

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In Re: )  
 )  
Fifth Amended Order Governing )  
The Conduct of Hearings Due to )  
Coronavirus Disease 2019 (COVID-19) )  
and Reconstituting Operations )

**FIFTH AMENDED ORDER GOVERNING THE CONDUCT OF  
HEARINGS DUE TO CORONAVIRUS DISEASE 2019 (COVID-19) AND  
RECONSTITUTING OPERATIONS**

WHEREAS, on March 13, 2020, in response to the threat of Coronavirus Disease 2019 (COVID-19), the Court entered its Interim Order re Cessation of Hand Deliveries (“Hand Deliveries Order”). Pursuant to the Hand Deliveries Order, among other things, the Court prohibited the hand delivery of documents to the Bankruptcy Court and modified certain Local Rules and Chambers’ Procedures to provide for electronic delivery of documents.

WHEREAS, on March 16, 2020, the Bankruptcy Court entered its General Order (“General Order”) governing the conduct of all hearings, status conferences, trials and any other matters scheduled to be held in open court (“Court Hearings”). Pursuant to the General Order, among other things, all Court Hearings that are not time sensitive were continued to a date to be determined on or after April 15, 2020, and Court Hearings were limited to being held (i) telephonically, or (ii) by a combination of telephonic and video conference.

WHEREAS, on March 31, 2020, the Bankruptcy Court entered its Amended Order Governing the Conduct of Hearings due to Coronavirus Disease 2019 (COVID-19) (the “Amended Order”). Pursuant to the Amended Order, among other things, all Court Hearings that are not time sensitive were continued to a date to be determined by the presiding judge on or after May 1, 2020, and Court Hearings were limited to being held (i) telephonically, or (ii) by a combination of telephonic and video conference.

WHEREAS, on April 20, 2020, the Bankruptcy Court entered its Second Amended Order Governing the Conduct of Hearings due to Coronavirus Disease 2019 (COVID-19) (the “Second Amended Order”). Pursuant to the Second Amended Order, among other things, all Court Hearings that are not time sensitive were continued to a date to be determined by the presiding judge on or after May 18, 2020, and Court Hearings were

limited to being held (i) telephonically, or (ii) by a combination of telephonic and video conference.

WHEREAS, on May 11, 2020, the Bankruptcy Court entered its Third Amended Order Governing the Conduct of Hearings due to Coronavirus Disease 2019 (COVID-19) (the "Third Amended Order"). Pursuant to the Third Amended Order, among other things, (i) the Hand Deliveries Order remained in effect, provided, however, that any judge was authorized, but not directed, to annul or to modify any of the provisions of the Hand Deliveries Order, on a case by case basis, solely as it applies to said judge; (ii) the continuation of non-time sensitive matters under the Second Amended Order was terminated, effective May 18, 2020; and (iii) Court Hearings that are held prior to June 1, 2020 were limited to being held telephonically, or by a combination of telephonic and video conference.

WHEREAS, on May 26, 2020, the Bankruptcy Court entered its Fourth Amended Order Governing the Conduct of Hearings due to Coronavirus Disease 2019 (COVID-19) (the "Fourth Amended Order"). Pursuant to the Fourth Amended Order, among other things, Court Hearings that are held prior to July 1, 2020 were limited to being held telephonically, or by a combination of telephonic and video conference.

WHEREAS, on April 24, 2020, the Administrative Office of the United States Courts issued Federal Judiciary COVID-19 Recovery Guidelines ("AO Guidelines") in which it recommended a phased approach to reconstituting operations. The AO Guidelines recommend that a threshold requirement to beginning the process of reconstituting operations is "sustained downward trending average of cumulative daily COVID-19 case counts over a 14-day period."

WHEREAS, according to data released by the Delaware Division of Public Health, the 14-day average of cumulative daily COVID-19 case counts in Delaware, as well as the (i) number of hospitalizations, (ii) number of new hospital admissions, and (iii) percentage of persons who have tested positive have sustained a level or downward trend since early May, 2020.

WHEREAS, on June 15, 2020, the U.S. District Court for the District of Delaware issued the District Court Re-Opening Guidelines (the "District Court Guidelines") and ordered that the District Court and Bankruptcy Court will enter Phase 1 under the AO Guidelines and District Court Guidelines, effective June 17, 2020.

WHEREAS, on March 13, 2020, Delaware Governor John C. Carney issued his Declaration of a State of Emergency for The State of Delaware Due to a Public Health Threat (the "State of Emergency Declaration"). The operation of the Bankruptcy Court is not prohibited under the State of Emergency Declaration.

WHEREAS, pursuant to the 7<sup>th</sup> Modification of the State of Emergency Declaration entered on March 29, 2020, “[a]ny individual who enters Delaware from another state, and who is not merely passing through, must immediately self-quarantine for fourteen (14) days from the time of entry into Delaware or for the duration of the individual’s presence in Delaware, whichever period is shorter.” On June 1, 2020, Governor Carney lifted the quarantine requirement of the 7<sup>th</sup> Modification to the State of Emergency Declaration. Thus, there is no prohibition on persons travelling from outside Delaware attending on-site Court Hearings in the Bankruptcy Court.

WHEREAS, pursuant to the 9<sup>th</sup> Modification of the State of Emergency Declaration entered on April 1, 2020, “[a]ll persons are prohibited from gathering in groups of ten (10) or more people until after May 15, 2020 or the public health threat of COVID-19 has been eliminated.” On May 15, 2020, Governor Carney issued guidance regarding Delaware’s reopening of business. That guidance provides, among other things, that “Social settings of more than 10 people, where appropriate distancing may not be practical, must be avoided (e.g. receptions, trade shows).” On June 2, 2020, Governor Carney issued further guidance, which provides that, effective June 15, 2020, the “indoor gathering limit” is raised to 50 persons. The Bankruptcy Court interprets this guidance as providing that the prohibition on individuals from attending gatherings in groups of 50 or more does not apply to on-site Court Hearings, which are not “social settings.” Nonetheless, as described below, the imposition of social distancing guidelines will result in no more than 50 persons being present in any courtrooms.

WHEREAS, effective June 15, 2020, the State of Delaware entered Phase 2 of its Reopening Plan.

NOW, THEREFORE, it is hereby ORDERED as follows:

1. This Order supersedes and replaces the General Order issued March 16, 2020, the Amended Order issued March 31, 2020, the Second Amended Order issued April 20, 2020, the Third Amended Order issued May 11, 2020, and the Fourth Amended Order dated May 26, 2020.
2. This Order is effective as of June 17, 2020.
3. The Hand Deliveries Order remains in effect, provided, however, that any judge is authorized, but not directed, to annul or to modify any of the provisions of the Hand Deliveries Order on a case by case basis solely as it applies to said judge.
4. At the discretion of the presiding judge, on a case by case basis, Court Hearings that are held on or after June 17, 2020, shall be held (i)

telephonically, (ii) by a combination of telephonic and video conference, or (iii) on-site in a courtroom.

5. **On-site Court Hearings shall be held at the discretion of the presiding judge, on a case by case basis, and shall be minimized and limited to critical cases only. Persons are allowed and encouraged to attend on-site Court Hearings via telephone whenever possible.**
6. The presiding judge will promptly consider any request to change a Court Hearing from being held on-site in a courtroom to being held telephonically or by a combination of telephonic and video conference.
7. The Bankruptcy Court premises on the 5<sup>th</sup> and 6<sup>th</sup> floors of 824 North Market Street, Wilmington, Delaware (the "Premises") are reopened to the public, solely for the purpose of conducting on-site Court Hearings and making hand deliveries authorized by the Hand Deliveries Order, subject to the following conditions:
  - a. The Standing Order re Use of Face Mask/Coverings in Public Areas of the District and Bankruptcy Courts issued April 28, 2020, which provides, in pertinent part, that "[v]isitors to the ... Bankruptcy Court - including vendors, contractors, litigants, attorneys, and other members of the public - are required to wear a mask or face covering when interacting with Court staff and in the common or public areas of Court facilities," remains in effect.
  - b. Persons must satisfactorily complete a specified wellness questionnaire **prior to your arrival** to ensure efficient processing through security. This can be accessed by navigating to the following link: <https://www.apple.com/covid19/>.
  - c. Unless otherwise ordered by the presiding judge on a case by case basis, access to the Premises is limited solely to (i) debtors, (ii) any pre-petition or post-petition secured lender to a debtor, (iii) any official or ad hoc committee, (iv) any party that is seeking relief from the Bankruptcy Court, (v) any party that has filed a written objection to relief being sought from the Bankruptcy Court, (vi) any representative of the Office of the United States Trustee, (vii) any party purchasing assets of a debtor, (viii) any witness that may be called to testify during a Court Hearing, and (ix) members of the press.

- d. Unless otherwise ordered by the presiding judge on a case by case basis, access to the Premises is further limited to: (i) in the event any of the persons listed in paragraph 7(c) above is an entity, one representative of that entity (two for the debtor(s)), (ii) legal counsel to any of the persons listed in paragraph 7(c), provided, however, that no more than two attorneys may be present (three for the debtor(s)), and (iii) financial advisors to any of persons listed in paragraph 7(c), provided, however, that no more than one person may be present (two for the debtor(s)).
- e. Except as provided in paragraphs 7(c) and (d) above, persons, including parties in interest, which are merely observing Court Hearings are not permitted on the Premises. Persons are allowed and encouraged to attend on-site Court Hearings via telephone whenever possible.
- f. All persons in the courtroom are required to wear a mask or face covering, provided, however, that persons sitting at counsel table may at their preference remove their masks or face covering. Any person addressing the Bankruptcy Court from counsel table or the podium must remove their mask or face covering. Any witness must remove their mask or face covering while testifying.
- g. All persons on the Premises must maintain responsible social distancing to the extent practicable, including in the courtrooms, in the hallways, in the restrooms, at the security checkpoints, in conference rooms, and in Chambers. All persons must follow any posted signs or verbal instructions as to behavior in the courtroom and the Premises generally.
- h. No person shall approach the bench, the clerk, the court reporter, or the witness stand unless given express permission by the presiding judge.
- i. The presiding judge in his or her discretion may amend or supplement these conditions.
- j. Persons not complying with these requirements, posted signage or any instructions of any Court Security Officer or other Bankruptcy Court personnel will be denied access to or be ejected from the Premises.

8. The manner of submitting evidence in Court Hearings shall be determined on a case by case basis by the presiding judge. The parties are encouraged to limit the use of paper in on-site Court Hearings.
9. Local Rule 9029-3(b)(iii) is hereby amended on an interim basis as follows:

Status Information. For each motion, the agenda shall provide whether the matter is going forward, whether a continuance is requested (and any opposition to the continuance, if known), whether any or all of the objections have been resolved and any other pertinent status information, including whether the presentation of live witness(es) is expected, and, if so, the identity and location of the witness(es), and which party is presenting the witness(es). Counsel responsible for submitting the agenda shall consult with other parties in interest to identify all witnesses that will be presented.
10. Notwithstanding paragraph 7 above, the Clerk's Office will remain open to the public through telephone and email access and drop boxes located in the lobby of 824 N. Market Street but the intake counter will remain closed to in-person public access until further notice. Emergency bankruptcy petitions for self-represented individuals may be filed electronically at <https://www.deb.uscourts.gov>.
11. The Bankruptcy Court will continue to monitor the situation and will amend this Order from time to time as appropriate, including, if necessary, to suspend the conduct of on-site Court Hearings.



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Christopher S. Sontchi  
Chief United States Bankruptcy Judge

Dated: June 17, 2020