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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Supplemental Interim Procedures for Relief to
Mitigate the Effects of COVID-19 for All
Chapter 13 Cases Assigned to
Judge John E. Waites,

Debtor(s).

**AMENDED OPERATING
ORDER 20-07¹
(Interim Procedures for
Judge Waites' Cases Only)**

This Amended Operating Order supplements Operating Order 20-06 and is in effect on an interim basis until further order of this Court but applies only to chapter 13 cases before Judge Waites.²

Motions for Moratorium

Motions for moratorium will be liberally granted by the Court. The length of a moratorium requested due to causes directly or indirectly related to COVID-19 or its consequences is not limited by Court or Trustee practice but depends upon the circumstances of each case.³ For both conduit and non-conduit plans, the curing of any payments originally arising during the period of the moratorium shall be made over the remaining term of the chapter 13 plan (including a "step" repayment plan)⁴ or paid by the extension of the original term of the chapter 13 plan. Consent orders granting a moratorium shall not include a provision that provides for dismissal without further notice and a hearing. The forms to be used in a conduit case have been specified in Operating Order 20-08 and are available on the Court's Local Forms webpage.⁵

¹ This Operating Order supplements the District-wide procedures stated in Operating Order 20-06 for the chapter 13 cases assigned to Judge John E. Waites.

² This Operating Order supplements and does not replace the undersigned's Chambers Guidelines, which remain in effect for all cases assigned to him. To the extent this Operating Order conflicts with Chambers Guidelines, this District's local bankruptcy rules and forms or other operating orders regarding procedures (including Operating Order 20-08), this Operating Order controls.

³ Moratoriums that extend the term of the plan significantly beyond 60 months may require a modification to the plan pursuant to § 1113 of the CARES Act (Pub. L. No. 116-136).

⁴ A step repayment plan refers to a plan in which initial cure payments are less than later payments with the ultimate result being a cure of the total amount of the missed payments.

⁵ The Local Forms webpage is available at <http://www.scb.uscourts.gov/local-forms>.

Current Upon Confirmation

The requirement that a debtor be current on payments to the Chapter 13 Trustee as a condition of confirmation is suspended; however, the Trustee may raise related concerns regarding feasibility to the Court at a hearing.

Modification of Plan due to COVID-19 Pandemic

Eligible chapter 13 plans may be modified to extend the payment term to up to 84 months if the debtor is experiencing a material financial hardship due directly or indirectly to the COVID-19 pandemic and in compliance with § 1113 of the CARES Act (Pub. L. No. 116-136).⁶ The Court will liberally consider the connection of the financial hardship to the COVID-19 pandemic when considering whether an extension of the plan term is necessary.

Modified plans that reduce the payment to be made to creditors in circumstances where the debtor's income has materially decreased or expenses have materially increased due directly or indirectly to the COVID-19 pandemic or its consequences will qualify as a substantial or unanticipated change of circumstances. To the extent that the debtor and Chapter 13 Trustee cannot consensually resolve a motion to modify the chapter 13 plan due to such hardships, the Chapter 13 Trustee is instructed to call the matter at a hearing before the Court.

Forbearance Agreements

Section 4022 of the CARES Act (Pub. L. No. 116-136) provides forbearance rights to a borrower of certain federally-backed mortgage loans. The results of a forbearance agreement may have an effect on the terms and payments required in a chapter 13 case. A forbearance agreement may be indicated by a Notice of Forbearance Agreement or Consent Forbearance Order. To indicate consent of the creditor, a copy of the forbearance offer or agreement may be attached to Consent Forbearance Order. In a conduit case, a Consent Forbearance Order must include the consent of the Chapter 13 Trustee.

Neither Forbearance Agreements nor Consent Forbearance Orders nor any orders addressing repayment thereof may include provisions providing for relief from the automatic stay, dismissal or other remedies for non-payment. Requirements for the cure or catch up of payments arising during the period of forbearance must be reasonable and be approved by the Court.⁷ Any fees and expenses charged to the loan as a result of a forbearance agreement or order shall be noticed pursuant to Fed. R. Bankr. P. 3002.1 and shall not be included or approved as part of any

⁶ Counsel should note that 11 U.S.C. § 1329(d), which was enacted as part of the CARES Act, provides that an extension of the term of the plan beyond 60 months is only permitted for chapter 13 plans confirmed prior to March 27, 2020. See *In re Drews*, C/A No. 19-52728, slip op. (Bankr. E.D. Mich. Jul. 30, 2020); *In re Bridges*, C/A No. 19-31012, slip op. (Bankr. S.D. Ill. Jul. 30, 2020).

⁷ For guidance on the payment of post-petition arrearage in a chapter 13 case, please see Operating Order 20-08 for conduit cases (available at <http://www.scb.uscourts.gov/op-adm-orders>) and, for non-conduit cases, the Guidelines for Payment of Post-Petition Arrearage and Payment of Fees, Charges and Expenses under Fed. R. Bankr. P. 3002.1 (available at <http://www.scb.uscourts.gov/content/judge-waites>).

Forbearance Agreement, Consent Forbearance Order or order addressing repayment unless allowed at a hearing before the Court.

Loss Mitigation/Mortgage Modification

Request for LM/MM in a Conduit Case: In a case with a confirmed plan providing for payment to a mortgage creditor through the conduit procedure, requests for post-confirmation loss mitigation/mortgage modification through the Portal (“LM/MM”) may be submitted by motion.

Debtor Cannot Afford Conduit Payments during the LM/MM Review: In cases where the debtor becomes unable to afford the Conduit Payment, the debtor may file a Motion for LM/MM (Portal) and include a provision that provides for the debtor to pay directly to the mortgage creditor the regular payments or any adequate protection or trial period plan payments in compliance with Chambers Guidelines while LM/MM is pending.⁸ In such a circumstance, the debtor’s attorney should, concurrent with the filing of the LM/MM motion, contact the Trustee to propose a consent order which relieves the Trustee from making conduit payments and sets the amount of any continuing plan payment to the Trustee for the benefit of other creditors during the LM/MM review. Upon the approval of a trial period plan or the denial of LM/MM,⁹ the debtor shall within 7 days file a modified plan with any future payments to the mortgage creditor to be paid directly by the debtor or provide for other allowable treatment (i.e. surrender, sale, etc.).

Debtor Continuing Conduit Payments during the LM/MM Review: In cases where the debtor elects to pursue LM/MM while maintaining Conduit Payments to the Trustee during the review, the debtor may file a Motion for LM/MM. After the entry of an Order Requiring LM/MM and upon the approval of a trial period plan or permanent loan modification (if no trial period plan is offered), the debtor shall file a modified plan recognizing the modification of the mortgage and requiring further post-confirmation payments to the mortgage creditor be paid directly by the debtor.

11 U.S.C. § 362 Settlement Orders

Elimination of *ex parte* relief language: On an interim basis, no proposed settlement order submitted to resolve an 11 U.S.C. § 362(d) motion shall include a provision providing for *ex parte* relief upon default of the settlement order; rather, a further hearing may be requested to be

⁸ The Motion for LM/MM (Exhibit N in the LM/MM Guidelines) must include the following language if the debtor intends to suspend conduit mortgage payments while the LM/MM review is pending:

SUSPENSION OF CONDUIT MORTGAGE PAYMENTS: The Debtor proposes to pay directly to the Mortgage Creditor the regular payment or any adequate protection or trial period plan payments in compliance with Chambers Guidelines. The Debtor therefore requests that the Chapter 13 Trustee be relieved from making conduit payments to the Mortgage Creditor while the LM/MM review is pending.

⁹ In circumstances where the mortgage creditor offers a permanent loan modification without the need for trial period plan payments, the debtor shall file a modified plan upon the approval of a permanent loan modification.

scheduled upon a default of a payment or other obligation required under a settlement order.¹⁰ In addition, affidavits of default and proposed orders of relief filed pursuant to an *ex parte* relief provision included in a previously-entered § 362 settlement order may be scheduled for a further hearing.

Case Dismissals

On an interim basis, requests for dismissal with prejudice will be scheduled for a hearing before the Court. In instances in which prior orders have provided for future dismissal to be with prejudice, the Trustee may recommend dismissal without prejudice. In instances in which prior orders have provided for *ex parte* dismissal relief, a further hearing may be scheduled on the dismissal request. The scheduling of the matter shall not be deemed a waiver of rights.

Statement in Support of Confirmation

The Court eliminates the requirement of filing a statement in support of confirmation previously required by Chambers Guidelines. It is therefore not necessary to file the statement in support of confirmation.

Settlements of Petitions to Dismiss by PIII Order or Other Settlement Order

The terms of any agreement that serves as the basis for a PIII Order or another settlement resolving a petition/motion to dismiss for nonpayment or other grounds shall be documented in writing or on the record by the Trustee. Any order of dismissal presented due to a default under such a settlement order or agreement shall specify the grounds of the default.

The repayment of missed payments resolved by an agreement under a PIII Order or other dismissal settlement order shall be allowed over a period of 12 months or more. Agreements that provide a repayment period of less than 12 months shall be scheduled by the Trustee for consideration by the Court at a hearing.

Reservation of Rights in Chapter 13 Plans

To the extent debtors seek to include a reservation of rights in the non-standard language section of a chapter 13 plan, the following new language is approved by the Court for cases filed on October 1, 2020 and thereafter:

Confirmation of this plan does not bar a party in interest from any actions discovered from the documentation, or lack thereof, in a proof of claim. The debtor specifically reserves any currently undiscovered or future claims, rights, or causes of action the debtor may have, regarding any issues not specifically addressed or determined by the plan, against any creditor or other party in interest including, but not limited to, violations of applicable consumer protections codes and actions under 11 U.S.C. §§ 542, 543, 544, 547, and 548. This reservation of rights shall

¹⁰ For the convenience of counsel, revised form § 362 settlement orders are available on the Court's website at <http://www.scb.uscourts.gov/jw-local-forms>.

continue until the later of six (6) months after confirmation of the plan or, if related to a claim, the filing of the claim or an amended claim.

Deadline for Filing Tax Returns

Due to COVID-related delays by the IRS associated with providing debtors transcripts of income necessary for the filing of delinquent tax returns, for debtors affected by such a delay, on an interim basis, the provisions of Operating Order 14-04 (effective in Judge Waites Cases Only) that require debtors who have unfiled delinquent tax returns to file all such returns (or related affidavits) no later than 28 days prior to the first scheduled confirmation hearing are suspended. This provision does not suspend any requirement to file a tax return under the Bankruptcy Code or Rules absent further order of the Court. A debtor may request that a plan be confirmed that provides for payment to the IRS based upon its estimated claim amount if feasible.

Exception from Mandatory Conduit Procedure

In newly-filed chapter 13 cases, good cause for an exception to the Conduit Mortgage Payment Requirements under Operating Order 20-08 may be demonstrated to the extent that the debtor's failure to make prepetition payments to a mortgage creditor was directly or indirectly related to COVID-19 or its consequences. In such instances, a debtor may request such an exception by the submission of an order consented to by the Trustee or by the filing of a motion which demonstrates the connection with COVID-19, which may be considered *ex parte*.

/s/ John E. Waites
United States Bankruptcy Judge

AND IT IS SO ORDERED.

Columbia, South Carolina
September 10, 2020