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2020 Northeast Virtual Bankruptcy Conference and Consumer Forum

Virtually Effective: Conducting Professional and Persuasive Hearings on Remote Platforms

Andrew C. Helman

Murray Plumb & Murray | Portland, Maine

Eric A. Henzy

Zeisler & Zeisler, PC | Bridgeport, Conn.

Hon. Julie A. Manning

U.S. Bankruptcy Court (D. Conn.) | Bridgeport

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Introduction-- Federal Rule of Bankruptcy Procedure 9017, Federal Rule of Civil Procedure 43 and Federal Rule of Evidence 611

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- Basic principle that evidence should be taken in open court.
- Federal Rule of Bankruptcy Procedure 9017 provides in part:

Rule[] 43 ... F.R.Civ.P. appl[ies] in cases under the Code.

- Federal Rule of Civil Procedure 43(a) provides:

(a) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

- 1996 Advisory Committee Note to Rule 43:

"The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth-telling."

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Thornton v. Snyder, 428 F.3d 690 (7th Cir. 2005) (“Clearly, a jury trial conducted by videoconference is not the same as a trial where the witnesses testify in the same room as the jury. Videoconference proceedings have their shortcomings. ... The limitations videoconferencing presents demonstrate that the decision to deny [a party] the opportunity to be physically present at a ... trial ... is not one that should be taken lightly.”)

United States v. Lawrence, 248 F.3d 300 (4th Cir. 2001) (“Virtual reality is rarely a substitute for actual presence and ... even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it.”)

Stoner v. Sowders, 997 F.2d 209 (6th Cir. 1993) (“The immediacy of a living person is lost” with video technology.)

Edwards v. Logan, 38 F.Supp. 2d 463 (“Video conferencing ... is not the same as actual presence, and it is to be expected that the ability to observe demeanor, central to the fact-finding process, may be lessened in a particular case by video conferencing. This may be particularly detrimental where it is a party to the case who is participating by video conferencing, since personal impression may be a crucial factor in persuasion.”)



- Also relevant-- Federal Rule of Evidence 611 provides:
Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - (1) make those procedures effective for determining the truth;
 - (2) avoid wasting time; and
 - (3) protect witnesses from harassment or undue embarrassment.
- The trial court has wide latitude under Federal Rule of Evidence 611 in controlling the presentation of evidence. SR Int'l Bus. Ins. Co. Ltd. v. World Trade Ctr. Props., LLC, 467 F.3d 107 (2d Cir. 2006); Santos v. Posadas De P.R. Assocs., 452 F.3d 59 (1st Cir. 2006).
- Exercise of such latitude arguably in conflict with Rule 43(a) generally within discretion. In re Adair, 965 F.2d 777 (9th Cir. 1992) (presenting direct testimony by written declaration a permissible "mode"); Jane Doe v. Chang, 2012 U.S. Dist LEXIS 206452 (N.D. Tex., March 7, 2012) (courts have allowed witnesses to testify at trial via telephone or live video pursuant to Rule 43(a) and Rule 611); Saverson v. Levitt, 162 F.R.D. 407 (D. D.C. 1995) (Rule 611 removes all doubt that court could order direct testimony via affidavit or declaration); Ahern and MacLean, Bankruptcy Procedure Manual § 9017.2 (2016 ed.) (To the extent there is any inconsistency between Civil Rule 43 and the Federal Rules of Evidence, the Rules of Evidence control.)



- Some General concerns—

Fairness and Due Process—Does a videoconference trial provide the same experience or non-verbal information as an in-person hearing? Does a videoconference hearing allow the judge to assess an attorney's or witness's credibility in the same way as at an in person hearing or trial? Would the result have been the same if the hearing had taken place in person? Do the participants, including the judge, pay as much attention at a video hearing? How does videoconferencing affect the parties' acceptance of a court's decision?

Dignity of the Court—How do the parties perceive the court when not surrounded by the courtroom? Is some or all of the dignity of the court lost when hearings/trials are by videoconference?

Equal Treatment of Parties and Attorneys—What about a disparity in technology resources between firms and lawyers? What if some parties have slower internet speeds or lower bandwidth than others? What about pro se parties?

Jurisdictional Issues—Can a court compel a witness to appear at a remote hearing? Can an oath be administered to a remote witness?

Technological Glitches—What to do about poor sound quality or connection issues? What to do if a party is dropped from the proceeding at some point?

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Large Cases—With a larger number of participants, the risk of technological interruptions or errors goes up. May a court limit the number of participants where there are a large number of attorneys and/or parties? May a court limit participation based on a minimum level of technological capability?

Confidentiality—courts have limited ability to control who appears. How to handle evidence that implicates sensitive or confidential information?

Public Right of Access—How can a videoconference hearing be made available with same level of access as an open court? What to do with an unruly participant?

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- **What is “good cause in compelling circumstances”?**

“Contemporaneous transmission of testimony from a different location is permitted only on showing good cause in compelling circumstances.” 1996 Advisory Committee Note to Rule 43

Covid cases on cause:

Barrett v. Rogers (In re Lawrence), 2020 Bankr. LEXIS 1795 (Bankr. E.D. Va., July 8, 2020) (denying motion to continue trial and finding good cause)

Guerra v. Rodas, 2020 U.S. Dist. LEXIS 96559 (W.D. Okla., June 2, 2020) (finding COVID-19 constituted compelling circumstances)

Centripetal Networks v. Cisco Systems, 2020 U.S. Dist. LEXIS 110665 (E.D. Va., April 23, 2020) (denying motion opposing trial by video conference)

Fin. Guar. Ins. Co. v. Putnam Advisory Co., LLC, 2020 U.S. Dist. LEXIS 110254 (S.D.N.Y., June 23, 2020) (COVID-19 found to constitute compelling circumstances on consent of both parties)



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Vitamins Inline, Inc. v. Heartwise, Inc., 2020 U.S. Dist. LEXIS 111709 (D. Utah, June 24, 2020) (ordering that trial proceed by video conference over party's objection)

Argonaut Ins. Co. v. Manetta Enters., 2020 U.S. Dist. LEXIS 103625 (E.D.N.Y., June 11, 2020) (overruling objection to conducting trial via videoconference and finding that COVID-19 constitutes good cause in compelling circumstances)

ResCap Liquidating Trust v. Primary Mortg., Inc. (In re RFC & ResCap Liquidating Trust Action), 2020 U.S. Dist. LEXIS 44607 (D. Minn., March 13, 2020) (finding COVID-19 to be compelling circumstances and denying request to reschedule final two days or trial)

Graham v. Sunil Kumar Dhar, 2020 U.S. Dist. LEXIS 111141 (S.D. W.Va., June 25, 2020) (denying motion to permit trial testimony via videoconference, finding that travel difficulties and backlog of surgical cases for doctor/witness caused by COVID-19 did not constitute compelling circumstances)

Gould Elecs. Inc. v. Livingston Cty. Rd. Comm'n, 2020 U.S. Dist. LEXIS 118236 (E.D Mich., June 30, 2020) (overruling objection to trial by videoconference and finding COVID-19 constitutes compelling circumstances)

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- **Can court still insist on live testimony even if “good cause in compelling circumstances exist?”**

In re Mikolajczyk, 2015 Bankr. LEXIS 1883 (Bankr. W.D. Mich., June 3, 2015) (denying unopposed request to allow video appearance of three witness—“Compelling circumstances do not include mere inconvenience of witnesses.”)

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- **Consent—do you need it under Rule 43(a)?**

In re Betcorp Ltd., 400 B.R. 266, 272 n.4 (Bankr. D. Nev. 2008) (“Although the parties stipulated to the taking of testimony by video transmission, the court could have found good cause to permit such method of receiving evidence given the cost of bringing the witness to the United States [from Australia] for only a half-day of testimony.”)

“Good cause and compelling circumstances may be established with relative ease if all parties agree that testimony should be presented by transmission. The court is not bound by a stipulation, however, and can insist on live testimony. Rejection of the parties’ agreement will be influenced, among other factors, by the apparent importance of the testimony in the full context of the trial.” 1996 Advisory Committee Note to Rule 43



- What are “appropriate safeguards?”

The Judge must be able to identify, communicate with, and evaluate the demeanor of a witness. *See* 1996 Advisory Committee Note to Rule 43 (“The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition.”)

“No attempt is made to specify the means of transmission that may be used. Audio transmission without video images may be sufficient in some circumstances, particularly as to less important testimony. Video transmission ordinarily should be preferred when the cost is reasonable in relation to the matters in dispute, the means of the parties, and the circumstances that justify transmission. Transmission that merely produces the equivalent of a written statement ordinarily should not be used. Safeguards must be adopted that ensure accurate identification of the witness and that protect against influence by persons present with the witness. Accurate transmission likewise must be assured.” 1996 Advisory Committee Note to Rule 43



In re Rand Int’l Leisure Products, LLC, 2010 Bankr. LEXIS 1986 (Bankr. E.D.N.Y. June 16, 2010) (listing safeguards for video conference witnesses)

Barrett v. Rogers (In re Lawrence), 2020 Bankr. LEXIS 1795 (Bankr. E.D. Va. July 8, 2020) (finding protocol established by court for remote witness testimony constituted appropriate safeguards)

Guerra v. Rodas, 2020 U.S. Dist. LEXIS 96559 (W.D. Okla. June 2, 2020) (finding appropriate safeguards in place)

Order Consolidating Adversary Proceedings And Scheduling Status Conference (ECF Doc. No. 23), *Penobscot Valley Hospital v. Carranza (In re Penobscot Valley Hospital)*, Adv. Proc. No. 20-1005, annexed hereto.

Protocol In Response To Public Health Emergency, Exhibit B—Instructions For Remote Witness Testimony Using Zoom For Government, United States Bankruptcy Court for the Eastern District of Virginia, annexed hereto.

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Pre-Trial Considerations

Logistics

- Technology—make sure all counsel and witnesses have access to a computer, tablet or smartphone with functioning camera, speaker, and microphone.
- Court connection—know and understand the court's technical requirements, specific instructions (including court invite), and other information and instructions.
- Test equipment ahead of time.
- Pretrial/Scheduling Order provisions regarding exchange and filing of exhibits—pay attention to such provisions
- Local Rules regarding filing and presentation of exhibits—e.g. marking exhibits before hearing/trial.
- Confirm that all parties, including the witness, have exhibits before hearing/trial.
- Coordination with Court/Clerk's Office/Court IT department before hearing/trial.



- Request for Pretrial/Status Conference before hearing/trial to have a rehearsal/practice session. Mandatory test sessions prior to the start of the hearing? All counsel and witnesses required to attend?
- Separate breakout rooms for plaintiff and defendant during breaks.
- Practice, practice, practice—How do you/does your client come off? E.g., hand gestures, distance from camera, voice, background, etc.

United States Bankruptcy Court, District of Connecticut, Procedures and Guide for Remote Appearances using ZoomGov, annexed hereto.

Pretrial Order (ECF Doc. No. 32), Penobscot Valley Hospital v. Carranza (In re Penobscot Valley Hospital), Adv. Proc. No. 20-1005, annexed hereto.



Preparation

- How does preparation differ for trial counsel?
- How does preparation differ for witness?
- How does preparation differ for court?
- Witness preparation—

Discuss the environment—concern about being too relaxed/conversational

Slow down—even more than in courtroom

Practice handling exhibits

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Trial Considerations

Etiquette

- Dress as if in court.
- Don't talk over people.
- Don't move around.
- Don't look at other devices.
- Identify self more frequently than might in open court. Requirement that all participants identify on screen by name and with prefix that indicates plaintiff or defendant?
- Go slow.

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Presentation

- Be aware of background—lighting, avoid distracting items.
- Be in quiet place.
- Position camera and onscreen video so that speaker is looking at the camera. Onscreen videos often default to left or right side of screen which means speaker is NOT looking at camera (often positioned at top/middle of monitor). Be aware of camera position versus position of speaker's head, should be slightly higher than speaker's eyes.
- Eliminate all outside noises to the extent possible.
- Have protocol in place in case of technology glitch, which happens even with great preparation.



Trial, Witnesses and Exhibits

- Introducing exhibits during hearing/trial—Practice, practice, practice. Share screen? Docketed?
- Affirmations that no unauthorized person is in the room with the witness and that no one can contact them during the testimony?
- Specific instructions as to when rebuttal evidence needs to be provided to the other side.
- Video/audio off/on mute except tribunal, appearing attorneys and testifying witness?
- Questioning Technique (for lawyer)—how does it differ.
- Answering technique (for witness)—how does it differ.
- Direct vs Cross examination



Some Ethical Considerations

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Witness Coaching

In re Eldridge, 82 N.Y. 161 (N.Y. 1880): “While a discreet and prudent attorney may properly ascertain from witnesses in advance of the trial what they in fact do know, and the extent and limitations of their memory, as a guide to his own examinations, he has no right, legal or moral, to go further. His duty is to extract the facts from the witness, not pour them into him; to learn what the witness does know, not to teach him what he ought to know.”

Perry v. Leek, 488 U.S. 272 (1989) (upholding prohibition on client/witness from conferring with counsel during 15-minute recess to prevent, inter alia, unethical witness coaching)

Geders v. United States, 425 U.S. 80 (1976) (overturning order preventing client/witness from consulting counsel “about anything” during seventeen hour overnight recess between direct and cross-examination, held to deprive client witness of right to assistance of counsel—discussing other ways to deal with possible improper coaching)

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Model Rules of Professional Conduct 1.1, 1.2, 1.3, 3.3 and 3.4

- A lawyer may discuss the case with witnesses before they testify. A lawyer has an ethical and legal duty to investigate the facts of the case, including by talking to witnesses. A lawyer is allowed lawyers to prepare witnesses so that they can deliver their testimony efficiently and persuasively.
- When a lawyer discusses the case with a witness, the lawyer must not try to put words in (“pour them into”) the witness’s mouth.
- A lawyer can be disciplined for counselling or assisting a witness to testify falsely or for knowingly offering testimony that the lawyer knows is false.
- Perry and Geders balance right to counsel with need to prevent improper coaching—narrowly tailored vs absolute prohibition.
- In the context of videoconference trials—What mechanisms does court put in place to prevent improper coaching? May an attorney speak to client during a recess about matters other than testimony, i.e., about questions regarding general procedure, Rules of Evidence, the way the trial is proceeding? May attorney speak communicate with witness while witness is testifying via e-mail, text or other electronic communication?



Competence

Model Rule of Professional Conduct 1.1:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment 8:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Note: As of December 1, 2019, 37 states had adopted a “duty of technology” competence either by adopting Comment 8 or by formal ethics opinion.

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Note: As of December 1, 2019, 37 states had adopted a “duty of technology” competence either by adopting Comment 8 or by formal ethics opinion.

- In the context of videoconference hearings, is there a duty to become competent with the use of Zoom or other platforms?
- How competent/proficient?
- Are there equity issues—is it fair to impose a duty on a lawyer who may never have had to use this type of technology before and is uncomfortable with it? How does this tie into the decision under Rule 43(a)—should a court continue a trial/hearing until open court is possible if convinced that a lawyer simply cannot handle the technology?

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Confidentiality

Model Rule of Professional Conduct 1.6

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

....

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

ABA Formal Opinion 477



Comment 18:

Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].



- With respect to sensitive information and Zoom trials, obligation to consider and potentially address who information will be available to, level of security of technology, availability, cost and efficacy of additional safeguards, effect that disclosure might have on client, likelihood of disclosure.
- Again, the duty of competence—must have at least a basic comprehension of videoconferencing technology.
- Must communicate with client about all of the foregoing so that client may assess risks.

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

Penobscot Valley Hospital,
Debtor

Chapter 11
Case No. 19-10034

Penobscot Valley Hospital,
Plaintiff

v.

Jovita Carranza, in her capacity as
Administrator for the United States
Small Business Administration,
Defendant

Adv. Proc. No. 20-1005

In re:

Calais Regional Hospital,
Debtor

Chapter 11
Case No. 19-10486

Calais Regional Hospital,
Plaintiff

v.

Jovita Carranza, in her capacity as
Administrator for the United States
Small Business Administration,
Defendant

Adv. Proc. No. 20-1006

**ORDER CONSOLIDATING ADVERSARY PROCEEDINGS
AND SCHEDULING STATUS CONFERENCE AND TRIAL**

After conducting status conferences in the above-captioned adversary proceedings on May 5, 2020, it is hereby ORDERED that:

A. Consolidation.

1. Because the pleadings and other papers filed by the Plaintiffs and the Defendant involve common questions of law and fact, the Court will consolidate these actions under Fed. R. Civ. P. 42(a), *see* Fed. R. Bankr. P. 7042, and conduct a trial on the merits of the Plaintiffs' complaints beginning at 9:00 a.m. on May 27, 2020 (the "Trial").
2. Any pleading, motion, objection, reply, or other document filed in either of the above-captioned adversary proceeding that relates to the merits of the complaints or to further proceedings thereon must: (i) contain a caption that substantially mirrors that set forth above; and (ii) be filed only on the docket of the lead adversary proceeding, Penobscot Valley Hospital v. Carranza, Adv. Proc. No. 20-1005 (the "Lead Adversary Proceeding"). Following the entry of this order, and until the entry of final judgments, any orders of the Court in these proceedings may be entered only on the docket of the Lead Adversary Proceeding.

B. Pretrial Matters.

1. The Defendant may, but need not, file answers to the complaints in these adversary proceedings. Notwithstanding the foregoing, the Defendant must file a written statement indicating whether the Defendant does or does not consent to entry of final orders or judgments on any claim or claims set forth in the Plaintiffs' complaints on or before May 13, 2020. *See* Fed. R. Bankr. P. 7012(b).

2. All of the discovery tools under Part VII of the Federal Rules of Bankruptcy Procedure are made available to the parties, but any deadline in excess of seven days is hereby shortened to seven days. *See, e.g.*, Fed. R. Civ. P. 33(b)(2); Fed. R. Civ. P. 34(b)(2).
3. The parties must work cooperatively to stipulate to any relevant facts that are not reasonably in dispute. The parties must file a joint stipulation of facts no later than 5:00 p.m. on May 23, 2020. The stipulation may contain a section of facts common to both proceedings, and separate sections with facts relevant to a particular adversary proceeding.
4. Each party must disclose, to the other party, the names of each individual that will or may be called as a witness at Trial. The disclosure must include, for each individual, the following: the person's name, the street address of a place where a subpoena might be served on the person, a working email address for the person, and a brief statement of the expected testimony of the person. This disclosure must occur no later than 5:00 p.m. on May 20, 2020.
5. Each party must pre-mark copies of the exhibits that the party reasonably anticipates offering at Trial. The parties shall identify the exhibits using the following system: CRH101, CRH102, etc. for exhibits that may be offered by Calais Regional Hospital; PVH201, PVH202, etc. for exhibits that may be offered by Penobscot Valley Hospital; and SBA301, SBA302, etc. for exhibits that may be offered by the Defendant.
6. All pre-marked exhibits must be aggregated into both (i) a PDF file or files, with a table of contents and bookmarks for each individual exhibit contained in

the file(s); and (ii) a physical binder or set of binders (the “Exhibit Books”), with a table of contents and tabs for each individual exhibit contained in the binder(s).

7. Each party must send, by e-mail, its digital PDF collection of pre-marked exhibits by 5:00 p.m. on May 23, 2020 to: (i) opposing counsel; and (ii) Judge Fagone’s paralegal, Mary Withee, at Mary_Withee@meb.uscourts.gov.
8. Each party must also send identical copies of the Exhibit Books to each witness who may testify at Trial and ensure that the Exhibits Books are actually received by the witnesses no later than 12:00 p.m. on May 26, 2020. The Exhibit Books should contain cover labels conspicuously identifying the contents (to help the Court, the parties, and witnesses quickly locate the appropriate binder during the Trial).
9. The parties may submit additional legal briefing on any of the issues raised by the complaints but need not reiterate any of the arguments made in the motions for temporary restraining orders, the objections to those motions, or the replies and supplemental memoranda in support of the motions for temporary restraining orders. Additional legal briefing would be most helpful if it were focused on the Plaintiffs’ claims that the Defendant (i) exceeded her statutory authority; and (ii) violated a duty such that the issuance of a writ of mandamus is warranted. Any additional legal briefing is due no later than 5:00 p.m. on May 22, 2020. Each party will be permitted only one legal brief; replies, responses, and other supplemental memoranda or authorities are not permitted.

10. The specific deadlines established under Part B of this order are fixed and are not subject to any automatic extensions that might ordinarily be provided under Fed. R. Bankr. P. 9006 or otherwise.

C. Trial.

1. General Provisions. The current COVID-19 pandemic provides good cause in compelling circumstances to allow all aspects of the Trial to be conducted remotely through the use of videoconferencing solutions. *See* Fed. R. Civ. P. 43(a); *see also* Fed. R. Bankr. P. 9017 (making Rule 43 applicable to cases under the Bankruptcy Code). The Court finds that the procedures adopted herein will provide “adequate safeguards” for purposes of Rule 43(a) and ensure due process of law. These procedures will: (i) enable the Court to identify, communicate with, and assess the demeanor of all witnesses in real time; (ii) enable counsel for the parties to see and hear the testimony of witnesses, interpose objections, and communicate with the Court in real time; (iii) enable the parties, the witnesses, and the Court to have simultaneous access to an identical set of pre-marked exhibits; (iv) avoid any undue influence or interference with witnesses in connection with their testimony; and (v) preserve the ability of the parties (through their representatives) to communicate with their counsel during the Trial, as the Court deems appropriate.
2. Telephonic and Videoconferencing Solutions. The Trial shall take place virtually by way of Zoom videoconference technology. All counsel and witnesses that may participate via Zoom shall undertake appropriate pretrial testing of Zoom as may be required by this Court’s IT personnel. Instructions

for use of said videoconference technology (including the meeting ID and password) for any pretrial testing and for the Trial will be communicated to counsel, witnesses and interested parties at an appropriate time. Those who receive the Zoom meeting invitation from the Court may not forward or otherwise share that invitation with any other persons.

3. Required Equipment. For purposes of any pretrial testing and for Trial, each participating attorney and each witness must have simultaneous access to: (i) a telephone; (ii) a computer equipped with a camera that is capable of receiving and transmitting video and audio through Zoom; (iii) Internet browsing software that is adequate to facilitate the Court's videoconference solution; (iv) an Internet connection with bandwidth sufficient to support the individual's use of that video solution; and (v) Adobe Acrobat Reader for purposes of reviewing any exhibits that may be used for impeachment at Trial.
4. Public Access. Any person wishing to observe, but not participate in, the Trial should contact Christa Berry at Christa_Berry@med.uscourts.gov for instructions no later than 10:00 a.m. on May 26, 2020.
5. Prior Notice of Intent to Participate. The parties shall provide the Court with a list of all attorneys and witnesses who will participate in the Trial, and telephone numbers at which the attorneys and witnesses may be reached during the Trial, by no later than 5:00 p.m. on May 22, 2020. This list of attorneys and witnesses may be emailed to Judge Fagone's paralegal, Mary Withee, at Mary_Withee@meb.uscourts.gov. Any person identified on such list must make themselves reasonably available for a test of the videoconferencing

technology with the Court's IT staff on May 26, 2020 beginning at 10:00 a.m.

To provide additional safeguards for the acceptance of testimony from witnesses who are not physically present in the courthouse during Trial, the list of witnesses must contain:

- a. The name and title of the witness;
- b. The matter on which the witness will provide testimony;
- c. The location of the witness (city, state, country);
- d. The place from which the witness will testify (e.g. home, office – ***no addresses are required***);
- e. Whether anyone will be in the room with the witness during the testimony, and if so, who (name, title, relationship to the witness), and for what purpose; and
- f. Whether the witness will have access to any documents or electronically stored information other than exhibits in the Exhibit Books, and if so, what documents or electronically stored information.

6. *Courtroom Formalities.* Although it will be conducted by videoconference, the Trial constitutes a court proceeding, and any recording other than the official court version is prohibited. No party may record images or sounds from any location. All formalities of a courtroom must be observed in all respects. When called to testify, a witness must situate himself or herself in such a manner as to be able to view the video screen and be seen by the Court. The Court and counsel for the parties must be able to see the entire personage of the witness and, while any witness is testifying, the witness may not communicate, by any means, with any person (other than the presiding judge and the attorney examining the witness) for any reason. If a party and that party's counsel wish to communicate with one another, either shall openly request a recess for such

purpose. If that request is granted by the Court, the party and counsel may privately confer by telephonic means that are not transmitted to other participants in the Trial. Counsel will be responsible for coordinating any such telephonic communications between themselves and their clients.

D. Extension of Temporary Restraining Order.

1. With the consent of the Defendant, the Court extends the terms of the temporary restraining orders issued in these adversary proceedings until 5:30 p.m. on May 28, 2020. *See* Fed. R. Civ. P. 65(b)(2). In addition to the Defendant's consent, "cause" for this extension consists of the unprecedented public health crisis and the attendant need to conduct a remote evidentiary hearing through the use of videoconferencing technology.

E. Pretrial Status Conference

1. The Court will conduct a pretrial status conference in these consolidated matters at 9:00 a.m. on May 15, 2020. At this point, the status conference is likely proceed via telephone, but the Court may elect to issue an order converting the status conference to a videoconference by Zoom. In such event, instructions will be transmitted to counsel for the parties in advance of the status conference.
2. The parties should consider, in advance of the status conference, the matters identified in Fed. R. Civ. P. 16(c)(2)(O) and (P) and Fed. R. Civ. P. 16(e) and be prepared to discuss with those matters with the Court. In addition, without limiting the generality of the foregoing, the parties must be prepared to discuss: (i) any questions or concerns that can be reasonably anticipated with respect to the conduct of the Trial by Zoom videoconferencing; and (ii) use of affidavits

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or declarations to provide the direct testimony of any witnesses and to minimize the testimony provided by way of Zoom.

A handwritten signature in blue ink, appearing to read "Michael A. Fagone", is positioned above a horizontal line.

Date: May 7, 2020

Michael A. Fagone
United States Bankruptcy Judge
District of Maine

2020 NORTHEAST VIRTUAL BANKRUPTCY CONFERENCE AND CONSUMER FORUM

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to BNC - All Parties: Notice Recipients Page 1 of 1

Notice Recipients

District/Off: 0100-1

User: lstocker

Date Created: 5/7/2020

Case: 20-01005

Form ID: pdf900

Total: 9

Recipients of Notice of Electronic Filing:

aty	Andrew Helman, Esq.	ahelman@mpmlaw.com
aty	Dominique V. Sinesi, Esq.	Dominique.sinesi@usdoj.gov
aty	Jeremy R. Fischer	jfischer@dwmlaw.com
aty	Katherine Krakowka	kkrakowka@mpmlaw.com
aty	Roger A. Clement, Jr., Esq.	rclement@verrilldana.com

TOTAL: 5

Recipients submitted to the BNC (Bankruptcy Noticing Center):

dft	Jovita Carranza, in her capacity as administrator for the U.S. Small Business Administration	U.S. Small Business Administration
	409 3rd St., S.W.	Washington, DC 20416
smg	State of Maine Bureau of Revenue Services	Compliance Division Bankruptcy Unit
	1060 Augusta, ME 04332	P.O. Box
ust	Office of the U.S. Trustee	537 Congress Street Portland, ME 04101
ust	Office of U.S. Trustee	537 Congress Street, Suite 300 Portland, ME 04101

TOTAL: 4

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re: Penobscot Valley Hospital, Debtor	Chapter 11 Case No. 19-10034
Penobscot Valley Hospital, Plaintiff v. Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration, Defendant	Adv. Proc. No. 20-1005
In re: Calais Regional Hospital, Debtor	Chapter 11 Case No. 19-10486
Calais Regional Hospital, Plaintiff v. Jovita Carranza, in her capacity as Administrator for the United States Small Business Administration, Defendant	Adv. Proc. No. 20-1006

PRETRIAL ORDER

During a pretrial status conference in these consolidated adversary proceedings on May 15, 2020, the Court altered certain pretrial deadlines and discussed other pretrial matters with the

parties. This order memorializes the actions taken during the conference. To the extent that any provision of this order may conflict with the terms of the Order Consolidating Adversary Proceedings and Scheduling Status Conference and Trial (the “First Pretrial Order”), this order shall control. It is hereby ORDERED that:

1. The Defendant must file a written statement indicating whether the Defendant does or does not consent to the entry of final orders or judgments on the Plaintiffs’ complaints on or before May 20, 2020. *See* Fed. R. Bankr. P. 7012(b). Consent may be provided or withheld on a complete basis or on a claim-by-claim basis.
2. Lead trial counsel for the Plaintiffs and for the Defendant must participate in an initial test of the videoconference technology that will be used for Trial on Wednesday, May 20, 2020 beginning at 11:00 a.m. Zoom instructions and the meeting ID and password for the test on May 20 will be communicated to counsel by email on Tuesday, May 19, 2020. Depending on the results of that initial test, counsel may also be asked to engage in a final test of the technology on May 26, 2020 beginning at 10:00 a.m. (as described in ¶ C.5 of the First Pretrial Order).
3. The Plaintiffs and the Defendant must notify the Court of the names and working phone numbers and email addresses of any witnesses who may be called to testify at Trial as soon as practicable. Such information may be conveyed by email to Judge Fagone’s paralegal, Mary Withee, at Mary_Withee@meb.uscourts.gov.
4. Any witnesses who may testify at Trial must participate in pretrial testing of the videoconference technology. The Court’s IT staff will offer two opportunities for witnesses to engage in pretrial Zoom testing.

- a. First, any witness whose information has been provided to the Court pursuant to ¶ 3 of this order by Monday, May 18, 2020 may participate in an initial test of the technology on Wednesday, May 20, 2020 beginning at 11:30 a.m. Zoom instructions and the meeting ID and password for the test on May 20 will be communicated to the persons identified as potential witnesses by email on Tuesday, May 19, 2020.
 - b. Second, any witness whose information has been provided to the Court pursuant to ¶ 3 of this order by 12:00 p.m. on Friday, May 22, 2020 may participate in the final test of Zoom on May 26, 2020 beginning at 10:00 a.m. (as described in ¶ C.5 of the First Pretrial Order). Zoom instructions and the meeting ID and password for the test on May 26 will be communicated to the persons identified as potential witnesses by email no later than 5:00 p.m. on Friday, May 22.
5. Any document that may be used solely for impeachment or rebuttal at Trial should not be included in the PDF file or file(s) or the Exhibit Books described in ¶ B.6. If counsel wishes to use a document solely for impeachment or rebuttal at Trial, counsel must be prepared to simultaneously email a PDF copy of the document to the Court and the witness during the Trial. The Zoom host will then display the document on the screen, and the Court will preserve a copy of the document for the record.
6. If the parties agree to submit their dispute for decision on a stipulated record and forego the opportunity to examine witnesses, they must immediately notify the Court of that agreement. In that event:
 - a. the parties may submit their stipulated record to the Court by filing a copy of the stipulated record on the docket of the Lead Adversary Proceeding; and

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- b. the Court will entertain oral argument from counsel during the time previously set aside for the Trial.
7. The Defendant should file a notice no later than 5:00 p.m. on May 22, 2020 indicating whether the SBA would consent to the Court entering preliminary injunctions on the same terms as those set forth in the TROs but to remain in effect only from May 28, 2020 to June 3, 2020 to provide a brief window for the Court to take the matters under advisement after Trial and to render a decision on the merits no later than June 3.

Date: May 15, 2020



Michael A. Fagone
United States Bankruptcy Judge
District of Maine

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to BNC - All Parties: Notice Recipients Page 1 of 1

Notice Recipients

District/Off: 0100-1

User: tleclair

Date Created: 5/15/2020

Case: 20-01005

Form ID: pdf900

Total: 11

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aty	Jeremy R. Fischer	jfischer@dwmlaw.com
aty	Katherine Krakowka	kkrakowka@mpmlaw.com
aty	Kelly McDonald, Esq.	kmcdonald@mpmlaw.com
aty	Roger A. Clement, Jr., Esq.	rclement@verilldana.com
aty	Sage M. Friedman, Esq.	sfriedman@mpmlaw.com

TOTAL: 7

Recipients submitted to the BNC (Bankruptcy Noticing Center):

dft	Jovita Carranza, in her capacity as administrator for the U.S. Small Business Administration	U.S. Small Business
	Administration 409 3rd St., S.W. Washington, DC 20416	
smg	State of Maine Bureau of Revenue Services Compliance Division Bankruptcy Unit	P.O. Box
	1060 Augusta, ME 04332	
ust	Office of the U.S. Trustee 537 Congress Street	Portland, ME 04101
ust	Office of U.S. Trustee 537 Congress Street, Suite 300	Portland, ME 04101

TOTAL: 4

**United States Bankruptcy Court
District of Connecticut**

Procedures and Guide for Remote Appearances using ZoomGov

In connection with the General Orders Regarding Court Operations Under the Exigent Circumstances Created by COVID-19 (see www.ctb.uscourts.gov) (the “General Orders”), the United States Bankruptcy Court for the District of Connecticut (the “Court”) is continually reviewing its procedures regarding telephonic and other remote appearances. Since the issuance of the General Orders, most non-evidentiary hearings and conferences before the Court have been held telephonically utilizing court approved telephonic hearing vendors.

Effective June 29, 2020, the Court is adding the ZoomGov platform for participants and attendees to appear remotely at hearings and conferences. ZoomGov has both telephone and video capability. The Court provides this guide to assist attendees and participants in successfully appearing remotely using ZoomGov (by phone or video) in hearings and conferences set before our Court during the COVID-19 pandemic.

If a party who is appearing remotely at a scheduled hearing or conference fails to respond to the call of the matter on the Court calendar, the Court may pass the matter or may treat the failure to respond as a failure to appear. A hearing or conference generally will not be rescheduled due to the failure to appear. A party who fails to appear as scheduled may face sanctions from the Court. Sanctions may include denying the matter for failure to prosecute, proceeding in the absence of a party who fails to appear, or a monetary sanction.

If you have additional questions regarding a scheduled hearing, please contact the appropriate courtroom deputy at:

Hartford: CourtroomDeputy_Hartford@ctb.uscourts.gov

Bridgeport: CourtroomDeputy_Bridgeport@ctb.uscourts.gov

New Haven: CourtroomDeputy_NewHaven@ctb.uscourts.gov

In addition to this document, Zoom provides many guides and tutorial videos with helpful information on using the Zoom platform, which has an almost identical layout as ZoomGov. We encourage you review the Zoom materials below to familiarize yourself with the audio/video basics of using ZoomGov.

1. Video: <https://support.zoom.us/hc/en-us/sections/200521865-Video>
2. Audio: <https://support.zoom.us/hc/en-us/sections/200319096-Audio>
3. Learn how to easy mute/unmute with Push to talk: <https://support.zoom.us/hc/en-us/articles/360000510003-Push-to-Talk>
4. Hot Keys and Keyboard Shortcuts to start/stop video, mute, etc.: <https://support.zoom.us/hc/en-us/articles/205683899-Hot-Keys-and-Keybaord-Shortcuts-for-Zoom>

The ZoomGov webpage to join a video or telephonic hearing before our Court is:
www.zoomgov.com.

United States Bankruptcy Court
District of Connecticut
Procedures and Guide for Remote Appearances using ZoomGov

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TELEPHONIC APPEARANCES USING ZOOMGOV

Individuals may participate telephonically in hearings using the ZoomGov audio connection only. A telephone or cell phone is required (standard telephone charges may apply). No Zoom or ZoomGov account is necessary to participate telephonically and no pre-registration is required.

Telephonic appearances are connected directly to the courtroom's audio system and electronic recording equipment and create an official record of the scheduled hearing or conference.

All parties participating in the scheduled hearing or conference should be able to hear all parties without difficulty or echo. To ensure the quality of the official record of the scheduled hearing or conference, telephonic participants should use a “land line” telephone.

The use of a cell phone during a telephonic appearance is discouraged due to greater potential for disruptive surroundings or poor connection. Any party during a telephonic appearance may be muted or disconnected from the scheduled hearing or conference at the discretion of the Court.

The Court also discourages the use of speakerphones, public telephone booths, phones while driving, or phones used in public places and such use may also result in the party being disconnected from the scheduled hearing or conference at the discretion of the Court.

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Procedures and Guide for Remote Appearances using ZoomGov

TELEPHONICALLY CONNECTING TO A HEARING

Using a telephone, dial the number below that is closest to your location (this ensures a better-quality call):

East Coast callers: 646-828-7666

West Coast callers: 669-254-5252

International callers should contact the courtroom deputy for the appropriate number to call.

Once dialed, use the ZoomGov information received from the Court provided in the Notice of Hearing.

1. Meeting ID: When prompted, enter the Meeting ID, then #.
2. Participant ID: When prompted, enter a Participant ID, then #, (or to bypass it, simply enter #).
3. Meeting Password: When prompted, enter the Meeting Password, then #.

Upon connecting to the hearing, please **mute** your phone until your case is called or you are otherwise addressed by the Court.

You may choose to mute your phone device directly or enter *6 on your phone to mute your ZoomGov connection. If your ZoomGov connection is muted, you may unmute your ZoomGov connection by entering *6 on your phone.

USING THE ZOOMGOV ONLINE VIDEO DASHBOARD DURING A TELEPHONIC APPEARANCE

While appearing telephonically, participants and attendees may choose to log into an online video dashboard. Unless otherwise ordered by the Court, signing into ZoomGov's video dashboard during a telephonic appearance is optional.

The dashboard allows a participant or attendee to have on screen control of their mute features, to rename their participant label, to view the names or phone numbers of the other participants and attendees, and even to transmit their video image, if desired.

To use the dashboard, you must log onto the session at www.zoomgov.com or on the Zoom app using a computer or mobile device. With the ZoomGov information supplied by the Court, log into the video dashboard using a Meeting ID and password. The password for the video dashboard will be different from the numeric password received for telephonic connections. The password for the video dashboard will contain letters, numbers, and special characters.

Again, a Zoom or a ZoomGov account is not required to log into the online video dashboard.

If using the online video dashboard, please change your dashboard label to your complete name to assist the Court in creating an accurate record of the proceedings. Also, refer to Video Appearance section of this document which begins on Page 4 and the Best Practices for Video Appearances on Page 7 of this document.

**United States Bankruptcy Court
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BEST PRACTICES AND TIPS FOR USING ZOOMGOV DURING TELEPHONIC APPEARANCES

1. Unless and until it is your turn to speak, please mute your audio to minimize background noise.
 - a. If connected to ZoomGov audio by telephone, you can mute or unmute your connection by pressing *6 on your phone.
2. When you first speak—and each time you speak after someone else has spoken—please say your name. This may seem awkward, but is essential to making a good court record. The only part of the hearing being recorded is the audio. If a transcript is requested, it is sometimes difficult for the transcriber to know who is speaking.
3. If available, a headset-microphone often provides better sound quality for listening and speaking.
4. If you intend to speak at the hearing, please find a quiet place from which to participate. Close all doors around you in the room to limit disruption.

VIDEO APPEARANCES USING ZOOMGOV

During a hearing or conference with video participants, the Court recording contains only the audio portion of the hearing or conference. The audio feed of video appearances are connected directly to the courtroom's audio system and electronic recording equipment and create an official record of the scheduled hearing or conference. No recording of the video transmission is recorded by the Court.

Participants and members of the public should remember that although conducted remotely, these hearings are official court proceedings, and individuals should act accordingly. If video is enabled, please wear attire consistent with the decorum of court proceedings. ZoomGov permits the use of virtual backgrounds to safeguard your privacy. If you choose to use a virtual background, please avoid backgrounds that are offensive or distracting.

To ensure the quality of the official record of the scheduled hearing or conference, video participants are strongly encouraged to use a secure and dependable internet provider with a wired LAN connection. A wireless internet connection is strongly discouraged for its diminished performance of the overall video quality. Poor or disruptive connection may result in a party being disconnected from the scheduled hearing or conference at the discretion of the Court.

All parties participating in the scheduled hearing or conference should be able to hear all parties without difficulty or echo. If you hear audio echo or audio feedback during your meeting, there are 3 likely causes:

- A participant has both the computer and telephone audio active
- Participants with computer or telephones speakers that are too close to each other
- Multiple computers with active audio are in close proximity to each other.

United States Bankruptcy Court
District of Connecticut
Procedures and Guide for Remote Appearances using ZoomGov

BEFORE CONNECTING VIA VIDEO FOR A HEARING OR CONFERENCE

A Notice of Hearing will include a Meeting ID, an *alpha-numeric* Password, Telephone Numbers and *all-numeric* Password/Pin. This information will be needed to successfully connect to a hearing or conference using the ZoomGov platform. The ZoomGov connection information will also be posted on the court's website under the calendar pages.

We strongly recommend testing your connection the day before a hearing, to identify and resolve technical difficulties. Please join all hearing at least 10 minutes prior to a scheduled hearing time.

Video connections will require a computer, tablet, or smartphone with a built-in or attached camera. The audio connection may be made through the device itself or through a separate phone connection. Upon joining a meeting, ZoomGov will prompt an opportunity to check your audio connection. In either audio setup, using headphones with a microphone is encouraged to reduce background noise and feedback.

If using a computer, you may be prompted to download and run Zoom. If using a tablet or smartphone, there is a free Zoom app available for download in most app stores.

TO JOIN A HEARING VIA VIDEO

During a video appearance, remember that your audio feed can be connected either via computer audio or by telephone audio. For either audio option, please connect to the video feed first.

1. Joining the video portion of the hearing

- a. If provided with a link in a Notice of Hearing or an email, click the link (or copy and paste it into a browser window) to join at the appropriate time.
- b. If you do not have a link, you may also join the hearing by visiting <https://zoomgov.com/join> on any browser, or by opening the Zoom app on a tablet or smartphone, and manually entering the Meeting ID and password provided by the Court in the Notice of Hearing. (If you have not already downloaded the Zoom app and your device requires it, you may be instructed to download it at this time.)

2. Joining the audio portion of the hearing - Once connected to the video portion, you must choose between two audio options: computer or telephone. Choose whichever will provide you the better audio quality, both outgoing and incoming.

- a. **Computer audio** – choose this option if you have a built in or attached microphone and speakers. You have an opportunity to test your audio at this point by clicking on “Test Computer Audio.” Once you are satisfied that your audio functions properly, click on “Join audio by computer.” You should now be connected to the Court’s video session. Mute your session until your case is called or you are otherwise addressed by the Court. *Skip to step #3.*
- b. **Telephone audio** – choose this option if you have no audio equipment on your computer or other mobile device, or it is malfunctioning. Then follow the

United States Bankruptcy Court
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Procedures and Guide for Remote Appearances using ZoomGov

onscreen instructions to connect the phone audio to your video connection. This usually will involve the following steps:

- i. On your phone, dial 646-828-7666 (East Coast) or 669-254-5252 (West Coast)
 - ii. When prompted, enter the Meeting ID number (provided in your invitation), then #.
 - iii. When prompted, enter your participant ID then # (to be associated with your computer log in). *This ID is provided to you by Zoom upon selecting the telephone audio option.*
 - iv. At this point, ZoomGov will sync your video and telephone feeds and identify you appropriately. You should now be connected to the Court's video session.
 - v. Upon connecting to the hearing, please **mute** your connection until your case is called or you are otherwise addressed by the Court. The courtroom deputy will connect you to the live session once court is opened.
3. If the Host has enabled the "waiting room" feature, you may see a "Waiting for the host to start this meeting" or "Please wait, the meeting host will let you in soon" message.

United States Bankruptcy Court
District of Connecticut

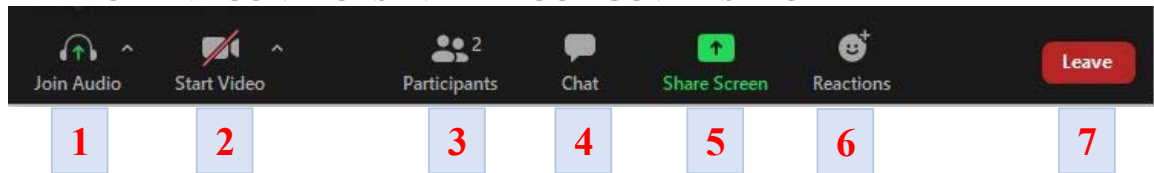
Procedures and Guide for Remote Appearances using ZoomGov

BEST PRACTICES AND TIPS FOR USING ZOOMGOV FOR VIDEO APPEARANCES

1. Test the video and audio capabilities of your computer or mobile device in advance of the hearing, preferably a day in advance.
 - a. You can do this by entering the ZoomGov session with the ZoomGov connection information in the Zoom email or hearing notice. ZoomGov will prompt you that your meeting hasn't started yet, but you may test the connection by following the onscreen instructions.
2. Participants and members of the public should at all times remember that although conducted remotely, these hearings are official court proceedings, and individuals should act accordingly.
 - a. If video is enabled, please wear attire consistent with the decorum of court proceedings.
 - b. ZoomGov permits the use of virtual backgrounds to safeguard your privacy. If you choose to use a virtual background, please avoid backgrounds that are offensive or distracting.
3. When you first speak—and each time you speak after someone else has spoken—please say your name. This may seem awkward but is essential to making a good court record. The only part of the hearing being recorded is the audio. If a transcript is requested, it is sometimes difficult for the transcriber to know who is speaking.
4. For vastly improved performance, use a hardwired LAN connection and not a wireless or cellular data connection.
 - a. If you are connecting to the hearing using a wireless device, you should situate yourself in a location with a strong wireless signal.
5. If available, a headset-microphone often provides better sound quality for listening and speaking.
6. ZoomGov video participants are permitted to specify a display name. If using video, please specify your complete name to assist the Court in creating a record of the proceedings.
7. If you are using an external camera and/or microphone, plug them in before opening the Zoom application. A headset is recommended.
8. Only 1 microphone and speaker system should be active per physical location to avoid a loud screeching sound.
9. Be sure to mute yourself when you are not speaking.
 - a. If connected to the ZoomGov or Zoom audio by telephone, you can mute and unmute your connection by entering *6 on your phone.
10. If you intend to speak at the hearing, please find a quiet place from which to participate. Close all doors around you in the room to limit disruption.
11. Do not situate yourself with a window or other strong light source directly behind you as that will significantly darken your image.
12. Zoom and ZoomGov video participants are permitted to specify a display name. If using video, please specify your complete name to assist the Court in creating a record of the proceedings. If using the ZoomGov or Zoom online platform via computer or app, you may use the “rename” feature to adjust your name on the dashboard visible to the Court and the other hearing participants.

United States Bankruptcy Court
District of Connecticut
Procedures and Guide for Remote Appearances using ZoomGov

PARTICIPANT CONTROLS IN THE ZOOMGOV DASHBOARD



On a computer, a menu bar containing participant tools may appear and disappear as you mouse over the Zoom meeting (or tap the screen on a tablet or phone), typically at the bottom of the screen. Mobile app interfaces will appear differently but contain most of the same functionality.

1. Join Audio – if you haven’t selected an audio connection option, this button is used to select either connecting to audio through the computer or a phone connection. Click the up arrow next to the Join Audio button for more audio settings.
 - a. Mute/Unmute your microphone – Once connected to audio, this button will turn into your Mute/Unmute button.
 - b. Click the up arrow next to the microphone icon to open audio settings. Here you change your speaker and microphone settings.
2. Start/Stop your video feed (Turn on/off camera) – Click the up arrow next to the camera icon to open video settings. Here you can change your camera settings.
3. Participants – Click to open a pop-out screen that shows a list of participants in the meeting. From this panel, all participants are visible. You may change your onscreen name/label from this panel by clicking “More” next to your name and selecting “rename”. The participant panel also includes a “Raise Hand” icon that you may use to raise a virtual hand to indicate that you’d like to speak next or ask a question, without interrupting the current speaker.
4. Chat – This feature will often be disabled. If enabled, click to open the Chat panel where you can start or respond to a chat.
5. Share your screen – If enabled for participants, you may click to start sharing your desktop display or any window/application on your computer with others in the meeting. Click the up arrow to reveal sharing options. This option may be disabled for participants.
6. Reactions – Not for use in court proceedings.
7. Leave Meeting – Disconnect and leave the meeting. Other remaining participants will remain in the meeting room until the Host ends the meeting.

Somewhere on the Zoom dashboard screen (normally in the top right corner of the screen) is also a choice to toggle between “speaker” and “gallery” view. “Speaker view” shows the active speaker. “Gallery view” tiles all of the meeting participants.

For more information and instructional videos see the Zoom Help Center at <https://support.zoom.us/hc/en-us>.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:

Exception to Standing Order 20-7 and
Bankruptcy Court Operations Under the
Exigent Circumstances Created by the
Outbreak of Coronavirus Disease 2019
(COVID-19) for the Richmond Division
Only

Richmond General Order 20-5

**ORDER CONCERNING EXCEPTION TO STANDING ORDER 20-7 AND
BANKRUPTCY COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES
CREATED BY THE OUTBREAK OF CORONAVIRUS DISEASE 2019 (COVID-19)
FOR THE RICHMOND DIVISION ONLY**

Richmond Division General Order 20-2, entered on March 20, 2020, implemented the Protocol in Response to Public Health Emergency (the “Protocol”) on an interim emergency basis effective March 23, 2020 through and including April 30, 2020. By Richmond Division General Order 20-4, the Protocol was extended through and including May 31, 2020. The Protocol provides that it may be amended by further Standing Order. In light of the foregoing, it is

ORDERED that the amendments to the Protocol, as reflected on the following, are hereby **ADOPTED** on an interim emergency basis beginning on May 31, 2020, and continuing until further notice; and it is further

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ORDERED that the Clerk of the Court shall post this Standing Order on the Court's website and distribute a copy to all registered CM/ECF users by email.

ENTERED: May 29, 2020

/s/ Kevin R. Huennekens
KEVIN R. HUENNEKENS
United States Bankruptcy Judge

/s/ Keith L. Phillips
KEITH L. PHILLIPS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

PROTOCOL IN RESPONSE TO PUBLIC HEALTH EMERGENCY

Effective May 31, 2020, and Continuing Until Further Notice

This protocol (the “Protocol”) applies in all bankruptcy cases and proceedings during the period beginning on May 31, 2020, and continuing until further notice (the “Protocol Period”) pending in the Richmond Division. During the Protocol Period, to the extent of any inconsistency between this Protocol, the Local Bankruptcy Rules, and any applicable scheduling order, this Protocol shall govern. Except as modified herein, applicable bankruptcy and non-bankruptcy law, including but not limited to Title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules, shall remain in full force and effect. While this Protocol is intended to minimize the number of hearings held and in-person attendance at any required hearings, the due process rights and appellate rights of all parties-in-interest must be protected.

1. **Obligations of Parties and Counsel.** Parties and counsel are responsible for becoming familiar with this Protocol and monitoring the Court’s website and the dockets of their cases. Counsel must make reasonable efforts to communicate with clients prior to any scheduled hearing and must specifically advise the client not to attend said hearing.
2. **Continuance of Hearings by the Court.** Hearings may be scheduled or rescheduled by the Court in its discretion, in which case parties shall be notified by the Clerk by such method as is reasonable under the circumstances.
3. **Continuance of Hearings by the Parties.** All matters, including final evidentiary hearings and trials, may be continued for cause upon consent motion and order. Cause will be construed liberally. Routine matters set on Wednesdays (for Judge Phillips, before 9:30AM and for Judge Huennekens, before 11:30AM) may be continued by agreement of the parties by telephone call to the courtroom deputies.
4. **Modified Procedures for Specific Types of Motions Pending During the Protocol Period.** During the Protocol Period, unless a hearing is specifically requested or an objection is timely filed, the Court may cancel any scheduled hearing on the following matters, and, instead, rule on the pleadings after expiration of any requisite notice period in accordance with Local Bankruptcy Rule 9013-1(L):
 - a. **Reaffirmation Agreements:** The Court will not conduct hearings on reaffirmation agreements that would impose an undue hardship on the debtors or their dependents. If no response is filed by the counterparty to the agreement within fourteen (14) days of the date of filing of the reaffirmation agreements and if the debtor(s) file a certification that they have complied with 11 U.S.C. §§ 521(a)(6) and 362(h) and request entry of a *Husain* order, the Court will issue orders not approving such agreements, but finding that the debtors have complied

with 11 U.S.C. §§ 521(a)(6) and 362(h). See *In re Husain*, 364 B.R. 211 (Bankr. E.D. Va. 2007); *In re Isom*, Case No. 07-31469, 2007 WL 2110318 (Bankr. E.D. Va. July 27, 2007).

- b. ***Motions to Extend the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3) and Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4):*** During the Protocol Period, contemporaneously with any motion to extend or impose the automatic stay, the debtor(s) must file an affidavit(s) substantiating such motion. Upon expiration of the notice period, if no objections are timely filed and the debtor(s) has timely filed an affidavit(s), the debtor(s) may submit a proposed order granting a motion to extend the automatic stay or motion to impose stay. The order may provide that the stay is extended nunc pro tunc to the date the notice period expired. If no affidavit is timely submitted, the debtor(s) may submit a bridge order extending or imposing the stay pending a subsequent hearing.
- c. ***Motions to Approve Loan Modification:*** Upon expiration of the notice period, the Court will issue an order conditionally approving a loan modification agreement and scheduling a final hearing. In order for a loan modification to be approved on a final basis, the movant must submit a fully executed copy of the underlying loan agreement(s) and a proposed order.
- d. ***Applications to Approve Compensation:*** Upon expiration of the notice period, the movant may submit proposed orders approving applications to approve compensation. In Chapter 13 cases, such orders must be endorsed by the Chapter 13 trustee. For all other chapters, the proposed order must be endorsed by the United States trustee.
- e. ***Motions to Continue/Extend Deadlines:*** For motions to continue or extend any deadlines to which all necessary parties have consented, no negative notice period is required and the parties may submit a consent order contemporaneously with the filing of the consent motion. For any other motion to continue or extend deadlines, unless expedited relief is requested, the movant must provide three (3) days' negative notice. Upon expiration of the notice period, the movant may submit an order granting the motion.
- f. ***Pre-trial Conferences:*** If all necessary parties are in agreement, in advance of any scheduled pre-trial conference, parties may contact the appropriate courtroom deputy to schedule a trial date. If the parties can select a mutually agreeable trial date and there is no other need to hold a pre-trial conference, the Court may enter a pre-trial order without convening the pre-trial conference.
- g. ***Motions for Relief from the Automatic Stay and Relief from the Co-Debtor Stay Subject to Standing Order 10-2:*** Upon expiration of the requisite notice period, in the absence of any response, the movant may submit proposed orders in compliance with Form B of Standing Order 10-2. Notwithstanding the foregoing,

in Chapter 7 cases, if the Chapter 7 trustee has not abandoned the subject real or personal property, the proposed order must be endorsed by the Chapter 7 trustee.

5. **Remote Hearings.** All counsel are encouraged to make liberal use of the Court's negative notice procedures. Unless otherwise ordered by the Court, all hearings during the Protocol Period must be conducted remotely.
 - a. **Hearings to be Conducted by Teleconference.** Unless ordered otherwise, by default, all hearings during the Protocol Period shall be treated as non-evidentiary hearings and will be conducted using CourtSolutions. Instructions for telephonic appearances in Richmond are available [here](#).
 - b. **Hearings to be Conducted by Video Conference.** All evidentiary hearings must be conducted by video conference using Zoom for Government. Any other hearing may be conducted by video conference upon request of the parties or in the discretion of the hearing judge. The procedures set forth on [Exhibit B](#) hereto apply to all hearings to be conducted by video conference.
6. **Evidence.** Parties are strongly encouraged to submit stipulations of fact in advance of any hearing, which stipulations should be electronically filed on CM/ECF. Notwithstanding anything to the contrary in the Local Bankruptcy Rules or scheduling order, all documentary evidence must be electronically filed in advance of the hearing in accordance with any applicable scheduling order. If no scheduling order has been entered in this matter or the scheduling order would not otherwise require the documentary evidence be filed electronically, the documentary evidence must be filed no later than twenty-four (24) hours prior to the hearing. Counsel should contact the Clerk's Office for instructions on how to provide any documentary evidence that is not in a suitable format to be filed electronically on CM/ECF.
7. **Hearing Judge.** During the Protocol Period, hearings may be held by the judge assigned to the case, or by any other bankruptcy judge.
8. **Requests for Expedited Hearings and/or to Shorten Time.** Notwithstanding anything to the contrary herein, all requests for expedited hearings and/or to shorten time must be made in accordance with the Local Bankruptcy Rules. In addition, counsel must send an email to the appropriate emergency contact, as detailed on [Exhibit A](#) hereto.
9. **Time Sensitive Orders or Other Court Action.** Any time-sensitive request not otherwise provided by paragraph 8 hereof should be directed to the appropriate emergency contact, as detailed on [Exhibit A](#) hereto.
10. **Deadlines.** Unless otherwise modified by order of the Court, all deadlines remain in full force in effect. The Court will consider any timely request to modify/toll deadlines, which should be made by appropriate motion and order. For avoidance of doubt, for matters and cases not previously excepted from the provisions of Standing Order 20-7, any deadline that fell during the period beginning on March 18, 2020, and ending on

March 23, 2020, is hereby **EXTENDED THROUGH AND INCLUDING MARCH 23, 2020**. This extension shall not apply to matters and cases previously excepted by Court Order from the provisions of Standing Order 20-7. Notwithstanding the foregoing, nothing herein shall prejudice the rights of any party to seek an extension of time or to request other relief.

11. This Protocol may be amended by further Standing Order, which shall be published on the Court's website and distributed by email to all CM/ECF users. Each Judge may vary this Protocol on a case-by-case basis in his or her discretion.

EXHIBIT A
EMERGENCY CONTACT INFORMATION

Hon. Kevin R. Huennekens	EDVABK-Emergency-Judge_Huennekens@vaeb.uscourts.gov
Hon. Keith L. Phillips	EDVABK-Emergency-Judge_Phillips@vaeb.uscourts.gov

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

**INSTRUCTIONS FOR REMOTE WITNESS TESTIMONY
USING ZOOM FOR GOVERNMENT**

The following procedures shall apply unless otherwise modified by subsequent order of this Court upon request by a party:

1. All participants on a video conference are expected to conduct themselves as if the hearing / trial were taking place in the courtroom. As such, participants must conduct themselves with the same level of decorum, courtesy, professionalism, and civility as they would at an in-person hearing / trial.

2. To schedule a hearing or trial to be conducted by video conference, the parties should contact the hearing judge's courtroom deputy at the time of scheduling. For hearings and trials previously scheduled that the parties wish to have conducted by video conference, the parties should contact the hearing judge's courtroom deputy as soon as practicable and, in any event, no later than five (5) business days prior to the previously scheduled hearing or trial.

3. The parties will then receive a registration link. All participants must separately register for the video conference no later than two (2) business days prior to the scheduled hearing/trial. The registrations must be true, complete, and accurate. Persons that register will receive separate email notification on whether their registration has been approved or denied. In the event that registration is approved, the confirmation email will include the link to the video conference.

4. All active participants at the evidentiary hearing / trial (including witnesses) must enable video and audio.

5. Any attendee, including active participants, must mute their audio when they are not speaking. If an attendee fails to mute their audio when they are not speaking, the Court may mute their audio for them.

6. Any attendee wishing to address the Court must utilize the “hand raise” feature.

7. The parties may direct that any witness appear via Zoom for Government and may issue subpoenas to such effect, but such party must ensure that such witness (a) has the ability to appear via Zoom for Government; (b) can provide sufficient documentation to the Court to verify his or her identity with the Court prior to their testimony; and (c) may provide testimony in a separate room from any other potential witnesses in this matter and free of outside influence (both in-person and through other technological means).

8. If no scheduling order has been entered in this matter or the scheduling order would not otherwise require a list of witnesses be filed electronically, each party intending to call witnesses must file a witness list no later than twenty-four (24) hours prior to the hearing.

9. If a party presents documentary evidence to a witness, that party bears the burden of ensuring that the witness has been provided a copy of such documentary evidence or has access to such documentary evidence.

10. If a party wishes to utilize the “Screen Share” feature, the party must make such request to the hearing judge’s courtroom deputy no later than two (2) business days’ prior to the hearing.

11. The parties will troubleshoot any problems with technology in advance of the hearing.

12. **The participants are expected to test their equipment to ensure that video/audio components are properly functioning prior to the hearing / trial and be**

prepared to proceed at the scheduled time. Problems stemming from the failure to make appropriate arrangements prior to the hearing / trial, or to adhere to this Protocol, may result in, inter alia, (i) the cancellation of the hearing / trial; (ii) the exclusion of an attorney, party or witness from testifying or participating at the hearing / trial; (iii) the termination of any participant's audio and / or video connection to the hearing / trial; and (iv) the imposition of sanctions. Requests to deviate from these procedures, for cause, must be submitted to the Court and opposing parties no later than two (2) business days prior to the hearing / trial. The Court reserves the discretion to deviate from these procedures in the interest of justice and judicial economy.

**EXHIBIT 1
BLACKLINE OF PROTOCOL**

AMERICAN BANKRUPTCY INSTITUTE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

PROTOCOL IN RESPONSE TO PUBLIC HEALTH EMERGENCY

Effective ~~March 23~~ May 31, 2020, ~~through April 30, 2020~~ and Continuing Until Further Notice

This protocol (the “Protocol”) applies in all bankruptcy cases and proceedings during the period ~~of March 23~~ beginning on May 31, 2020, ~~through April 30, 2020~~ and continuing until further notice (the “Protocol Period”) pending in the Richmond Division. During the Protocol Period, to the extent of any inconsistency between this Protocol, the Local Bankruptcy Rules, and any applicable scheduling order, this Protocol shall govern. Except as modified herein, applicable bankruptcy and non-bankruptcy law, including but not limited to Title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules, shall remain in full force and effect. While this Protocol is intended to minimize the number of hearings held and in-person attendance at any required hearings, the due process rights and appellate rights of all parties-in-interest must be protected.

1. **Obligations of Parties and Counsel.** Parties and counsel are responsible for becoming familiar with this Protocol and monitoring the Court’s website and the dockets of their cases. Counsel must make reasonable efforts to communicate with clients prior to any scheduled hearing and must specifically advise the client not to attend said hearing.
2. **Continuance of Hearings by the Court.** Hearings may be scheduled or rescheduled by the Court in its discretion, in which case parties shall be notified by the Clerk by such method as is reasonable under the circumstances.
3. **Continuance of Hearings by the Parties.** All matters, including final evidentiary hearings and trials, may be continued for cause upon consent motion and order. Cause will be construed liberally. Routine matters set on Wednesdays (for Judge Phillips, before 9:30AM and for Judge Huennekens, before 11:30AM) may be continued by agreement of the parties by telephone call to the courtroom deputies.
4. **Modified Procedures for Specific Types of Motions Pending During the Protocol Period.** ~~Unless~~ During the Protocol Period, unless a hearing is specifically requested or an objection is timely filed, ~~during the Protocol Period, the Court will not conduct hearings~~ may cancel any scheduled hearing on the following matters, ~~but~~ and, instead, ~~will~~ rule on the pleadings after expiration of any requisite notice period in accordance with Local Bankruptcy Rule 9013-1(L):
 - a. **Reaffirmation Agreements:** The Court will not conduct hearings on reaffirmation agreements that would impose an undue hardship on the debtors or their dependents. If no response is filed by the counterparty to the agreement within fourteen (14) days of the date of filing of the reaffirmation agreements and if the debtor(s) file a certification that they have complied with 11 U.S.C. §§ 521(a)(6) and 362(h) and request entry of a *Husain* order, the Court will issue

orders not approving such agreements, but finding that the debtors have complied with 11 U.S.C. §§ 521(a)(6) and 362(h). See *In re Husain*, 364 B.R. 211 (Bankr. E.D. Va. 2007); *In re Isom*, Case No. 07-31469, 2007 WL 2110318 (Bankr. E.D. Va. July 27, 2007).

- b. ***Motions to Extend the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3) and Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4):*** During the Protocol Period, contemporaneously with any motion to extend or impose the automatic stay, the debtor(s) must file an affidavit(s) substantiating such motion. Upon expiration of the notice period, if no objections are timely filed and the debtor(s) has timely filed an affidavit(s), the debtor(s) may submit a proposed order granting a motion to extend the automatic stay or motion to impose stay. The order may provide that the stay is extended nunc pro tunc to the date the notice period expired. If no affidavit is timely submitted, the debtor(s) may submit a bridge order extending or imposing the stay pending a subsequent hearing.
- c. ***Motions to Approve Loan Modification:*** Upon expiration of the ~~negative~~ notice period, the Court will issue an order conditionally approving a loan modification agreement and scheduling a final hearing. In order for a loan modification to be approved on a final basis, the movant must submit a fully executed copy of the underlying loan agreement(s) and a proposed order.
- d. ***Applications to Approve Compensation:*** Upon expiration of the ~~negative~~ notice period, the movant may submit proposed orders approving applications to approve compensation. In Chapter 13 cases, such orders must be endorsed by the Chapter 13 trustee. For all other chapters, the proposed order must be endorsed by the United States trustee.
- e. ***Motions to Continue/Extend Deadlines:*** For motions to continue or extend any deadlines to which all necessary parties have consented, no negative notice period is required and the parties may submit a consent order contemporaneously with the filing of the consent motion. For any other motion to continue or extend deadlines, unless expedited relief is requested, the movant must provide three (3) days' negative notice. Upon expiration of the notice period, the movant may submit an order granting the motion.
- f. ***Pre-trial Conferences:*** If all necessary parties are in agreement, in advance of any scheduled pre-trial conference, parties may contact the appropriate courtroom deputy to schedule a trial date. If the parties can select a mutually agreeable trial date and there is no other need to hold a pre-trial conference, the Court may enter a pre-trial order without convening the pre-trial conference.
- g. ***Motions for Relief from the Automatic Stay and Relief from the Co-Debtor Stay Subject to Standing Order 10-2:*** Upon expiration of the requisite ~~negative~~ notice period, in the absence of any response, the movant may submit proposed orders in

compliance with Form B of Standing Order 10-2. Notwithstanding the foregoing, in Chapter 7 cases, if the Chapter 7 trustee has not abandoned the subject real or personal property, the proposed order must be endorsed by the Chapter 7 trustee.

5. **Remote Hearings.** All counsel are encouraged to make liberal use of the Court's negative notice procedures. Unless otherwise ordered by the Court, all hearings during the Protocol Period must be conducted remotely ~~by teleconference.~~
 - a. **Hearings to be Conducted by Teleconference.** Unless ordered otherwise, by default, all hearings during the Protocol Period shall be treated as non-evidentiary hearings and will be conducted using CourtSolutions. Instructions for telephonic appearances in Richmond are available [here](#).
 - ~~b. **Hearings Non-Evidentiary.** All counsel are encouraged to make liberal use of the Court's negative notice procedures. All self-scheduled hearings during the Protocol Period shall be treated as non-~~**Conducted by Video Conference.** All evidentiary hearings. To schedule an evidentiary must be conducted by video conference using Zoom for Government. Any other hearing, the may be conducted by video conference upon request of the parties must contactor in the discretion of the hearing judge's courtroom deputy. judge. Evidence. Unless otherwise ordered by the Court, any hearing requiring witness testimony shall be continued. The parties must contact the hearing judge's courtroom deputyprocedures set forth on Exhibit B hereto apply to reschedule suchall hearings to be conducted by video conference.
6. **Evidence.** Parties are strongly encouraged to submit stipulations of fact in advance of any hearing, which stipulations should be electronically filed on CM/ECF. Notwithstanding anything to the contrary in the Local Bankruptcy Rules or scheduling order, all documentary evidence must be filed electronically on CM/ECF no later than 24 hours filed in advance of the hearing/trial in accordance with any applicable scheduling order. If no scheduling order has been entered in this matter or the scheduling order would not otherwise require the documentary evidence be filed electronically, the documentary evidence must be filed no later than twenty-four (24) hours prior to the hearing. Counsel should contact the Clerk's Office for instructions on how to provide any documentary evidence that is not in a suitable format to be filed electronically on CM/ECF.
7. **Hearing Judge.** During the Protocol Period, hearings may be held by the judge assigned to the case, or by any other bankruptcy judge.
8. **Requests for Expedited Hearings and/or to Shorten Time.** Notwithstanding anything to the contrary herein, all requests for expedited hearings and/or to shorten time must be made in accordance with the Local Bankruptcy Rules. In addition, counsel must send an email to the appropriate emergency contact, as detailed on Exhibit A hereto.

9. **Time Sensitive Orders or Other Court Action.** Any time-sensitive request not otherwise provided by paragraph 98 hereof should be directed to the appropriate emergency contact, as detailed on Exhibit A hereto.
10. **Deadlines.** Unless otherwise modified by order of the Court, all deadlines remain in full force in effect. The Court will consider any timely request to modify/toll deadlines, which should be made by appropriate motion and order. For avoidance of doubt, for matters and cases not previously excepted from the provisions of Standing Order 20-7, any deadline that fell during the period beginning on March 18, 2020, and ending on March 23, 2020, is hereby **EXTENDED THROUGH AND INCLUDING MARCH 23, 2020**. This extension shall not apply to matters and cases previously excepted by Court Order from the provisions of Standing Order 20-7. Notwithstanding the foregoing, nothing herein shall prejudice the rights of any party to seek an extension of time or to request other relief.
11. This Protocol may be amended by further Standing Order, which shall be published on the Court's website and distributed by email to all CM/ECF users. Each Judge may vary this Protocol on a case-by-case basis in his or her discretion.

AMERICAN BANKRUPTCY INSTITUTE

EXHIBIT A
EMERGENCY CONTACT INFORMATION

Hon. Kevin R. Huennekens	EDVABK-Emergency-Judge_Huennekens@vaeb.uscourts.gov
Hon. Keith L. Phillips	EDVABK-Emergency-Judge_Phillips@vaeb.uscourts.gov

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

INSTRUCTIONS FOR REMOTE WITNESS TESTIMONY
USING ZOOM FOR GOVERNMENT

The following procedures shall apply unless otherwise modified by subsequent order of this Court upon request by a party:

13. All participants on a video conference are expected to conduct themselves as if the hearing / trial were taking place in the courtroom. As such, participants must conduct themselves with the same level of decorum, courtesy, professionalism, and civility as they would at an in-person hearing / trial.

14. To schedule a hearing or trial to be conducted by video conference, the parties should contact the hearing judge's courtroom deputy at the time of scheduling. For hearings and trials previously scheduled that the parties wish to have conducted by video conference, the parties should contact the hearing judge's courtroom deputy as soon as practicable and, in any event, no later than five (5) business days prior to the previously scheduled hearing or trial.

15. The parties will then receive a registration link. All participants must separately register for the video conference no later than two (2) business days prior to the scheduled hearing/trial. The registrations must be true, complete, and accurate. Persons that register will receive separate email notification on whether their registration has been approved or denied. In the event that registration is approved, the confirmation email will include the link to the video conference.

16. All active participants at the evidentiary hearing / trial (including witnesses) must enable video and audio.

17. Any attendee, including active participants, must mute their audio when they are not speaking. If an attendee fails to mute their audio when they are not speaking, the Court may mute their audio for them.

18. Any attendee wishing to address the Court must utilize the “hand raise” feature.

19. The parties may direct that any witness appear via Zoom for Government and may issue subpoenas to such effect, but such party must ensure that such witness (a) has the ability to appear via Zoom for Government; (b) can provide sufficient documentation to the Court to verify his or her identity with the Court prior to their testimony; and (c) may provide testimony in a separate room from any other potential witnesses in this matter and free of outside influence (both in-person and through other technological means).

20. If no scheduling order has been entered in this matter or the scheduling order would not otherwise require a list of witnesses be filed electronically, each party intending to call witnesses must file a witness list no later than twenty-four (24) hours prior to the hearing.

21. If a party presents documentary evidence to a witness, that party bears the burden of ensuring that the witness has been provided a copy of such documentary evidence or has access to such documentary evidence.

22. If a party wishes to utilize the “Screen Share” feature, the party must make such request to the hearing judge’s courtroom deputy no later than two (2) business days’ prior to the hearing.

23. The parties will troubleshoot any problems with technology in advance of the hearing.

~~13-24.~~ The participants are expected to test their equipment to ensure that video/audio components are properly functioning prior to the hearing / trial and be

prepared to proceed at the scheduled time. Problems stemming from the failure to make appropriate arrangements prior to the hearing / trial, or to adhere to this Protocol, may result in, inter alia, (i) the cancellation of the hearing / trial; (ii) the exclusion of an attorney, party or witness from testifying or participating at the hearing / trial; (iii) the termination of any participant's audio and / or video connection to the hearing / trial; and (iv) the imposition of sanctions. Requests to deviate from these procedures, for cause, must be submitted to the Court and opposing parties no later than two (2) business days prior to the hearing / trial. The Court reserves the discretion to deviate from these procedures in the interest of justice and judicial economy