

**Procedures for Complex Chapter 11 Cases filed in the
Western District of Texas (All Divisions)**

The following procedures shall govern the administration of complex Chapter 11 cases. These Procedures for Complex Chapter 11 Cases filed in the Western District of Texas (All Divisions) may be referred to as the “Complex Case Procedures.”

The Complex Case Procedures do not alter the requirements of the Bankruptcy Code (“Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules” or “FRBP”), or the Western District Bankruptcy Local Rules (“Local Rules”). If there is a conflict between the Complex Case Procedures herein and the Bankruptcy Code, Bankruptcy Rules, or Local Rules that is unable to be reconciled, then the Code, Bankruptcy Rules, or Local Rules shall govern unless otherwise ordered by the Court.

The forms included in the Appendix are required to be used in all Complex Chapter 11 Cases filed in the Western District of Texas after **February 3, 2025**. The forms in the Appendix may be revised periodically or supplemented by standing order. The Clerk shall make available to the public the then applicable Complex Chapter 11 Case forms on the court’s website.

The forms in the Appendix are not an exhaustive list of the forms, documents, and/or pleadings that may be required to administer a Complex Chapter 11 Case.

I. Designation of a Complex Chapter 11 Case.

A. Definition of a "Complex Chapter 11 Case". A “complex Chapter 11 case” is defined as a case filed in this district under Chapter 11 of the Bankruptcy Code that requires special scheduling and other procedures based on consideration of the following factors:

1. the size of the case (usually total debt of more than \$10 million);
2. the large number of parties in interest in the case (usually more than 50 parties in interest in the case);
3. the fact that claims against the debtor and/or equity interests in the debtor are publicly traded (with some creditors possibly being represented by indenture trustees); or
4. any other circumstances justifying complex case treatment.

B. Designation of a Complex Chapter 11 Case. If any party filing a Chapter 11 bankruptcy petition believes that the case should be classified as a complex Chapter 11 case, the party shall file with the bankruptcy petition a Notice of Designation as Complex Chapter 11 Case using the form notice, provided below as **Appendix CC11-1** and available at www.txwb.uscourts.gov/complex-chapter-11-procedures, and shall include as an attachment the

proposed Order Granting Complex Chapter 11 Case Treatment using the form order, provided below as **Appendix CC11-2** and available at www.txwb.uscourts.gov/complex-chapter-11-procedures.

C. Counsel for the debtor, upon receipt of notice of entry of an order regarding complex Chapter 11 case treatment, shall serve the order granting or denying complex Chapter 11 case on all parties in interest within 7 days.

II. FIRST DAY HEARINGS.

A. Procedures Related to First Day Hearings.

1. If a party has “First Day” matters requiring emergency consideration by the Court, it should file a Motion for Emergency Consideration of Certain “First Day” Matters using the form motion, provided below as **Appendix CC11-3** and available at www.txwb.uscourts.gov/complex-chapter-11-procedures.

2. If possible, prior to filing First Day Motions, Movant shall contact the Courtroom Deputy or Deputies for the applicable Division, which may be found at www.txwb.uscourts.gov/clerks-office-information, advising of the filing and providing a time estimate for the hearing. The Courtroom Deputy or Deputies will advise the movant of an available hearing date and time.

3. The debtor’s counsel should (1) serve electronically, if the e-mail address is available (or by facsimile or immediate hand-delivery) a copy of the first day hearing request on all affected parties, including the U.S. trustee, simultaneously with its filing; and (2) notify electronically, if the e-mail address is available, or by fax, or telephonically (or by immediate hand-delivery) all affected parties of the hearing time on first day matters as soon as possible after debtor’s counsel has received confirmation from the Court of a hearing date and time.

4. Unless otherwise ordered, first-day hearings will be conducted as virtual hearings. Parties may only participate remotely and any party that attends in-person will not be permitted to address the Court; provided, if first-day hearings are combined with the plan confirmation hearing in a prepackaged case or a request for equitable relief in an adversary proceeding, in-person attendance will be permitted but not required. Non-Parties may attend first day hearings only in-person, but will not be permitted to address the Court. Non-Parties may not attend any hearing remotely without prior Court permission.

5. Instructions for accessing the virtual courtroom are available at www.txwb.uscourts.gov/txwbvirtualhearings. To minimize technical difficulties, parties are encouraged to utilize telephone landlines rather than computer audio where possible. Parties who are merely observing should not appear on camera during the proceedings.

B. Setting First Day Hearings on an Emergency Basis.

1. Each judge shall arrange the judge's calendar so that “first day” emergency

hearings, as requested in the Court-approved form entitled Motion for Emergency Consideration of Certain First Day Matters, can be conducted consistent with the Bankruptcy Code and Rules, including Rule 4001, as required by the circumstances, but not more than two business days after the request for emergency “first day” hearings.

2. If the assigned judge is not available to hold the emergency first day hearings within 2 business days of the time requested by the debtor’s counsel, an available judge will hold a hearing within 2 business days of the time requested by the debtor’s counsel and the Courtroom Deputy will notify counsel for the debtor of the time of the setting.

C. Final Orders at First-Day Hearings.

1. Final orders, rather than interim orders subject to final orders at subsequent hearings, may be sought for the following types of relief:

a. Motions to pay employee wages and benefits that do not include relief of the nature specified in 11 U.S.C. § 503(c) or that do not otherwise contain a request for payments outside the ordinary course of the debtors’ business. If relief is also sought for payments outside of the ordinary course of business or that implicates § 503(c), a separate motion seeking that additional relief should be filed.

b. Motions to pay pre-petition and post-petition taxes that are (i) secured by property of the estate; (ii) held in trust by the debtors pursuant to state or federal law; or (iii) entitled to priority pursuant to 11 U.S.C. § 507(a)(8).

c. Motions to pay (i) oil and gas royalties; (ii) mineral liens, or mechanic and material liens that meet the criteria of 11 U.S.C. § 546(b); (iii) joint interest billing disbursements to joint interest parties; claims arising under 11 U.S.C. § 503(b)(9); or (iv) claims arising under the Perishable Agricultural Commodities Act of 1930, the Packers and Stockyards Act of 1921, or any state statutes of similar effect.

d. Applications to retain a claims, balloting and/or noticing agent.

e. Motions to limit or modify the notice requirements of FRBP 2002.

f. Motions to approve adequate assurance procedures under 11 U.S.C. § 366 that (i) do not prejudice the right of a utility to propose alternative procedures; and (ii) provide for a hearing not later than 30 days after the petition date upon any timely filed objection to the adequate assurance procedures.

g. Motions for authority to pay insurance premiums.

h. Motions to establish bar dates and the form of bar date notices.

i. Motions that are procedural in nature and do not affect the substantive

rights of creditors and other parties-in-interest.

III. HEARINGS AND HEARING DATES.

A. Pre-Set Hearing Dates.

1. The debtor may request (as one of its first day matters or otherwise) that the Court establish in a complex Chapter 11 case a weekly/bimonthly/monthly setting time (“Pre-Set Hearing Dates”) for hearings in the complex Chapter 11 case (e.g., every Wednesday at 1:30 p.m.). The Court will accommodate this request for pre-set hearing dates in a complex Chapter 11 case if it appears justified. After pre-set hearing dates are established, all matters in the complex Chapter 11 case (whether initiated by a motion of the debtor or by another party in interest) will be set on pre-set hearing dates that are at least 21 days after the filing/service of a particular motion (unless otherwise requested by a party or ordered by the Court) and the movant shall indicate the hearing date and time on the face of the pleading. Movant shall advise the Courtroom Deputy of all such settings before filing, and the Courtroom Deputy will advise the movant whether there is enough time on the docket that day to accommodate the matter.

2. Notice of hearing of matters scheduled for pre-set hearing dates shall be accomplished by the moving party. The moving party shall file its notice of hearing on the docket, including a certificate of service.

B. Expedited and Emergency Matters.

1. “Expedited” means a matter which, for cause shown, should be heard on less than 21 days’ notice. “Emergency” means a matter which, for cause shown, should be heard on less than 7 days’ notice. An emergency motion must contain the word “emergency” in the title of the motion and must be filed using the CM/ECF code for an emergency motion.

2. If a party in interest has an expedited or emergency situation that it believes requires consideration on less than 21 days’ notice, the party must file and serve a separate, written motion for expedited or emergency hearing, with respect to the underlying motion, which must comply with the usual Court requirements for explanation and verification of the need for expedited or emergency hearing. The Court will make its best effort to rule on the motion for expedited or emergency hearing within 24 hours of the time it is presented. If the Court grants the motion for expedited or emergency hearing, the underlying motion will be set by the Courtroom Deputy at the next available pre-set hearing date or at some other appropriate shortened date approved by the Court. Motions for expedited and emergency hearings will only be granted for clear cause shown and presented with particularity in the body of the motion.

3. Emergency motions shall contain the following language just below the caption, in lieu of any language required by these rules:

Emergency relief has been requested. Relief is requested not later than [____ a.m/p.m. on _____, 202__].

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

[IF A HEARING DATE HAS BEEN OBTAINED, INCLUDE THE FOLLOWING PARAGRAPHS:] A hearing will be conducted on this matter on _____, 202_ at : am/pm in Courtroom , floor, (courthouse address) .

[INCLUDE ONE AS APPLICABLE AS DIRECTED BY THE CASE MANAGER: You may participate in the hearing either in person or by an audio and video connection [OR] Participation at the hearing will be permitted only by an audio and video connection] [OR] You are required to appear in person at the hearing pursuant to the Court's order.

Instructions for accessing the virtual courtroom are available at [www.txwb.uscourts.gov/sites/txwb/files/Zoom Video Hearing Guide for Participants txwb.pdf](http://www.txwb.uscourts.gov/sites/txwb/files/Zoom_Video_Hearing_Guide_for_Participants_txwb.pdf). To minimize technical difficulties, parties are encouraged to utilize telephone landlines rather than computer audio where possible. Parties who are merely observing should not appear on camera during the proceedings. Non-Parties may not attend a hearing remotely without prior Court permission.

C. Checklist for Lengthy Motions and Orders Pertaining to Cash Collateral and Post-Petition Financing.

With respect to any motions or order pertaining to cash collateral and post-petition financing in excess of ten (10) pages counsel shall file as a separate document the Attorney Checklist for Lengthy Motions and Orders Pertaining to Use of Cash Collateral and Post-Petition Financing (Which Are in Excess of Ten (10) Pages), provided below as **Appendix CC11-4**, and available at www.txwb.uscourts.gov/complex-chapter-11-procedures.

IV. AGENDA GUIDELINES FOR HEARINGS IN COMPLEX CHAPTER 11 CASES

A. Guidelines for Agenda, Mailing Matrices, and Shortened Service Lists.

1. **Agenda required prior to each hearing.** In complex Chapter 11 cases, counsel for the debtor-in-possession or Chapter 11 Trustee as applicable, in consultation with any other party whose motion is set on the same date, shall file, and serve an agenda describing the nature of the items set for hearing. The agenda shall be filed at least 24 hours before the date and time of the hearing. At the same time, counsel shall also serve the agenda on all attorneys who have filed papers with respect to the matters scheduled and upon the service list, including the United States Trustee.

2. **Sequence of Items on Agenda.** Uncontested matters should be listed ahead of contested matters. Contested matters should be listed in the order in which they appear on the Court's docket.

3. **Status Information.** For each matter set for hearing the agenda shall indicate the moving party; the nature of the motion; the docket number of the pleadings; if known, the response deadline; and the status of the matter. The status description should indicate whether the motion is settled, going forward, whether a continuance is requested (and any opposition to the continuance, if known) and any other pertinent information.

4. **Information for Motions in the Case.** For each motion that is going forward, or where a continuance request is not consensual, the agenda shall also list all pleadings in support of the motion, and any objections or responses. Each pleading listed shall identify the entity that filed the pleading, and the docket number of the pleading. If any entity has not filed a responsive pleading, but has engaged in written or oral communications with the debtor, that fact should be indicated on the agenda, as well as the status or outcome of those communications. For an omnibus objection to claims, responses to the objection which have been continued by consent may be listed collectively (e.g., “the following responses have been continued by consent:”).

5. **Changes in Agenda Information.** After the filing of the agenda, counsel shall notify judge’s chambers by emailing the Courtroom Deputy of additional related pleadings that have been filed, and changes in the status of any agenda matter.

6. The requirements listed above should not be construed to prohibit other information of a procedural nature that counsel thinks would be helpful to the Court.

V. GUIDELINES FOR SERVICE LISTS AND SHORTENED SERVICE LISTS IN COMPLEX CHAPTER 11 CASES

A. Bankruptcy Rule 2002 Notice/Service List

1. **Parties to be Included on the Service List in a Complex Chapter 11 Case.** There are certain events and deadlines that occur in a Chapter 11 case which FRBP 2002 requires be broadly noticed to all creditors, indenture trustees, equity interest holders, and other parties in interest (“Rule 2002 notice list”). To facilitate this, debtor’s counsel shall evaluate and consider whether the following persons and entities need to be included on the Rule 2002 notice list:

- a. creditors (whether a creditor’s claim is disputed, undisputed, contingent, noncontingent, liquidated, unliquidated, matured, unmatured, fixed, legal, equitable, secured or unsecured);
- b. indenture trustees;
- c. financial institutions at which the debtor has maintained accounts (regardless of whether such institutions are creditors);
- d. vendors with whom the debtor has dealt, even if the debtor’s records currently indicate no amount is owed;

- e. parties to contracts, executory contracts or leases with the debtor;
- f. federal, state, or local taxing authorities with which the debtor deals, including taxing authorities in every county in which the debtor owns real or personal property with regard to which ad valorem taxes might be owed;
- g. governmental entities with which the debtor might interact (including, but not limited to, the U.S. trustee and the SEC);
- h. any party who might assert a lien against property of the debtor;
- i. parties to litigation involving the debtor;
- j. parties with which the debtor might be engaged in some sort of dispute, whether or not a claim has formally been made against the debtor;
- k. tort claimants or accident victims;
- l. insurance companies with whom the debtor deals or has policies;
- m. active and retired employees of the debtor;
- n. officers or directors of the debtor;
- o. customers who are owed deposits, refunds, or store credit;
- p. utilities;
- q. shareholders (preferred and common), holders of options, warrants or other rights or equitable interests in the debtor;
- r. miscellaneous others who, in debtor counsel's judgment, might be entitled to "party in interest" status or who have requested notice.

2. Also, the mailing matrix or creditor list may be filed in separate volumes, for the separate categories of parties in interest, if the mailing matrix or creditor list is voluminous. Finally, if there are multiple, related debtors and the debtors intend to promptly move for joint administration of their cases, the debtors may file a consolidated mailing matrix or creditor list, subject to later being required to file separate mailing matrices if joint administration is not permitted.

3. **When Inclusion of Certain Parties in Interest on a Mailing Matrix is Burdensome.** If inclusion of certain categories of parties in interest on the mailing matrix or creditor list would be extremely impracticable, burdensome and costly to the estate, the debtor may file a motion, pursuant to FRBP 2002(l), and on notice to the affected categories of parties in interest,

requesting authority to provide notices to certain categories of parties in interest and may forego including those categories of parties in interest on the mailing matrix if the Court grants the motion.

B. Shortened Service List Procedure in a Complex Chapter 11 Case.

Procedures/Contents/Presumptions. If the Court has entered an order granting complex Chapter 11 case treatment, the debtor shall provide service as required by ¶ 1 of that order. If the Court has not entered such an order, the debtor may move to limit notice – that is, for approval of a shortened service list – that will be acceptable for noticing most events in the bankruptcy case, other than those events/deadlines that FRBP 2002 contemplates be served on all creditors and equity interest holders. At a minimum, the shortened list should include the debtor and its professionals, the secured creditors, the 20 largest unsecured creditors, any official committees and the professionals for same, the U.S. trustee, the IRS and other relevant governmental entities, and all parties who have requested notice. Upon the Court’s approval of a shortened service list in a complex Chapter 11 case, notice in any particular situation during a case shall be presumed adequate if there has been service on (1) the most current service list on file in the case; plus (2) any other party directly affected by the relief requested and not otherwise included on the service list.

C. Obligation to Update, File and Serve Service List.

The debtor must update the service list as parties request to be added to it or as circumstances otherwise require. To be added to the list, a party must file a notice of appearance and request for service and serve the notice on debtor’s counsel. Parties should include e-mail transmission information if they wish to receive expedited service of process during the case. Additionally, the debtor must file an updated service list and must serve the updated service list on all parties on the service list weekly for the first month after filing, then every 14 days for the next 60 days, then at least every 30 days thereafter during the pendency of the case.

VI. GUIDELINES FOR COMPENSATION AND EXPENSE REIMBURSEMENT OF PROFESSIONALS IN COMPLEX CHAPTER 11 CASES

A. Applicability and Scope.

1. The following are guidelines governing the most significant issues relating to applications for compensation and expense reimbursement. The guidelines cover the narrative portion of an application, time records, and expenses. It applies to all professionals but is not intended to cover every situation. All professionals are required to exercise reasonable billing judgment, notwithstanding total hours spent.

2. If, in a chapter 11 case, a professional to be employed pursuant to section 327 or 1103 of the Bankruptcy Code desires to have the terms of its compensation approved pursuant to section 328(a) of the Bankruptcy Code at the time of such professional’s retention, then the application seeking such approval should so indicate and the Court will consider such request after an evidentiary hearing on notice to be held after the United States trustee has had an opportunity to form a statutory committee of creditors pursuant to section 1102 of the Bankruptcy Code and the debtor had such committee have had an opportunity to review and comment on such application. At

a hearing to consider whether a professional's compensation arrangement should be approved pursuant to section 328(a), such professional should be prepared to produce evidence that the terms of compensation for which approval under section 328(a) is sought comply with the certification requirements of section 24.g. of these guidelines.

B. Narrative.

1. **Employment and Prior Compensation.** The application should disclose the date of the order approving applicant's employment and contain a clear statement itemizing the date of each prior request for compensation, the amount requested, the amount approved, and the amount paid.

2. **Case Status.** With respect to interim requests, the application should briefly explain the history and the present posture of the case, including a description of the status of pending litigation and the amount of recovery sought for the estate.

a. In chapter 11 cases, the information furnished should describe the general operations of the debtor; whether the business of the debtor, if any, is being operated at a profit or loss; the debtor's cash flow; whether a plan has been filed, and if not, what the prospects are for reorganization and when it is anticipated that a plan will be filed and a hearing set on the disclosure statement.

b. In chapter 7 cases, the application should contain a report of the administration of the case including the disposition of property of the estate; what property remains to be disposed of; why the estate is not in a position to be closed; and whether it is feasible to pay an interim dividend to creditors.

c. In both chapter 7 and chapter 11 cases, the application should state the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration. On applications for interim fees, the applicant should orally supplement the application at the hearing to inform the Court of any changes in the current financial status of the debtor's estate since the filing of the application. All retainers, previous draw downs, and fee applications and orders should be listed specifying the date of the event and the amounts involved and drawn down or allowed.

d. With respect to final requests, applications should meet the same criteria except where a chapter 7 trustee's final account is being heard at the same time, the financial information in the final account need not be repeated.

e. Fee applications submitted by special counsel seeking compensation from a fund generated directly by their efforts, auctioneers, real estate brokers, or appraisers do not have to comply with the above. For all other applications, when more than one application is noticed for the same hearing, they may, to the extent appropriate, incorporate by reference the narrative history furnished in a contemporaneous application.

3. **Project Billing.** The narrative should be categorized by subject matter, and separately discuss each professional project or task. All work for which compensation is requested should be in a category. Miscellaneous items may be included in a category such as “Case Administration.” The professional may use reasonable discretion in defining projects for this purpose, provided that the application provides meaningful guidance to the Court as to the complexity and difficulty of the task, the professional’s efficiency, and the results achieved. With respect to each project or task, the number of hours spent, and the amount of compensation and expenses requested should be set forth at the conclusion of the discussion of that project or task. In larger cases with multiple professionals, efforts should be made by the professionals for standard categorization.

4. **Billing Summary.** Hours and total compensation requested in each application should be aggregate and itemized as to each professional and paraprofessional who provided compensable services. Dates of changes in rates should be itemized as well as reasons for said changes.

5. **Paraprofessionals.** Fees may be sought for paralegals, professional assistants, and law clerks only if identified as such and if the application includes a resume or summary of the paraprofessional’s qualifications.

6. **Preparation of Application.** Reasonable fees for preparation of a fee application and responding to objections thereto may be requested. The aggregate number of hours spent, the amount requested, and the percentage of the total request which the amount represents must be disclosed. If the actual time spent will be reflected and charged in a future fee application, this fact should be stated, but an estimate provided, nevertheless.

7. **Certification.** Each application for compensation and expense reimbursement must contain a certification by the professional designated by the applicant with the responsibility in the particular case for compliance with these guidelines (“Certifying Professional”) that 1) the Certifying Professional has read the application; 2) to the best of the Certifying Professional’s knowledge, information and belief, formed after reasonable inquiry, the compensation and expense reimbursement sought is in conformity with these guidelines, except as specifically noted in the application; and 3) the compensation and expenses reimbursement requested are billed at rates, in accordance with practices, no less favorable than those customarily employed by the applicant and generally accepted by the applicant’s clients.

8. **Interim Compensation Arrangements in Complex Cases.** In a complex case, the Court may, upon motion and notice, consider at the outset of the case approval of an interim compensation mechanism for estate professionals that would enable professionals on a monthly basis to be paid up to 80% of their compensation for services rendered and reimbursed up to 100% of their actual and necessary out of pocket expenses. In connection with such a procedure, if approved in a particular complex case, professionals shall be required to circulate monthly billing statements to the US Trustee and other primary parties in interest, and the Debtor in Possession or Trustee will be authorized to pay the applicable percentage of such bill not disputed or contested by a party in interest.

C. TIME RECORDS

1. **Time Records Required.** All professionals, except auctioneers, real estate brokers, and appraisers must keep accurate contemporaneous time records.

2. **Increments.** Professionals are required to keep time records in minimum increments no greater than six minutes. Professionals who utilize a minimum billing increment greater than .1 hour are subject to a substantial reduction of their requests.

3. **Descriptions.** At a minimum, the time entries should identify the person performing the service, the date(s) performed, what was done, and the subject involved. Mere notations of telephone calls, conferences, research, drafting, etc., without identifying the matter involved, may result in disallowance of the time covered by the entries.

4. **Grouping of Tasks.** If a number of separate tasks are performed on a single day, the fee application should disclose the time spent for each such task, i.e., no “block billing”. Case management matters may be grouped together where the aggregate time attributed thereto is relatively minor. A rule of reason applies as to how specific and detailed the breakdown needs to be. Improperly grouped entries may be reduced or disallowed at the Court’s discretion.

5. **Conferences.** Professionals should be prepared to explain time spent in conferences with other professionals or paraprofessionals in the same firm. Relevant explanation would include complexity of issues involved and the necessity of more individuals’ involvement. Failure to justify this time may result in disallowance of all, or a portion of, fees related to such conferences.

6. **Multiple Professionals.** Professionals should be prepared to explain the need for more than one professional or paraprofessional from the same firm at the same Court hearing, deposition, or meeting. Failure to justify this time may result in compensation for only the person with the lowest billing rate. The Court acknowledges, however, that in complex chapter 11 cases the need for multiple professionals’ involvement will be more common and that in hearings involving multiple or complex issues a law firm may justifiably be required to utilize multiple attorneys as the circumstances of the case require.

7. **Travel Time.** Travel time is compensable at one-half normal hourly rates, but work actually done during travel is fully compensable.

8. **Administrative Tasks.** Time spent in addressing, stamping, and stuffing envelopes, file organization or management, filing photocopying or “supervising” any of the foregoing is generally not compensable, whether performed by a professional, paraprofessional, or secretary.

D. EXPENSES

1. **Firm Practice.** The Court will consider the customary practice of the firm in charging or not charging non-bankruptcy/insolvency clients for particular expense items. Where any

other clients, with the exception of pro-bono clients, are not billed for a particular expense, the estate should not be billed. Where expenses are billed to all other clients, reimbursement should be sought at the least expensive rate the firm or professional charges to any client for comparable services or expenses. It is recognized that there will be differences in billing practices among professionals.

2. **Actual Cost.** This is defined as the amount paid to a third party provider of goods or services without enhancement for handling or other administrative charge.

3. **Documentation.** This must be retained and made available upon request for all expenditures in excess of \$100.00. Where possible, receipts should be obtained for all expenditures.

4. **Office Overhead.** This is not reimbursable. Overhead includes: secretarial time, secretarial overtime (where clear necessity for same has not been shown), word processing time, charges for after-hour and weekend air conditioning and other utilities, and cost of meals or transportation provided to professionals and staff who work late or on weekends.

5. **Word Processing.** This is not reimbursable.

6. **Computerized Research.** This is reimbursable at actual cost. For large amounts billed to computerized research, significant explanatory detail should be furnished.

7. **Paraprofessional Services.** These services may be compensated as a paraprofessional under § 330, but not charged or reimbursed as an expense.

8. **Professional Services.** A professional employed under § 327 may not employ, and charge as an expense, another professional (e.g., special litigation counsel employing an expert witness) unless the employment of the second professional is approved by the Court before the rendering of service.

9. **Photocopies (Internal).** Charges must be disclosed on an aggregate and per page basis. If the per-page cost exceeds \$0.20, the professional must demonstrate to the satisfaction of the Court, with data, that the per-page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the copy machine, and supplies therefore, including the space occupied by the machine, but not including time spent in operating the machine.

10. **Photocopies (Outside).** This item is reimbursable at actual cost.

11. **Postage.** This is reimbursable at actual cost.

12. **Overnight Delivery.** This is reimbursable at actual cost where it is shown to be necessary. The Court acknowledges that in complex chapter 11 cases overnight delivery or messenger services may often be appropriate, particularly when shortened notice of a hearing of a hearing has been requested.

13. **Messenger Service.** This is reimbursable at actual cost where it is shown to

be necessary. An in-house messenger service is reimbursable, but the estate cannot be charged more than the cost of comparable services available outside the firm.

14. **Facsimile Transmission.** The actual cost of telephone charges for outgoing transmissions is reimbursable. Transmissions received are reimbursable on a per-page basis. If the per-page cost exceeds \$0.20, the professional must demonstrate, with data, to the satisfaction of the Court, that the per-page cost represents a good faith estimate of the actual cost of the copies, based upon the purchase or lease cost of the facsimile machine, and supplies therefore, including the space occupied by the machine, but not including time spent in operating the machine.

15. **Telephone Charges.** Telephone charges that are assessable to the estate such as conferencing services are reimbursable at actual cost.

16. **Parking.** This is reimbursable at actual cost.

17. **Air Transportation.** Air travel is expected to be at regular coach fare for all flights.

18. **Hotels.** Due to wide variation in hotel costs in various cities, it is not possible to establish a single guideline for this type of expense. All persons will be required to exercise reasonable discretion and prudence in connection with hotel expenditures.

19. **Meals (Travel).** Reimbursement may be sought for the reasonable cost of breakfast, lunch and dinner while traveling. For purposes of this section, “travel” is deemed to mean any time when the applicant is not in their primary office location.

20. **Meals (Working).** Working meals at restaurants or private clubs are not reimbursable. Reasonable reimbursement may be sought for working meals only where food is catered to the professional’s office in the course of a meeting with clients, such as a Creditors’ Committee, for the purpose of allowing the meeting to continue through a normal meal period.

21. **Amenities.** Charges for entertainment, alcoholic beverages, newspapers, dry cleaning, shoe shines, etc. are not reimbursable.

22. **Filing Fees.** These are reimbursable at actual cost.

23. **Court Reporter Fees.** These are reimbursable at actual cost.

24. **Witness Fees.** These are reimbursable at actual cost.

25. **Process Service.** This is reimbursable at actual cost.

26. **UCC Searches.** These are reimbursable at actual cost.

VII. GUIDELINES FOR DISPOSITION OF ASSETS IN CHAPTER 11 CASES, THE SALE OF SUBSTANTIALLY ALL ASSETS UNDER SECTION 363, AND OVERBID AND TOPPING FEES

A. Applicability.

The following guidelines apply to pre-negotiated or pre-packaged plans and 11 U.S.C. § 363 sales to dispose of substantially all assets of a Chapter 11 debtor. The guidelines recognize that parties in interest perceive the need at times to act expeditiously on such matters. In addition, the guidelines are written to provide procedural protection to the parties in interest.

B. Sale Motions – General Terms. Sale Motions shall attach or include the following:

1. The proposed purchase agreement, or a form of such agreement substantially similar to the one debtor reasonably believes it will execute in connection with the proposed sale;
2. A proposed form of sale order;
3. A disclosure of all material terms of the transaction, including those listed in paragraph D.1. below; and
4. A request, if necessary, for the appointment of a patient care or consumer privacy ombudsman under 11 U.S.C. §§ 332 or 333.

C. Overbids and Topping Fees

1. **Topping Fees and Break-up Fees.** Any request for the approval of a topping fee or a break-up fee provision shall be supported by a statement of the precise conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. Unless ordered otherwise, the request shall also contain a description of any offers received, including, without limitation, any disclosure of their plans as it relates to retention of debtor's employees.
2. Buyer protection provisions, including, topping fees, break-up fees, and overbid amounts should be requested in the relevant bid or sale procedures motion and should be conspicuous and summarized on the cover sheet.

D. The Sale of Substantially All Assets Under Bankruptcy Code Section 363

1. **The Motion to Sell.** In connection with any hearing to approve the sale of substantially all assets, a motion for an order authorizing a sale procedure and hearing or the sale motion itself when regularly noticed, should include factual information on the following points. The first page of the applicable motion include a summary of the required information in a chart format in substantially the form motion provided below at **Appendix CC11-5** and available at www.txwb.uscourts.gov/complex-chapter-11-procedures. The balance of the motion must:

- a. **Creditors' Committee.** State whether the Creditors' Committee supports the proposed sale. If a creditors' committee existed pre-petition, indicate the date and manner in which the committee was formed, as well as the identity of the members of the committee and the companies with which they are affiliated. If the pre-petition creditors' committee retained counsel or other advisors, indicate the date counsel was engaged and the identity of committee counsel or advisors.
- b. **Sale Contingencies.** State all contingencies to the sale agreement and citations to the provisions of the proposed sale agreement.
- c. **Good Faith Deposit.** Specifically describe whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which such deposit may be forfeited.
- d. **Closing and Other Deadlines.** Specifically describe any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction.
- e. **Administrative Expenses.** Itemize and estimate administrative expenses relating to the sale to be incurred before closing and the source of payment for those expenses.
- f. **Proceeds of Sale.** Estimate of the gross proceeds anticipated from the sale, together with an estimate of (i) all costs of sale (e.g., auctioneer or broker fees), (ii) all proceeds to be distributed directly to non-debtor parties (i.e., payment of pre- or post-petition taxes), (iii) any other deductions from the gross proceeds and (iv) the net proceeds to be remitted to the estate. Itemize all deductions that are to be made from gross sale proceeds and include a brief description of the basis for any such deductions.
- g. **Debt Structure of Debtor.** Provide a brief description of the debtor's debt structure, including the amount of the debtor's secured debt, priority claims and general unsecured claims.
- h. **Need for Quick Sale.** Provide, if applicable, a description of why the assets of the estate must be sold on an expedited basis. Include a discussion of alternatives to the sale.
- i. **Private Sale/No Competitive Bidding.** Specifically disclose whether an auction is contemplated and specifically describe any provision which limits the solicitation of competing offers for the property subject to the Sale Motion or otherwise limits marketing of the property in any material way.
- j. **Negotiating Background.** Describe the length of time spent in negotiating the sale, and which parties in interest were involved in the negotiation, along with any other offers to purchase, including, without limitation, the potential

pursuant to which the debtor seeks to sell or otherwise limit its rights to pursue avoidance claims under Chapter 5 of the Bankruptcy Code.

u. **Requested Findings as to Successor Liability.** Specifically describe any provision limiting the proposed purchaser's successor liability.

v. **Sale Free and Clear of Unexpired Leases.** Specifically describe any provision by which the debtor seeks to sell property free and clear of a possessory leasehold interest, license, or other right.

w. **Sale Free and Clear.** Specifically describe any provision by which the debtor seeks to sell property free and clear of interests pursuant to section 363(f) of the Bankruptcy Code.

x. **Credit Bid.** Specifically describe any provision by which the debtor seeks to allow, disallow, or affect in any manner, credit bidding pursuant to 11 U.S.C. § 363(k).

y. **Relief from Bankruptcy Rule 6004(h).** Specifically describe any provision whereby the debtor seeks relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

z. **Notice Timing.** File notice of the hearing on the motion to approve the motion to sell.

2. **Good Faith Finding.** There must be an evidentiary basis for a finding of good faith under 11 U.S.C. § 363(m).

3. **Competing Bids.** Unless the Court orders otherwise, competing bids may be presented at the time of the hearing. The motion to sell and the notice of hearing should so provide.

4. **Financial Ability to Close.** Unless the Court orders otherwise, any bidder must be prepared to demonstrate to the satisfaction of the Court, through an evidentiary hearing, its ability to consummate the transaction if it is the successful bidder, along with evidence regarding any financial contingencies to closing the transaction.

5. **Objection that proposed sale is a sub rosa plan.** Any party-in-interest opposing a sale motion on the basis that the proposed sale constitutes a sub rosa plan must identify with specificity what rights or protections under 11 U.S.C. §§ 1121-1129 are being violated. The proponents of a sale motion must respond specifically to any objection asserting that a proposed sale pursuant to 11 U.S.C. § 363 will constitute a sub rosa plan.

VIII. GUIDELINES FOR CASH COLLATERAL AND DIP FINANCING MOTIONS AND ORDERS

A. Interim vs. Final Orders

1. Stipulations in preliminary or interim orders should be minimized. Notice is generally not adequate to test the validity of stipulations, and they should be avoided to the extent not absolutely necessary to the interim approval process.

2. Simply state the nature of notice given; do not recite notice was “sufficient and adequate” since that is usually not the case particularly on the first day. The order should simply note that the financing is being approved pursuant to Bankruptcy Rule 4001(c)(2) authorizing such financing to avoid immediate and irreparable harm.

3. Adequate protection for the use of pre-petition cash collateral may be granted to the extent of a diminution of collateral. The Court will not approve on an interim basis language that adequate protection is granted in the form of replacement liens on post-petition assets based on stipulations that “use of cash collateral shall be deemed a dollar for dollar decrease in the value of the pre-petition collateral.” At the final hearing the Court will consider evidence to determine the extent to which the lender’s pre-petition collateral has or is likely to diminish in value. That evidence will inform the extent to which adequate protection will be granted.

4. The Court expects that other parties in interest will be involved in the process of developing an interim cash collateral order to the extent practicable. If the Court finds that the debtor and lender have not made reasonable efforts to afford the best notice possible, preliminary relief will not be granted until parties in interest have had a reasonable opportunity to review and comment on any proposed interim order.

5. Bankruptcy Rule 4001(b) and (c) limit the extent to which the Court may grant relief on less than 14 days’ notice. The debtor and the lender must negotiate interim orders within the confines of that authority. Interim orders shall be expressly without prejudice to the rights of parties in interest at a final hearing.

B. Stipulations requested by lender. The lender may request a stipulation as to the amount, validity, priority, and extent of the pre-petition loans or liens. The stipulation will only be approved if the order provides the stipulation is binding on other parties in interest only after the passage of an appropriate period of time (customarily 90 days) during which the parties in interest will have the opportunity to test the validity of the lien and the allowance of the claim.

C. Grant of Liens.

1. Liens granted in the cash collateral and DIP financing orders may not secure prepetition debts. Financing orders should not be used to elevate a pre-petition lender’s collateral inadequacy to a fully secured status.

2. Avoidance actions are frequently one of the few sources of recovery for creditors other than secured lenders. Orders granting liens on these unencumbered assets for the benefit of the lender will require a showing of extraordinary circumstances. In most cases the adequate protection grant will protect the lender since the lender will have a superpriority under 11 U.S.C. § 507(b) that will give the lender who suffers a failure of adequate protection

a first right to payment out of the proceeds from such actions before payment of any other expenses of the Chapter 11 case. Avoidance actions in the event of a conversion to Chapter 7 may be the only assets available to fund the trustee's discharge of his or her statutory duties.

3. Similarly, limitations on the surcharge of the lender's collateral under 11 U.S.C. § 506(c) are disfavored. The secured creditor may be the principal beneficiary of the proceedings in Chapter. Since the burden to surcharge requires a showing of direct benefit to the lender's collateral, lenders are not unreasonably exposed to surcharges of their collateral. And in light of the decision in *Hartford Underwriter's Insurance Co. v. Union Planters Bank N.A. (In re Hen House Interstate Inc.)*, 530 U.S. 1 (2000), only the DIP or the trustee may recover under 11 U.S.C. § 506(c).

D. Modification of Stay. Authority for unilateral action by lender without necessity to return to Court to establish post-petition default or breach or at least a notice to parties in interest will not be approved. If the cash collateral or financing order provides for a termination of the automatic stay in the event of a default, parties in interest must have an opportunity to be heard before the stay lifts.

E. Restrictions on Plan Process.

1. The Court will not approve cash collateral orders (or post-petition financing orders that are in substance cash collateral orders that have the effect of converting all the pre-petition liens and claims to post-petition liabilities under the guise of collecting prepetition accounts and readvancing them post-petition) that have the effect of converting prepetition secured debt into post-petition administrative claims that must be paid in full in order to confirm a plan. That type of provision unfairly limits the ability and flexibility of the debtor and other parties in interest to formulate a plan. That type of provision, granted at the outset of a case, effectively compels the debtor to pay off the secured lender in full on the effective date and has the consequence of eviscerating 11 U.S.C. § 1129(b).

2. On the other hand, persons who are advancing new money to the debtor postpetition may include in financing orders provisions that the post-petition loans have a 11 U.S.C. § 364(c)(1) super-super priority.

F. Loan Agreements. If there will be a loan agreement, the language of the financing order does not need to restate all of the terms of the loan agreement. The financing motion should, however, summarize the essential elements of the proposed borrowing or use of cash collateral, such as, amount of loan facility, sublimits on availability, borrowing base formula, conditions to new advances, interest rate, maturity, events of default, limitation on use of funds and description of collateral.

G. Professional Fees.

1. To the extent consistent with the market for similar financings, the lender may request reimbursement of reasonable professional fees. The lender should provide reasonably detailed invoices to the debtor and the committees so a proper assessment of reasonableness can be made.

2. The parties may agree on carve-outs for estate professionals. Lenders may exclude from the carve-out payment of professional fees for litigation of the extent, validity or perfection of the lender's claim as well as prosecution of lender liability suits. The carve-out should not, however, exclude the due diligence work by the committee or its professionals to determine whether a challenge to the lender is justified.

H. Work Fees/Loan Fees. Underwriting a substantial DIP loan may involve both direct out-of-pocket expenses and, at times, a certain lost opportunity cost. The debtor may move for the reimbursement of its lender's direct out-of-pocket expenses. The debtor and lender must be prepared to establish actual out-of-pocket costs, the reasonableness of the costs, and that the type of costs are actually paid in the market. On a case-by-case basis, the Court will consider on an expedited basis the debtor's request to pay a reasonable up-front fee to a prospective DIP lender to reimburse it for direct out-of-pocket costs. In addition, in connection with approving a DIP loan facility, on motion of the debtor, the Court will consider evidence of market rates and pricing for comparable loans in determining whether commitment fees, facility or availability fees, and other up-front or periodic loan charges are appropriate. The lender must provide evidence that it actually has provided or will provide the services customarily associated with these fees.

**APPENDIX CC11-1 – NOTICE OF DESIGNATION AS
COMPLEX CHAPTER 11 BANKRUPTCY CASE**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:

DEBTOR.

§
§
§
§

CASE NO. _____

**NOTICE OF DESIGNATION AS COMPLEX
CHAPTER 11 BANKRUPTCY CASE**

This bankruptcy case was filed on _____, 20___. The undersigned party in interest believes that this case qualifies as a complex Chapter 11 case because:

- _____ The debtor has total debt of more than \$10 million;
- _____ There are more than 50 parties in interest in this case;
- _____ Claims against the debtor and/or equity interests in the debtor are publicly traded;
- _____ Other: (Substantial explanation is required. Attach additional sheets if necessary.)

_____, 20__.

Name

Address

Telephone, and email

**APPENDIX CC11-2 – ORDER GRANTING COMPLEX CHAPTER 11 BANKRUPTCY
CASE TREATMENT**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:

§
§
§ CASE NO. _____
§
§
DEBTOR. §

**ORDER GRANTING COMPLEX
CHAPTER 11 BANKRUPTCY CASE TREATMENT**

This bankruptcy case was filed on _____, 20___. A Notice of Designation as Complex Chapter 11 Case was filed. After review of the initial pleadings filed in this case, the Court concludes that this case appears to be a complex Chapter 11 case.

Accordingly, unless the Court orders otherwise,

IT IS ORDERED THAT:

1. The debtor shall maintain a service list identifying the parties that must be served whenever a motion or other pleading requires notice. Unless otherwise required by the Bankruptcy Code or Rules, notices of motions and other matters will be limited to the parties on the service list.

- a. The service list shall initially include the debtor, debtor's counsel, counsel for the unsecured creditors' committee, the U.S. trustee, all secured creditors, the 20 largest unsecured creditors of each debtor, any indenture trustee, and any party that requests notice;
- b. Any party in interest that wishes to receive notice, other than as listed on the service list, shall be added to the service list by filing and serving the debtor and debtor's counsel with a notice of appearance and request for service.
- c. The initial service list shall be filed within 3 days after entry of this order. A revised list shall be filed 7 days after the initial service list is filed. The debtor shall update the service list, and shall file a copy of the updated service list, (i) at least every 7 days during the first 30 days of the case; (ii) at least every 14 days during the next 60 days of the case; and (iii) at least every 30 days thereafter throughout the case.

2. [The Court sets _____ of [each week] [every other week, commencing [Month and Day] [each month] at _____ am/pm as the pre-set hearing day and time for hearing all motions and other matters in these cases.] The Court sets the following dates and times for the next two months as the pre-set hearing date and time for hearing all motions and other matters in these cases [insert dates and times]. Settings for the following months will be published by the Court no later than 30 days before the first hearing date in the said following months. (There may be exceptions; those exceptions will be noted on the Court's internet schedule, available at www.txwb.uscourts.gov.)

- a. All motions and other matters requiring hearing, but not requiring expedited or emergency hearing, shall be noticed for hearing, on the next hearing day that is at least 21 days after the notice is served. As a preface to each pleading, just below the case caption, in lieu of the language required by any Local Bankruptcy Rule, the pleading shall state:

**A hearing will be conducted on this matter on _____ at
am/pm in courtroom __, [courthouse name & address], _____,
Texas.**

If you object to the relief requested, you must respond in writing, specifically answering each paragraph of this pleading. Unless otherwise directed by the court, you must file your response with the clerk of the bankruptcy court within 21 days from the date you were served with this pleading. You must serve a copy of your response on the person who sent you the notice; otherwise, the court may treat the pleading as unopposed and grant the relief requested.

- b. All motions and other matters requiring expedited or emergency hearing shall comply with the applicable Local Bankruptcy Rule(s) for explanation and verification of the need for emergency or expedited hearing. Specifically, if a party in interest has a situation that it believes requires consideration on less than 21 days' notice, then the party should file and serve a separate, written motion for expedited hearing, with respect to the underlying motion. The Court will make its best effort to rule on the motion for expedited or emergency hearing within 24 hours of the time it is presented. If the Court grants the motion for expedited or emergency hearing, the underlying motion will be set by the Courtroom Deputy at the next available pre-set hearing day or at some other appropriate shortened date approved by the Court. The party requesting the hearing shall be responsible for providing proper notice in accordance with this order and the Bankruptcy Code and Rules.
 - c. Not less than 24 hours before each of the pre-set hearing dates, the debtor shall file an agenda listing each matter set for hearing and indicating which of those matters are contested, which have been resolved, and which the parties will seek to continue to a later hearing date.
3. Emergency and expedited hearings (and other hearings in limited circumstances) in this case may be conducted by virtual means. Parties must request permission to participate virtually in accordance with the assigned Judge's procedures, which are available on the Court's website [link]. The Court may, on its own motion and in its sole discretion, order that any hearing be conducted solely by virtual means. In such instances, parties need not seek permission to appear virtually. All "First Day" Hearings shall be conducted only by virtual means.
4. If a matter is properly noticed for hearing and the parties reach a settlement of the dispute

before the final hearing, the parties may announce the settlement at the scheduled hearing. If the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement, (i.e., that the terms of the settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated) the Court may approve the settlement at the hearing without further notice of the terms of the settlement and without requiring a motion under FRBP 9019. Parties should notify the appropriate Courtroom Deputy as soon as practicable if a matter has been resolved consensually.

5. The debtor shall serve this order to all parties in interest within 7 days of the date of this order. If any party in interest, at any time, objects to the provisions of this order, that party shall file a motion articulating the objection and the relief requested. After hearing the objection and any responses the Court may reconsider any part of this order and may grant relief, if appropriate.

#

The Clerk shall notice:
Debtor
Debtor's Counsel
U.S. trustee

**APPENDIX CC11-3 – REQUEST FOR EMERGENCY CONSIDERATION OF CERTAIN
"FIRST DAY" MATTERS**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION

IN RE:

DEBTOR.

§
§ CASE NO. _____
§
§

REQUEST FOR EMERGENCY CONSIDERATION
OF CERTAIN "FIRST DAY" MATTERS

On [date], [Debtor(s)] filed a petition for relief under Chapter 11 of the Bankruptcy Code. Proposed counsel for the debtor believes that the case qualifies as a "Complex Chapter 11 Case" and contemporaneously herewith, has filed a Notice of Designation as a Complex Chapter 11 Case. The debtor seeks emergency consideration of the following initial case matters (check those that apply*):

_____ JOINT MOTION FOR JOINT ADMINISTRATION

_____ MOTION FOR ORDER EXTENDING TIME TO FILE SCHEDULES AND
STATEMENT OF FINANCIAL AFFAIRS

_____ MOTION TO LIMIT OR MODIFY THE NOTICE REQUIREMENTS OF FED. R.
BANKR. P. 2002.

_____ MOTION TO PAY INSURANCE PREMIUMS.

_____ MOTION TO ESTABLISH BAR DATES AND FOR APPROVAL OF BAR DATE
NOTICES.

_____ MOTION TO ESTABLISH PRE-SET HEARING DATES.

_____ MOTION RE MAINTENANCE OF BANK ACCOUNTS AND EXISTING CASH
MANAGEMENT, ATTACHING NOTICE OF CONFERENCE WITH U.S. TRUSTEE

_____ MOTION TO PAY PRE-PETITION WAGES, SALARIES, ET AL., ATTACHING
NOTICE OF CONFERENCE WITH U.S. TRUSTEE AND DETAILED EXHIBIT
SHOWING WHO DEBTOR PROPOSES TO PAY AND AMOUNTS

_____ MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING USE OF CASH
COLLATERAL

_____ MOTION FOR INTERIM APPROVAL OF POST-PETITION SECURED AND SUPER
PRIORITY FINANCING PURSUANT TO SECTION 364(c) OF THE BANKRUPTCY
CODE

_____ MOTION PURSUANT TO 11 U.S.C. § 366, FOR ENTRY OF INTERIM ORDER (1)
DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY
SERVICES AND (2) RESTRAINING UTILITY COMPANIES FROM
DISCONTINUING, ALTERING, OR REFUSING SERVICE

_____ MOTION TO RETAIN A CLAIMS, BALLOTING, AND/OR NOTICING AGENT

_____ MOTION TO ESTABLISH INTERIM NOTICE PROCEDURES

_____ MOTION FOR ORDER APPROVING INTERIM RETENTION OF PROFESSIONALS

_____ MOTION FOR ORDER APPROVING PAYMENT OF PRE-PETITION CLAIMS OF
CERTAIN CRITICAL VENDORS

_____ MOTION TO PAY PRE-PETITION AND POST-PETITION TAXES

_____ MOTION TO PAY OIL & GAS ROYALTIES, MINERAL LIENS, MECHANIC OR
MATERIALMAN'S LIENS, JOINT INTEREST BILLING DISBURSEMENTS, OR
CLAIMS UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT OF
1930, THE PACKERS AND STOCKYARDS ACT OF 1921, OR ANY STATE
STATUTES OF SIMILAR EFFECT.

_____ OTHERS (LIST):

_____, 20

[signature block of proposed counsel for the debtor]

* NOTE: The Court expects the parties to exercise judgment regarding which motions are applicable.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
DIVISION

DEBTOR. § CASE NO. _____
§
§ HEARING: _____

93

1. Identification of Proceedings:

(a) Preliminary motion/order or

(b) Final motion/order

(c) Continuing use of cash collateral (§ 363)

(d) New financing (§ 364)

(e) Combination of §§ 363 and 364 financing

(f) Emergency hearing (immediate and irreparable harm)

2. Stipulations:

(a) Brief history of debtor's businesses and status of debtor's prior relationships with lender

(b) Brief statement of purpose and necessity of financing

(c) Brief statement of type of financing (i.e., accounts receivable, inventory)

** (d) Are lender's pre-petition security interest(s) and liens deemed valid, fully perfected and non-avoidable

Are there provisions to allow for objections to above?

(e) Is there a post-petition financing agreement between lender and debtor?

(i) If so, is agreement attached?

** (f) If there is an agreement are lender's post-petition security interests and liens deemed valid, fully perfected and non-avoidable?

(g) Is lender undersecured?

(h) Is lender or oversecured?

(i) Has lender's non-cash collateral been appraised?

(i) Insert date of latest appraisal

- (j) Is debtor's proposed budget attached? _____
- (k) Are all pre-petition loan documents identified? _____
- (l) Are pre-petition liens on single or multiple assets? (circle one) _____
- (m) Are there limited pre-petition guaranties of debt? _____
- (n) Are there unlimited pre-petition guaranties of debt? _____

3. Grant of Liens:

- * (a) Do post-petition liens secure pre-petition debts? _____
- * (b) Is there cross-collateralization? _____
- ** (c) Is the priority of post-petition liens equal to or higher than existing liens? _____
- ** (d) Do post-petition liens have retroactive effect? _____
- (e) Are there restrictions on granting further liens or liens of equal or higher priority? _____
- * (f) Is lender given liens on claims under §§ 506(c), 544-50 and §§ 522? _____
- ** (i) Are lender's attorney's fees to be paid? _____
- (ii) Are debtor's attorney's fees excepted from § 506(c)? _____
- * (g) Is lender given liens upon proceeds of causes of action under §§ 544, 547 and 548? _____

4. Administrative Priority Claims:

- (a) Is lender given an administrative priority? _____
- (b) Is administrative priority higher than § 507(a)? _____
- (c) Is there a conversion of pre-petition secured claim to post-petition administrative claim by virtue of use of existing collateral? _____

5. Adequate Protection (§ 361):

(a) Is there post-petition debt service? _____

(b) Is there a replacement 361(l) lien? _____

(c) Is there an additional 361(1) lien? _____

** (d) Is the lender's claim given super-priority?
(§ 364(c) or (d)) [designate] _____

(e) Are there guaranties? _____

(f) Is there adequate insurance coverage? _____

(g) Other? _____

6. Waiver/Release Claims v. Lender:

** (a) Debtor waives or release claims against lender, including, but not limited to, claims under §§ 506(c), 544-550, 552, and 553 of the Code? _____

** (b) Does the debtor waive defenses to claim or liens of lender? _____

7. Source of Post-Petition Financing (§ 364 Financing):

(a) Is the proposed lender also the pre-petition lender? _____

(b) New post-petition lender? _____

(c) Is the lender an insider? _____

8. Modification of Stay:

** (a) Is any modified lift of stay allowed? _____

** (b) Will the automatic stay be lifted to permit lender to exercise self-help upon default without further order? _____

(c) Are there any other remedies exercisable without further order of the Court? _____

- (d) Is there a provision that any future modification of order shall not affect status of debtor's post-petition obligations to lender? _____

9. Creditors' Committee:

- (a) Has creditors' committee been appointed? _____

- (b) Does creditors' committee approve of proposed financing? _____

10. Restrictions on Parties in Interest:

- ** (a) Is a plan proponent restricted in any manner, concerning modification of lender's rights, liens and/or causes? _____

- ** (b) Is the debtor prohibited from seeking to enjoin the lender in pursuant of rights? _____

- ** (c) Is any party in interest prohibited from seeking to modify this order? _____

- (d) Is the entry of any order conditioned upon payment of debt to lender? _____

- (e) Is the order binding on subsequent trustee on conversion? _____

11. Nunc Pro Tunc:

- (a) *Does any provision have retroactive effect? _____

12. Notice and Other Procedures:

- (a) Is shortened time for notice requested? _____

- (b) Is notice requested to shortened list? _____

- (c) Is time to respond to be shortened? _____

- (d) If final order sought, have 14 days elapsed since service of motion pursuant to Rule 4001(b)(2)? _____

- (e) If preliminary order sought, is cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing? _____

- (f) Is a Certificate of Conference included? _____

- (g) Is a Certificate of Service included? _____
- (h) Is there verification of transmittal to U.S. trustee included pursuant to Rule 9034? _____
- (i) Has an agreement been reached subsequent to filing motion? _____
- (i) If so, has notice of the agreement been served pursuant to Rule 4001(d)(4)? _____
- (ii) Is the agreement in settlement of motion pursuant to Rule 4001(d)(4)? _____
- (iii) Does the motion afford reasonable notice of material provisions of agreement pursuant to Rule 4001(d)(4)? _____
- (iv) Does the motion provide for opportunity for hearing pursuant to Rule 9014? _____

SIGNED this ____ day of _____, 20__ .

[Enter Firm Name]

By: _____

[Enter Attorney's Name]

[Enter Texas Bar No.]

[Enter Address]

[Enter Telephone Number]

[Enter Email Address]

[Enter Identification Role in Case]

APPENDIX CC11-5 – COVER SHEET FOR MOTION TO SELL ASSETS

[Case Style]

COVER SHEET FOR MOTION TO SELL ASSETS

The first page of all motions seeking to sell substantial assets under 11 U.S.C. §§ 363(b) or (f) should be this completed coversheet.

	If the answer to any question is “yes”, provide a citation to the relevant section of the Motion describing the topic in detail.
Closing and Other Deadlines	
When must the deal close?	
Other key deadlines?	
Assets to be Sold	
Describe assets to be sold	
Describe important contingencies	
Describe important carveouts	
Auction, private sale, other?	
Good Faith Deposit	
Amount? Percent of Value?	
Conditions for forfeiture?	
Proceeds of Sale	
Gross sales price?	
Costs of sale	
Net proceeds?	
Debt structure paid?	
Buyer	
Buyer and its source of funds?	
Connections with debtor or debtor’s controlling interests?	
Connections with Committee?	
Buyer’s post-sale relationships with debtor’s management or directors?	
Marketing of Assets	
How has/will debtor market the assets?	
Over what time period?	
Creditors Committee Support?	
Releases, Exculpations and Indemnifications?	

Sale of Avoidance Actions?	
Requested Findings as to Successor Liability?	
Sale Free and Clear of Unexpired Leases?	
Credit Bid under §363(k)?	
Sale Process	
Private sale/competitive bidding	
Any provisions/terms limiting solicitation of competing offers	
Open call auction/sealed bid?	