party/Parties.<sup>2</sup>

\_\_\_\_\_  
(DATED)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(DATED)

\_\_\_\_\_  
(SIGNATURE)

**This Statement of Dispute is adopted by the Court for purposes of the hearing and the parties are bound thereto.**

**AND IT IS SO ORDERED.**

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John E. Waites, Judge

Columbia, South Carolina  
\_\_\_\_\_, 200\_\_

<sup>1</sup> To be submitted via electronic mail to [judgewaites\\_ch13@scb.uscourts.gov](mailto:judgewaites_ch13@scb.uscourts.gov).

<sup>2</sup> Parties, or a person designated that is fully knowledgeable about the matters herein, are to be prepared to discuss this matter with the Court at any time after submission. Failure to provide a thorough and meaningful Joint Statement of Dispute, and/or the failure of any party or person designated to be reasonably available for discussion with the Court, may be deemed a failure to prosecute which may result in dismissal or denial of the party's position or pleading or may result in sanctions pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927 or the inherent authority of the Court.