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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

GUIDELINES FOR THE FILING OF
DOCUMENTS

OPERATING ORDER 08-07¹

Upon agreement of the Judges of this Court, the Guidelines for the Filing of Documents with the United States Bankruptcy Court for the District of South Carolina, attached hereto as Exhibit A and made a part hereof, are hereby adopted and made effective January 1, 2009.

AND IT IS SO ORDERED.


John E. Waites, Chief Judge

Columbia, South Carolina
December 31, 2008

¹ This Operating Order supersedes Operating Order 06-02.

EXHIBIT A

GUIDELINES FOR THE FILING OF DOCUMENTS WITH THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF SOUTH CAROLINA

INTRODUCTION

These Guidelines for the Filing of Documents (Guidelines), as adopted by Operating Order 08-07, govern the filing of documents with the United States Bankruptcy Court for the District of South Carolina.

I. DESIGNATION OF CASES, PASSWORDS, AND REGISTRATION FOR THE CASE MANAGEMENT/ELECTRONIC CASE FILING SYSTEM

A. Designation of Cases

1. All pending, reopened, and newly filed cases and adversary proceedings in the United States Bankruptcy Court for the District of South Carolina (Court) shall be assigned to the Case Management/Electronic Case Filing system (CM/ECF) and have their case dockets available electronically.
2. The electronic record shall constitute the official record of cases and proceedings in this Court.

B. Registration and Passwords

1. Attorneys admitted to practice before the United States District Court and currently in good standing, and limited registrants¹ shall be eligible to receive a login and password to participate in the CM/ECF system. Attorneys admitted *pro hac vice* shall be eligible to receive a login and

¹ A limited registrant has limited access to filing options in CM/ECF, such as filers that are utilizing CM/ECF for the sole purpose of filing proofs of claim or reaffirmation agreements.

password for electronic filing, which they shall limit to the case in which they are admitted.²

2. Each approved filer (Participants) will be assigned one or more login and password combinations to use the CM/ECF system. The Court reserves the right to change the assigned CM/ECF login and password periodically.³
3. To obtain a login and password, a registration form must be completed and contain the written signature⁴ of the proposed Participant. The registration form is available on the Court's website and shall be submitted as set forth on the Court's website. Registration forms submitted prior to the implementation of these revised Guidelines shall continue in full force and effect and be deemed to provide the Participant's consent to and acceptance of these Guidelines, including waiver of notice and service provisions as provided herein.
4. The Clerk's Office will notify the Participant, by the electronic mail address on the Participant's registration form, of their assigned CM/ECF login and password combination when the Court verifies completion of approved training and eligibility to receive a CM/ECF login and password.

² See "Signatures" section of these Guidelines for reference to signatory requirements for local counsel and attorneys admitted *pro hac vice*.

³ Participants may wish to change their passwords periodically and are encouraged to change the password that is initially issued by the Clerk's Office. Participants may do so as set forth in the Participant's Guide. If a Participant believes the security of an existing password has been compromised, the Participant shall notify the Clerk's Office immediately to cancel that password. To provide this notice, Participants may contact the Clerk's Office by telephone at the Help Desk telephone number listed on the Court's website or by electronic mail at **cmecf_helpdesk@scb.uscourts.gov**.

⁴ If the registration form is submitted by electronic mail, a scanned image of the proposed Participant's signature is acceptable. Further instructions are available through the Court's website at www.scb.uscourts.gov.

5. A Participant's login and password shall be used only by the Participant or authorized agent, under the direction and supervision of the Participant. A registered Participant may withdraw from participation in CM/ECF upon written request in the event the Participant will no longer be filing documents with the Court. Submission of such request constitutes the Participant's certification that any rule governing the Participant's duty to represent has been complied with, including South Carolina Local Bankruptcy Rule 9011-1.
6. All registered Participants who retrieve and effect electronic filings must have purchased, installed, used, and updated daily antivirus software at all locations from which they access CM/ECF. Any CD ROM (or disk) submitted to the Clerk's Office or to a Judge must be inspected for viruses and related defects by the submitting party.

C. Disabling of Login Upon Suspension, Disbarment, or Order of the Court

1. A Participant's electronic filing privileges may be revoked upon Order of the Court.
2. Upon notification of disbarment or suspension of a Participant who is an attorney, the Court may disable a Participant's login. Future use of CM/ECF by the Participant following reinstatement shall require submission of a new registration form to be considered for electronic filing with the Court.
3. Participants admitted *pro hac vice* (or their local counsel) shall promptly notify the Court, by electronic mail to the Court's CM/ECF help desk, of

the closing of the case or counsel's termination of participation in the case to which the Participant has been granted *pro hac vice* admission, whichever is earlier. The Clerk's Office may review the status of Participants granted electronic filing privileges by *pro hac vice* admission and may disable the login (or limit access) of such Participants following inactivity of 1 year by *pro hac vice* counsel or closure of the case for which the Participants were admitted to practice.

II. FILING OF DOCUMENTS

The Court permits filing through CM/ECF and the limited conventional filing allowed by these Guidelines.

A. Mandatory Electronic Filing

1. Manner of Filing

- a. Except as stated herein or by Order of the Court, all documents, including proofs of claim, shall be filed electronically utilizing the CM/ECF system.
- b. Documents shall be filed in Portable Document Format (PDF).

2. Failure to Comply

Filing of a document not in compliance with these Guidelines may result in denial of the relief sought, striking of the document, sanctions, or other adverse ruling.

B. Limited Exceptions to Mandatory Electronic Filing

1. Parties without legal representation⁵ may effect filings in paper form (Conventional Filing) unless otherwise ordered by the Court.
2. **Emergency Filing** in Conjunction with Inability to File Using CM/ECF **(due to failure of the Court's system)**
 - a. If a Participant cannot access CM/ECF via the Internet to effect a filing **during regular business hours** of the Clerk's Office, the Participant shall contact the Clerk's Office by telephone, at the number(s) listed on the Court's website (803-253-3624), and speak with a member of the CM/ECF Help Desk to confirm that CM/ECF is not accessible, state why an immediate filing is necessary, and make suitable arrangements with the Clerk of Court for the filing to occur. Such a filing is effective upon submission as instructed to the Clerk's Office and will be electronically entered and docketed when CM/ECF is accessible unless otherwise ordered by the Court.
 - b. If a Participant cannot access CM/ECF via the Internet to effect a filing **after regular business hours** of the Clerk's Office, and the filing is time sensitive and will be made untimely as the result of a technological failure of CM/ECF, the Participant should either electronic mail the document to the CM/ECF Help Desk at **cmecf_helpdesk@scb.uscourts.gov** or send the document to the attention of the Clerk's Office by facsimile to the number(s) listed

⁵ See South Carolina Local Bankruptcy Rule 2090-1 and 9011-2 regarding practice before the Court. All partnerships, corporations, and other business entities must be represented by an attorney duly admitted to practice as specified therein, except with respect to the filing of proofs of claim and reaffirmation agreements.

on the Court's website (803-253-3368). The electronic mail or facsimile shall include a statement explaining the inability to use CM/ECF, the time sensitive nature of the filing, and the date and time of submission. If the Court determines that the failure to electronically file was caused by an error of the Participant, or a misuse or abuse of the emergency filing procedures, the Court may strike the document and issue sanctions, which may include additional mandatory training.

3. **Emergency Filing** in Conjunction with Inability to File Using CM/ECF
(other than a failure of the Court's system)

- a. In the event there is an attempt to file a document on the last date, i.e., a deadline established by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure or Federal Rules of Civil Procedure, Local Rule, Notice, Order, or other critical time-sensitive filing (the failure of which may cause substantial prejudice to the filing party), and there is a failure in the previously approved method/means of transmitting the document for filing that would prevent the timely filing, the following procedure shall apply and govern:

CONVENTIONAL/PAPER FILING

According to Federal Rule of Civil Procedure 5(e), the filing party may file the document by hand delivery in conventional/paper form with the Clerk's Office during regular business hours (by

special arrangement with the Clerk of Court, filings may be made by hand delivery thereafter) on the date of and before the applicable deadline, accompanied by a certification which sets forth in detail the reasons for failure to comply with these Guidelines.

USE OF TELEFAX

If the Conventional Filing as stated above is not possible, and before the expiration of the deadline, the filing party may submit a motion to allow filing, accompanied by the document to be filed and a certification setting forth in detail the reasons for the failure to comply with the Guidelines in the manner of filing, by facsimile to the chambers of the Judge assigned to the case.⁶ If the parties affected by the filing consent to the motion, such consent should be noted on the motion/certification. Failure to attach the document and certification may result in denial of the motion.

The filing party shall simultaneously serve the motion (where applicable), the document, and certification on the parties affected by the document, the trustee assigned to the case, if any, and the United States Trustee by hand delivery, facsimile, overnight delivery, or electronic mail (receipt confirmed).

- b. Where applicable, the Clerk's Office shall immediately submit to the Judge assigned to the case the filed document and certification

⁶ In order to send a facsimile to the applicable Judge under these procedures, the numbers are: 803-253-3464 (Judge Waites); 803-253-3368 (Judge Burris); 803-253-3996 (Judge Duncan).

for the Court to consider, with or without hearing, and determine the allowability of the filing or an extension. If the Court deems the filing of the document or submission of the motion an abuse of the Court's procedures, or finds other cause, the document may be stricken, or motion denied, and the filing party may be subject to sanctions or other adverse ruling.

- c. If the inability to file under means approved by the Guidelines is expected to persist, due to natural disaster or other reasons beyond the control of the filer, the request for an alternative means of filing may govern multiple cases if requested and approved by the Chief Judge of the United States Bankruptcy Court.

4. Documents to be Filed Under Seal

A motion to file a document under seal shall be filed electronically; however, the actual document to be filed under seal shall be submitted to the Clerk of Court for filing conventionally. If the motion itself contains confidential information, the movant shall file and serve electronically a redacted version clearly marked as such and shall submit the unredacted version *in camera*. The order of the Court authorizing the filing of such documents under seal shall be entered electronically unless otherwise directed by the Judge assigned to the case.

5. Hearings/Trial Exhibits (evidentiary documents or items)

Participants shall submit hearing/trial exhibits conventionally at the time of the filing of the joint pretrial order or as directed by the Court.

6. Transcripts

Requests for transcripts may be submitted conventionally or electronically through CM/ECF unless otherwise directed by the Court.

C. Affirmative Duty to Ensure that Documents are Filed Correctly

1. Parties filing documents have the responsibility of ensuring that the documents are correctly filed under the applicable CM/ECF event; bear the correct case and/or adversary proceeding numbers; and that any document image is readable and accessible. The Clerk's Office shall not reconcile the case name (or parties' names in an adversary proceeding) with the case or adversary proceeding number shown on the documents, nor reconcile the image associated with the docket entry to the case or proceeding to which the image was filed.
2. Any party who fails to correctly file a document; files a document using an incorrect case or proceeding number; files an unreadable or inaccessible document image; or files a document in the incorrect case or proceeding must file appropriate motions in order for the Court to consider any issues resulting from the error.
3. Filing Pleadings or Claims with Supporting Documentation and Use of the "Attachment" Option in CM/ECF
 - a. Documentation supporting pleadings or claims (such as vehicle titles, mortgages, promissory notes, statements of accounts, etc.) should be combined with the pleading or claim so that only one

PDF is filed.⁷ If a Participant is unable to create a PDF in manageable file sizes, the CM/ECF Help Desk may be contacted for assistance.

- b. If a pleading is to be accompanied by a separate memorandum of law, the docket entry for the memorandum is to be linked to the related pleading.

D. Timeliness

1. Filings must be completed with a Court generated Notice of Electronic Filing (NEF) before midnight (eastern time zone) to be considered filed that day, unless otherwise ordered.
2. All references to time contained in these Guidelines are to Eastern Standard or Eastern Daylight Savings Time, whichever is in place at the time a filing is effected.
3. In certain instances, CM/ECF automatically calculates dates for filing a response to certain pleadings and memoranda. Other deadlines for responses may be contained in a notice of hearing or as otherwise ordered.

E. Effect of Electronic Filing

1. All orders, decrees, judgments and proceedings of the Court will be filed in accordance with these Guidelines, which will constitute entry on the docket kept by the Clerk under Fed. R. Bankr. P. 5003 and 9021.
2. All signed orders will be filed electronically by the Court. Any order or other Court-issued document filed electronically without the original

⁷ Several pleadings can comprise one image (PDF) if a CM/ECF filing event is available to accommodate this. Examples are: 362 motions, most passive notices, schedules and certificates of service. (See Participant's Guide for further clarification).

signature of a Judge or Clerk (such as a summons) has the same force and effect as if the Judge or Clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

3. Orders may also be issued as “text-only” entries on the docket for which a NEF will be generated. In such cases, the text-only entry shall constitute the Court’s only order on the matter.

III. NOTICE AND SERVICE

- A. Immediately following the entry of an order, judgment, decree or proceeding of the Court on the docket, CM/ECF will transmit a NEF. By having registered as a CM/ECF Participant, the Participant is deemed to have requested and consented to receive notice and service of all documents by electronic transmission, except with respect to those documents to which the service requirements of Fed. R. Bankr. P. 7004 apply. Electronic transmission also constitutes Notice of Judgment or Order pursuant to Fed. R. Bankr. P. 9022.
- B. It shall be the responsibility of the Participant filing a document via CM/ECF to ensure that the document is properly titled, linked, and docketed so as to identify the content of the filing and to ensure that the event and document are docketed in the correct case so that proper notice (and service where applicable) will be received by Participants. Failure to do so may result in a failure of notice and service and may require the refiling of the document and the cancellation of any hearing associated with the document.

IV. RETURNED ELECTRONIC MAIL

Participants are responsible for keeping the primary and alternative electronic mail addresses they provide to the Court current at all times and for maintaining an electronic mail account that will properly receive electronic notices from the Court. Electronic notices returned to the Court may not be re-sent and may result in the removal of the associated electronic mail address. The Court should be notified within 24 hours if a Participant is having difficulty with his or her Internet Service Provider (ISP) while working with the ISP to resolve the problem. CM/ECF generated electronic mail is sent by [SCB ECF NEF@scb.uscourts.gov](mailto:SCB_ECF_NEF@scb.uscourts.gov). PLEASE DO NOT REPLY TO ANY CM/ECF ELECTRONIC MAIL FROM THIS ADDRESS.

V. SIGNATURES

A. Filing any document by using a login and password issued by the Clerk's Office shall constitute the Participant's signature for purposes of signing the document under Fed. R. Bankr. P. 9011 and any other applicable authority relating to signatures. The Participant's name under whose login and password the document is submitted as well as any other party whose signature is represented on an electronically submitted document must be displayed in one of the following ways: by a "/s/" and the name of the person typed in the space where the signature would otherwise appear (e.g., /s/Jane Doe), by a scanned original document containing original signatures, or by an image of the original signature either by facsimile or digital signature. All signatories must provide their name, address, telephone number, electronic mail address, facsimile number, United

States District Court identification number (where applicable), and any other information as directed by Judge, local rule or order.

- B. Pursuant to the Local Rules of the United States District Court for the District of South Carolina, an attorney acting as local counsel for an attorney admitted *pro hac vice* must sign all documents filed with the Court. If permission is given by local counsel to an attorney admitted *pro hac vice* to electronically file a particular document containing local counsel's signature (by any signature method set forth above), such permission shall be documented and maintained by local counsel and the attorney admitted *pro hac vice* on a document by document basis. Upon the request of the Court, both counsel should be prepared to submit documentation specifically memorializing consent of local counsel.
- C. The filing of a bankruptcy petition via a CM/ECF login constitutes an attorney's representation to the Court that the debtor's original signature has been affixed to the original petition, and that the debtor authorizes the filing of the bankruptcy case electronically.⁸ The filing of any lists, schedules, and statements, all amendments thereto and all original plans, amended plans and monthly or periodic financial reports shall also constitute an attorney's representation to the Court that the original signature of the debtor has been affixed and is retained by the filing party.
- D. The filing of affidavits or other documents that represent an unsworn declaration under penalty of perjury pursuant to 28 U.S.C. § 1746 constitutes a filer's representation that the original signature of the declaring party has been affixed to such document.

⁸ The requirement of filing a Declaration of Electronic Filing has been removed.

- E. Unless set forth herein or otherwise provided by statute, rule, or order, original signatures are not required by this Court to be presented on other electronically filed documents, including consent orders, where written permission has been expressly provided by the other party for a Participant (or *pro hac vice* attorney) to sign and file on that party's behalf a document containing that party's signature.
- F. A settlement order⁹ may demonstrate the parties' agreement by the following certification language being affixed to the order and certified by the signature (/s/) of the filing attorney: "I certify that this order contains a true and complete statement of the agreed upon terms of settlement between the parties."
- G. In instances where there is a discrepancy between the login and signature upon the electronic filing of a document, or in instances in which multiple signatures are included, both the Participant whose login was used and the signatory/signatories are responsible attorneys for both Fed. R. Bankr. P. 9011 and SC LBR 2090-1 purposes.

VI. RETENTION

The Participant must retain the original signature in paper form of any document set forth in section V.C. and V.D. above, and must retain any documentation memorializing the consent of counsel or a party to the filing of a document with counsel's or a party's signature where permitted by these Guidelines and where original signatures are not required until the case or adversary proceeding is closed and all maximum allowable times for appeals in that case or adversary proceeding have expired, and, if applicable, the time within which a discharge of the debtor may be revoked has passed. In the event

⁹ See Chambers Guidelines regarding Settlements.

a case is dismissed, all original signed petitions or other documents signed by debtor or other verifying party shall be maintained by the attorney of record or, if there is no attorney of record, the party originating the document for a period of three (3) years. An original document or petition must be provided for review to other parties upon order or to the Court upon request.

VII. SUBMISSION OF ORDERS

A. Proposed orders may be submitted electronically as outlined in the Participant's Guide,¹⁰ or directly to the applicable Judge only as instructed in the Judges' Chambers Guidelines.

B. Consent and Settlement Orders

Consent and Settlement orders may be submitted electronically in any manner permitted by these Guidelines. Signatory and Retention requirements are set forth above.

C. Submission of other types of Orders may be referenced in the Chambers Guidelines, including requests for emergency relief.

VIII. PUBLIC ACCESS TO THE DOCKET AND OTHER FILING REQUIREMENTS

A. Internet Access

Any person or organization may access this Court's Internet site at the following address: **www.scb.uscourts.gov**. Access to the docket and documents in CM/ECF through the Web PACER Internet site will require registration with the

¹⁰ The Participant's Guide is an instructional guide to filing via CM/ECF and may be found on the Court's website. The Participant's Guide has no legal effect and is to be considered a resource for Participants. In the event information provided in the Participant's Guide conflicts with any rule, statute, order, procedure, or determination by a Judge, the latter shall govern.

PACER Billing Center (telephone number: 1-800-676-6856) (website: pacer.psc.uscourts.gov).

B. Fees Payable to the Clerk

1. Applicable filing fees shall be due upon the electronic filing of documents and may be charged through approved credit card facilities. A Participant must use the Internet Credit Card Module of CM/ECF when a filing fee is due for a document being filed. Instructions are contained in the Participant's Guide, which is posted on the Court's website.
2. The Court requires that fees be paid on the same day as the documents are filed. If a Participant does not pay all fees due by midnight of the day the fees were incurred, the failure to pay will be reported to the Judge assigned to the case for appropriate action, including the striking of the document or other relief.
3. Participants are cautioned to use care when making payments via the Internet Credit Card Module. Absent a separate order of the Court, the Clerk is authorized to make a refund only in limited circumstances, such as when payment of the fee was unintentionally submitted twice through technical error or is caused by an error in the operation of the Court's CM/ECF system.

IX. REMOVED CASES

Pursuant to Fed. R. Bankr. P. 9027(e)(2), in a case removed to this Court, the Participant is required to file electronic copies of all documents previously filed in the transferred case together with the electronically filed Notice of Removal.