GUIDELINES FOR CHAPTER 11 CASES

NORTHERN & EASTERN DISTRICTS OF TEXAS

REGION VI

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I. GENERAL REQUIREMENTS

A. The U. S. Trustee promulgates these Guidelines pursuant to his statutory duty to administer bankruptcy cases. The Guidelines are issued to assist you in performing the functions and duties of the trustee of the estate pursuant to 11 U.S.C. § 1107 and to aid in case administration.

B. With the filing of a Chapter 11 petition, you as Debtor become a new and separate entity called a "Debtor-in-Possession". You, as the Debtor-in-Possession, have fiduciary and statutory responsibilities to preserve and maintain the bankruptcy estate and to operate as efficiently as possible to maximize ultimate payments on pre-petition debts while keeping post-petition debts current. Some of your obligations are as follows:

1) You may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the Court.

2) You must comply with Section 363 of the Bankruptcy Code regarding the use of cash collateral. Questions regarding cash collateral should be directed to your attorney.

3) You must pay all obligations arising after the filing of the petition in full when due. This includes quarterly fee payments to the U.S. Trustee (see QUARTERLY FEES).

4) You may not make any new loan, give a post-petition guarantee, or borrow funds without Court approval unless otherwise permitted by the Bankruptcy Code.

5) You may not sell or lease property outside the ordinary course of business without Court approval unless otherwise permitted by the Bankruptcy Code.

6) You must file all Federal, state, and local tax returns when due or obtain an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or Court order. You must timely pay all post-petition taxes.

C. You must send notices and copies of pleadings to the U.S. Trustee as required by Bankruptcy Rules 1007, 2002, 2014, 2015, 2016, and by the applicable Local Bankruptcy Rules ("L.B.R.") in your District.

D. You are required to comply in all respects with the Bankruptcy Code, the Federal Bankruptcy Rules, and the Local Bankruptcy Rules for the Northern or Eastern Districts of Texas. You may find this information on the Court's website at www.txnb.uscourts.gov/Reference-Library for the Northern District and www.txeb.uscourts.gov/LocalRules.asp for the Eastern District.

E. Failure to abide by these required Guidelines may result in the U.S. Trustee seeking conversion or dismissal of a case, the appointment of a trustee, or other remedies deemed appropriate from the Bankruptcy Court.

II. INITIAL DEBTOR INTERVIEW

A. You and your attorney must attend an initial debtor interview that is scheduled by our office shortly after filing your bankruptcy petition and prior to the meeting of creditors. The purpose of the meeting is for our office to obtain a general understanding of the case before the meeting of creditors and to review your Chapter 11 administrative requirements.

1) You should review the information contained in these Guidelines thoroughly before your initial debtor interview so that any administrative questions can be addressed at that time.

2) If you speak a language other than English or require accommodation for a hearing impairment or physical disability, contact our office immediately so that reasonable accommodations can be arranged.

3) **You must print, complete, and bring certain documents to the initial debtor interview. If attending telephonically, you will need to fax/e-mail those documents ahead of time to the Bankruptcy Analyst conducting the interview.** All documents are available on our website at www.justice.gov/ust/r06/reg_info.htm under "Initial Debtor Interview (IDI) Information" and must be completed beforehand as no time will be allotted for this task during the meeting. The required documents include the following:

☐ ***Obligations of Chapter 11 Cases Acknowledgement of Receipt*** (signed at the IDI).

☐ ***Information for Initial Debtor Interview***, i.e. IDI Information worksheet.

☐ ***Proof of insurance coverage***. You must maintain appropriate insurance coverage and provide us with a declaration page showing the type(s) of coverage, coverage limits, and policy period. The documentation must show the name of the Debtor (i.e. the name on the petition) as the insured party and the U.S. Trustee must be listed as a notified party. See INSURANCE REQUIREMENTS for additional information.

☐ ***Statements Regarding Compliance with 11 USC § 345(b)***, i.e. DIP Bank Designation form. You should have begun the process of setting up debtor-in-possession account(s) either before or immediately upon the filing of your bankruptcy petition. See BANK ACCOUNT REQUIREMENTS for additional information and for a link to the current list of approved financial depositories.

☐ ***An original voided check for each DIP account*** you have created with the appropriate styling. Photocopies or temporary checks are not acceptable. See BANK ACCOUNT REQUIREMENTS for additional information and a sample check.

☐ ***Direction of Debtor Attorney Concerning U.S. Trustee Contact with Client***, i.e. McDade Authorization form.

☐ ***Group/Pension Information Form***. (Must be completed even if not applicable).

☐ ***Copies of the last 2 filed tax returns*** (Northern District only). We prefer that these be sent via e-mail prior to the initial debtor interview – note that attachments are limited to 10MB in total size.

☐ Chart of Accounts, Listing of Accounts, or General Ledger (if available)

☐ If you are an entity that is indirectly or directly affiliated, related, and/or shares common ownership with other entities (a "layered" entity structure, for example), you must provide us with an organizational chart or detailed statement that explains the relationship. Clearly identify non-debtor and debtor entities and provide federal identification numbers (FEINs).

III. MEETING OF CREDITORS

A. You will be required to attend a meeting of creditors as required by Section 341 of the Bankruptcy Code and submit to examination under oath. Your attorney is also required to attend this meeting.

1) Our office will schedule this meeting and a notice will be prepared by the Bankruptcy Clerk.

2) In the Northern District of Texas your attorney must timely serve the notice of the meeting to all creditors pursuant to L.B.R. 2002-1. We strongly recommend that your attorney file a certificate of service simultaneously with the notice of the meeting of creditors. After your attorney sends notice, we cannot cancel or reschedule the meeting to accommodate scheduling conflicts of parties or attorneys.

3) In the Eastern District of Texas your attorney does not need to serve the notice of the meeting. The Bankruptcy Clerk will serve the notice of the meeting to all creditors pursuant to L.B.R. 2002.

4) If you are an individual you must bring to this meeting (a) proof of your identity <u>and</u> (b) proof of your Social Security number. Permissible forms of identification include a valid driver's license, government issued photo identification card, U.S. Passport, or resident alien card. Proof of Social Security number may include a Social Security card, current Form W-2, or payroll check stub.

4) If you speak a language other than English or require accommodation for a hearing impairment or physical disability, contact our office immediately so that reasonable accommodations can be arranged.

B. At the conclusion of the initial meeting of creditors, we may decide to adjourn the meeting and continue the examination at another date and time. The presiding officer will announce the adjourned date and time and no additional written notice to creditors need be provided.

IV. UNSECURED CREDITORS' COMMITTEE

A. Pursuant to 11 U.S.C. § 1102, we will contact the 20 largest unsecured creditors for the purpose of forming an unsecured creditors' committee. An organizational meeting for this purpose may be held in conjunction with the initial meeting of creditors or may be scheduled separately. You and your attorney may be requested to attend this meeting.

V. BANKRUPTCY SCHEDULES

A. You must comply with Bankruptcy Rules 1002 and 1007. These rules require you to file schedules and a statement of financial affairs ("SOFA") with the Clerk of the Bankruptcy Court within 14 days of the filing of the petition.

B. You must file the schedules or a complete list of all creditors and their addresses with the petition.

C. If you are in the Northern District, your attorney must contact our office before you file any motion for extension of time to file the Schedules and SOFA pursuant to L.B.R. 1007(b).

D. Pursuant to Bankruptcy Rule 1007(d), you must also file a separate list containing the name, address, phone number and amount of claim of the twenty largest unsecured creditors. This list must not contain the names of any creditors who are "insiders" as that term is defined in Section 101(31) of the Bankruptcy Code. The U.S. Trustee uses this list to attempt to form a creditors' committee to serve in the case.

VI. BANK ACCOUNT REQUIREMENTS

A. Immediately upon filing your petition, any funds in your existing bank accounts become property of the bankruptcy estate. This includes individual Debtors - see *Property of the Estate* §1115, 1123(a)(8), 1129(a)(15). The investment and protection of bankruptcy estate funds is governed by Section 345 of the Bankruptcy Code.

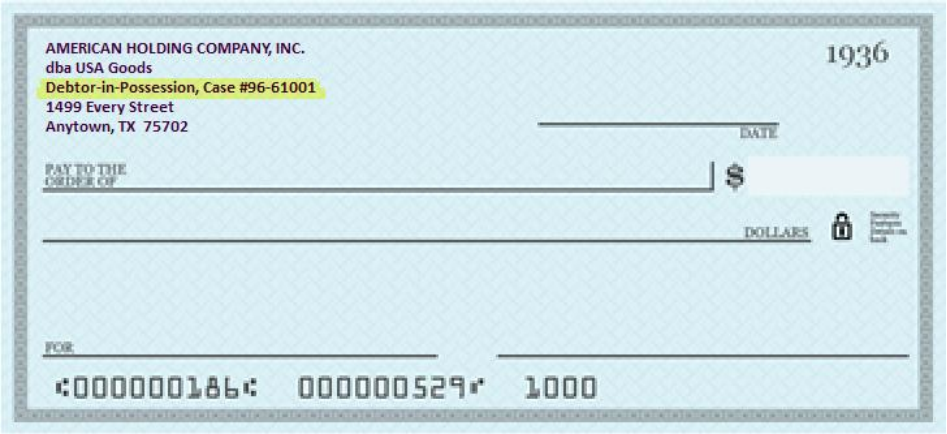
B. You must close all existing pre-petition bank accounts and move the funds to a Debtor-in-Possession ("DIP") bank account(s). Note that outstanding checks that have not cleared pre-petition bank accounts at the time of filing should not be permitted to clear.

C. We maintain a list of financial institutions that have agreed to pledge securities with the Federal Reserve or post a bond in order to insure their bankruptcy accounts. We monitor these institutions to insure the requirements of Section 345(b) are met with regard to all bankruptcy accounts which they maintain. Section 345(b) provides that, unless the Court orders otherwise, you must require that all financial institutions in which estate monies exceeding federal deposit insurance limits are deposited or invested have either posted a bond or pledged securities of a type specified in the statute. This requirement insures that all estate fund balances exceeding federal deposit insurance limits are protected against loss in the event of the failure of the financial institution. The most current Authorized Depository Listing is available on our website at www.justice.gov/ust/r06/reg_info.htm under the heading "Initial Debtor Interview (IDI) Information".

D. Financial institutions that do not appear on the list are not part of our reporting and monitoring system. If you choose to use such a financial institution, you are solely responsible for insuring that the requirements of Section 345(b) are met, either by securing the posting of a bond or a pledge of securities from the financial institution, or by obtaining a court order excusing compliance with this requirement for cause. If you use a financial institution that is not a part of our reporting and monitoring system (i.e. is not on our Authorized Depository Listing), a copy of the current monthly bank statement for each account must be submitted to the U.S. Trustee as an attachment to the monthly operating report.

E. You must insure that your checks are imprinted with the full name of the debtor-in-possession exactly as shown on your voluntary petition, (Official Bankruptcy Form 1). If you are filing individually or filing a joint petition, the check must include the first, middle and last names (not initials) of all petitioners. If use of a d.b.a. ("doing business as") is desired in the styling of the check, the d.b.a. must have been recorded in the box on the petition labeled "All other Names used by the Debtor in the last 6 years (including married, maiden and trade names)."

1) The designation “Debtor-In-Possession” (do not abbreviate as “DIP”) and the case number must also be imprinted on all checks. See the following sample check as an illustration:



2) You must provide original voided samples of permanent checks from each account to the U.S. Trustee for review.

F. All financial transactions involving property of the estate must be made through the debtor-in-possession account(s). Any funds exceeding those required for current operations should be invested in accordance with the provisions of Section 345(a).

G. Once the Bankruptcy Court confirms the Chapter 11 plan, the Debtor-in-Possession bank account(s) must be closed and regular accounts re-established. To close these accounts you must present a copy of the Bankruptcy Court's confirmation order to the financial institution. Closing the bank accounts is your or your attorney’s responsibility.

H. We exercise no responsibility with respect to monitoring bank accounts once a plan of reorganization is confirmed, or the case is dismissed or converted.

VII. INSURANCE REQUIREMENTS

A. You must maintain appropriate insurance coverage and make all premium payments when due.

B. Unless we direct otherwise, you must maintain the following types of insurance coverage:

1) General liability and, if appropriate, product liability insurance if you conduct business operations.
2) Casualty insurance for tangible assets susceptible to loss (fire, weather, theft, vandalism, etc.)
3) Worker's Compensation insurance and unemployment insurance if you have employees.

C. You must contact your insurance company and instruct them to list the U.S. Trustee on each of your policies as a notified party and provide us with the declaration pages as proof of same.

D. You must provide our office with updated declaration pages proving that the required insurance is maintained throughout the pendency of the Chapter 11 case. Should any insurance policy lapse during the pendency of the Chapter 11 case, you must forward to us proof of the renewal policy. Such a renewal policy should contain the new expiration date and clearly identify the properties insured under the new policy.

E. If any of the properties covered by previous policies are no longer a part of bankruptcy estate, please advise our office at the time the renewal policies are tendered.

VIII. OPERATING REPORT REQUIREMENTS

A. You must electronically file operating reports with the Clerk of the Bankruptcy Court via Mandatory Electronic Filing (CM/ECF) pursuant to General Order 2003-04. Your attorney will typically handle electronic filing for you.

B. Operating reports are due every month until the Court confirms your Plan. After confirmation, operating reports are due quarterly.

C. You must file all operating reports no later than the 20th day of the month following the end of the period covered by the report. For example, the pre-confirmation monthly operating report for April would be due on May 20th and the post-confirmation quarterly operating report for the 3rd Quarter would be due on October 20th.

D. Your attorney must maintain original copies of all reports (i.e. original signatures) for evidentiary purposes and may be required to produce them upon request. If you are a pro se debtor, i.e. you do not have an attorney representing you, you must mail hard copies of the operating reports to our office in addition to filing them with the Court. If a trustee has been appointed to your case he/she will be responsible for maintaining original copies of all reports.

E. Operating reports that are filed *must be legible* and only the original (1st generation) documents are to be scanned by your attorney for filing purposes.

F. You must submit operating reports only on the forms designated and provided by our office. These forms can be found on our website at www.justice.gov/ust/r06/reg_info.htm under the heading "Operating Reports (MORs and QORs)".

G. You may attach *additional* documentation to the operating reports but you cannot *substitute* pages of the report with this documentation.

H. You must complete all pages of the operating report. If portions of the report are not applicable, you may note that in the report, but that page must be filed.

I. You must file operating reports each month (or each quarter if your Plan has been confirmed) *even if no financial activity occurred during a reporting period.*

J. You must continue to file reports until the case is converted, dismissed, or substantial consummation of the Plan has occurred and the Court has entered a *final decree* closing the case pursuant to Federal Rule of Bankruptcy Procedure 3022 and Section 350 of the Bankruptcy Code. Your attorney must file a motion to obtain a final decree.

IX. QUARTERLY FEES

A. You are responsible for paying quarterly fees to our office until the case is converted, dismissed, or substantial consummation of the Plan has occurred and the Court has entered a *final decree* closing the case pursuant to Federal Rule of Bankruptcy Procedure 3022 and Section 350 of the Bankruptcy Code. Your attorney is responsible for filing a motion to obtain a final decree.

B. The fee due is calculated on the actual *and constructive* cash disbursements made during the days of the quarter that the Chapter 11 case is open. Constructive disbursements are those made by another party on your behalf or in which you benefit.

C. Proceeds from the sale of properties that are used to pay debt are also considered constructive cash disbursements and are included in the quarterly fee calculation even if those funds are not received directly. As a result, you need to be sure you budget for this increase in the quarterly fee or have your attorney carve out a portion of the closing costs.

D. Fees are *not prorated* for a partial quarter. The minimum fee applies even if the case is open for only one day of the quarter and if no disbursements are made during the reporting period.

E. The following chart displays the revised quarterly fee schedule for calendar quarters beginning January 1, 2008 pursuant to Section 213 of Title II, Division B, Consolidated Appropriations Act, 2008, (P.L. 110-161) - established by 28 U.S.C. §1930(a)(6) as amended:

DISBURSEMENT CATEGORY			QUARTERLY FEE DUE
$0	-	$14,999	$325
$15,000	-	$74,999	$650
$75,000	-	$149,999	$975
$150,000	-	$224,999	$1,625
$225,000	-	$299,999	$1,950
$300,000	-	$999,999	$4,875
$1,000,000	-	$1,999,999	$6,500
$2,000,000	-	$2,999,999	$9,750
$3,000,000	-	$4,999,999	$10,400
$5,000,000	-	$14,999,999	$13,000
$15,000,000	-	$29,999,999	$20,000
$30,000,000	-	or more	$30,000

F. Quarterly fees become delinquent on the last day of the month following each calendar quarter:

1st Quarter	January 1st to March 31st	Due by April 30th
2nd Quarter	April 1st to June 30th	Due by July 31st
3rd Quarter	July 1st to September 30th	Due by October 31st
4th Quarter	October 1st to December 31st	Due by January 31st

G. You will receive a statement regarding the fee prior to each of the due dates noted above (it will be mailed to the address that is provided on the petition). Each statement contains a "tear off" payment stub which should be returned along with your check to the following address:

Regular Mail	Overnight Courier
US Trustee Payment Center	US Trustee Payment Center
P.O. Box 530202	1075 Inner Loop Road (2nd Floor)
Atlanta, GA 30353-0202	Atlanta, GA 30337-6086

H. Please make all checks payable to "U.S. Trustee." Your case number, which can be obtained from the statement, should be written on the face of the check.

I. If you have a change in address or would like the fee statement to be mailed to an address other than that which is provided on the petition, your attorney must provide a written statement to our office requesting the address change and providing the updated information. Address changes submitted to the Bankruptcy Court will not update the address on file with the U.S. Trustee.

J. A plan must provide for payment of all unpaid quarterly fees, or it cannot be confirmed by the Court. You must pay all unpaid quarterly fees prior to the dismissal or conversion of a case.

K. If you do not pay your quarterly fees timely, we have the option of referring the matter to the Department of the Treasury to attempt collection pursuant to the Debt Collection Improvement Act of 1996, PL 104-13. Treasury Department collection efforts will include: (a) sending dunning notices to the debtor; (b) withholding any government payment to the debtor, including tax refunds, in the amount of the indebtedness; (c) employing collection agencies to enforce collection, and (d) reporting the indebtedness to credit bureaus.

L. Pursuant to 31 U.S.C. §3717, the U.S. Trustee Program assesses interest on unpaid Chapter 11 quarterly fees charged in accordance with 28 U.S.C. §1930(a). The interest rate assessed is the rate in effect as determined by the Treasury Department at the time your account becomes past due. If payment of the full principal amount past due is received within thirty (30) days of the date of the notice of initial interest assessment the interest assessed will be waived.

M. Direct all correspondence and questions regarding your account to your local U.S. Trustee Office: Northern District (214) 767-8967 or Eastern District (903) 590-1450.

X. EMPLOYMENT AND PAYMENT OF PROFESSIONALS

A. Attorneys and other professionals (e.g. accountants, brokers, real estate agents, etc.) who assist you in connection with your Chapter 11 case must obtain court authority to represent you. Applications to employ these persons should be filed with the Bankruptcy Court promptly after the filing of your case and should conform to the requirements of Section 327 of the Bankruptcy Code, Bankruptcy Rule 2014, and the Local Rules for your district.

B. If an employment application is not filed with the Bankruptcy Court within thirty days of the date the attorney or other professional began rendering services to you in connection with your Chapter 11 case, a more detailed application must be filed with the Bankruptcy Court to obtain retroactive approval for the professional's services. In the Northern District you will need to

comply with the requirements of L.B.R. 2014-1(b) and in the Eastern District you will need to comply with the requirements of L.B.R. 2014(d).

C. You may not pay professional persons without court authority. In order to pay a professional person for services rendered you must file a fee application with the Bankruptcy Court, and the court must approve the fees and other expenses requested. Fee applications must comply with Bankruptcy Code Section 330, Bankruptcy Rule 2016, and the Local Rules for your district. In addition, the United States Trustee has published guidelines for the filing of fee applications that can be found at our website: www.justice.gov/ust/eo/rules_regulations/guidelines/index.htm

XI. DISCLOSURE STATEMENT & PLAN

A. You have an exclusivity period, where only you as the Debtor-in-Possession can file a disclosure statement and plan of reorganization, for 120 days after the petition date or order for relief. If yours is a small business case, the exclusivity period is 180 days. If you qualify as a single asset real estate case, the exclusivity period is 90 days.

B. To request an extension of the exclusivity period, you must comply with L.B.R. 3016 and file the reports that are required. The motion for an extension needs to be filed by the exclusivity deadline. Note that in a small business case the court order approving the extension must also be entered by the exclusivity deadline.

C. If yours is a small business case, you must file a disclosure statement and proposed plan of reorganization (which can be combined) within 300 days of the order for relief and it must be confirmed within 45 days after the plan has been filed. In small business cases, we will attempt to enter into an agreed scheduling order with you which may provide for shorter deadlines.

D. If yours is a single asset real estate case, the automatic stay is lifted after the 90 day exclusivity period if a disclosure statement and plan of reorganization has not been filed.

E. For additional information on disclosure statements and plans of reorganization, please review 11 U.S.C. § 1121 and L.B.R. 3016-1 through 3022-1 for the Northern District and L.B.R. 3016 for the Eastern District.

XII. SINGLE ASSET REAL ESTATE CASES

A. Your attorney will determine whether you qualify as a single asset real estate debtor under 11 U.S.C. § 101 (51B). Designation of single asset real estate status is reflected on the bankruptcy petition.

B. If you do qualify as a single asset real estate case, the automatic stay is lifted after the 90 day exclusivity period if a disclosure statement and plan of reorganization has not been filed (see 11 U.S.C. §362(d)(3).

XIII. SMALL BUSINESS CASES

A. Your attorney will determine whether you qualify as a small business debtor under 11 U.S.C. § 101 (51D). Designation of small business status is reflected on the bankruptcy petition.

B. If you do qualify as a small business, you are required to do the following *in addition* to the requirements previously outlined (see 11 U.S.C. §1116).

1) You must file with the voluntary petition a copy of your most recent balance sheet, statement of operations (i.e. income statement or profit & loss report), cash flow statement, and Federal income tax return or a statement under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed. If an involuntary petition was filed, you must file these documents not later than 7 days after the date of the order for relief is entered.

2) You must use the Monthly Operating Report Form – Small Business (Basic) format when completing your operating reports prior to the confirmation of your plan. This form can be found on our website at www.justice.gov/ust/r06/reg_info.htm under "Operating Reports (MORs and QORs)".

3) You must attach copies of supporting schedules, bank statements, and bank reconciliations to each monthly operating report that you file prior to the confirmation of the plan.

4) You must file a disclosure statement and proposed plan of reorganization (which can be combined) within 300 days of the after the order for relief and it must be confirmed 45 days after the plan has been filed. In small business cases, we will attempt to enter into an agreed scheduling order which may provide for shorter deadlines.