

CHAPTER 13 MATTERS

The Judges have implemented procedures for chapter 13 matters.¹ The goal of these procedures is to reduce unnecessary attendance and wait time at hearings for the bar and parties, allow compliance with Fed. R. Bankr. P. 9014(e), provide parties with further opportunity to settle matters or prepare arguments, and assist the Court in preparing for significant issues not highlighted by the pleadings through research and review. The calendar for hearing chapter 13 case matters is divided into a consent calendar for Judges Waites and Burris or general chapter 13 calendar for Judge Duncan (hereinafter “chapter 13/consent calendar”) and a dispute calendar, unless otherwise scheduled by the presiding Judge. 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. In its discretion, the Court may also reschedule matters *sua sponte*.

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.² 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 **10:00 a.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 the respective 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 filed with the Court.

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 chapter 13/consent calendar (**or Judge Duncan’s original hearing date**), parties (through counsel if applicable) involved in matters that could not be settled or that remain in dispute shall report to the Court by filing a **Joint Statement of Dispute** according to the form attached hereto as Exhibit B.

¹ These procedures **do not** govern the hearing of motions for relief from the automatic stay.

² For all matters continued from the chapter 13/consent calendar to the dispute calendar as set forth herein, the Court should receive a Statement of Dispute.

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.

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.

CHAPTER 13/CONSENT CALENDAR

Definition of Consent Matter and General Procedures. Matters for the chapter 13/consent calendar are matters that generally are settled or uncontested (See Exhibit A). Chapter 13/consent calendars may be conducted by the chapter 13 Trustee (the "Trustee") with the Judge available only on a limited basis. The presiding judge may also choose to require parties to proffer evidence at the hearing.

Prior to the chapter 13/consent calendar, the Trustee shall provide notice of deficiencies in a debtor's plan of reorganization (the "Plan").³ If conducting the chapter 13/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

³ 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.

chambers, or on the record at or following the hearing scheduled on the chapter 13/consent calendar.

Attendance. The Court does not require the attendance of debtors or witnesses at a hearing on the chapter 13/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 or when an objection is filed to confirmation of a debtor's plan. Accordingly, it is the responsibility of debtors and counsel to inquire with the Trustee as to the need for a particular debtor's attendance.⁴ 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 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 chapter 13/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 **10:00 a.m.** on the day immediately **prior** to the day of a hearing on the chapter 13/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 chapter 13/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.⁵

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 chapter 13/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.

⁴ To assist the bar, Trustees may develop, implement, and publish standard rules and procedures governing attendance by debtors at hearings scheduled on the chapter 13/consent calendar.

⁵ Only Joint Statements of Dispute will be considered by the Court in order to remove a matter from the chapter 13/consent calendar on the day prior to the chapter 13/consent calendar.

EXHIBIT A

LIST OF MATTERS FOR SCHEDULING

<u>Chapter 13/consent calendar</u>	<u>Dispute Calendar</u>
Confirmation Hearings	Expedited Hearings (set by Chambers)
Motions to Value	Motions for Relief from or to Extend/Impose the Automatic Stay**
Motions to Assume or Reject	Co-debtor Stay Motions*
Motions to Avoid Judicial Lien	Motions to Reconsider Stay
Wage Order Request	Rules to Show Cause (set by Chambers)
Amended Plan Objections (after confirmation hearing)	Pro se Motions
Trustee's Petition to Dismiss – various kinds (based upon non-payment, passive*)	Claims Objections*
Application for Compensation*	Motions to Reconsider Dismissal, Reopen or to Vacate Dismissal
Application for Administrative Expense*	Motions by U.S. Trustee such as Sanctions, Dismiss or Convert, Disgorgement
Motions to Obtain Credit*	Motions to Change Venue*
Motions to Sell, Use, or Lease Property*	Petition to Convert or Dismiss by Creditor
Consensual Motion to Modify a Mortgage	Motion by Trustee to Convert or Sanctions
Motions to Prohibit or Condition the Use, Sale or Lease of Property*	Adversaries – pretrials (set by Chambers)
Motions for Moratorium*	Motions to Compel Compliance
Motions to Withdraw as Attorney	Motions for Contempt
Motions to Approve Settlement*	“CATCH ALL” – motions not otherwise listed or as set by the Court.
Motions to Substitute Collateral	Motions to Establish Priority of Tax Claim
Motions to Separate Case	Motions to Return Fees or for Disgorgement
Motions to use Cash Collateral*	Motions for Hardship Discharge
Request for Chapter 13 Discharge (BAPCPA) pursuant to SC LBR 3015-5(a)*	Request for a Hardship Discharge (BAPCPA) pursuant to SC LBR 3015-5(b)
Objection to IRS Setoff	**The scheduling of motions for relief from or to extend/impose the automatic stay shall be governed by SC LBR 4001-1 and, where applicable, the § 362 calendar published on the Court's web page.
Objection to Exemptions (if by Trustee, passive*)	The procedures required for continuances or to report a settlement of motions for relief from the automatic stay are those stated in the Chambers Guidelines.
*Indicates motions on passive notice list – (set by counsel)	

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Debtor.

C/A No.

(JOINT) STATEMENT OF DISPUTE
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.²

(DATED)

(SIGNATURE)

(DATED)

(SIGNATURE)

² 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.