AMERICAN BANKRUPTCY INSTITUTE

2021 Winter Leadership Conference

Prepping for Success: The Keys to Maximizing the Mediation Process

Hosted by the Mediation and Young & New Member Committees

Isley M. Gostin
Wilmer Cutler Pickering Hale & Dorr LLP; Washington, D.C.

Jerry M. Markowitz
Markowitz, Ringel, Trusty, & Hartog, P.A.; Miami

Daniel R. Schimizzi
Whiteford Taylor Preston LLP; Pittsburgh

Edward L. Schnitzer
Montgomery McCracken Walker & Rhoads LLP; New York

CONCURRENT SESSION

2021

ABI: Winter Leadership Conference

Prepping for Success: The Keys to Maximizing the Mediation Process

Saturday, December 11, 2021
9:45 am – 10:45 am

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Wilmer Hale

2) **Jerry Markowitz**
Markowitz Ringel Trusty & Hartog, P.A.

3) **Daniel Schimizzi**
Whiteford Taylor Preston LLP

4) **Edward L. Schnitzer**
Montgomery McCracken Walker & Rhoads LLP

PRESENTATION OUTLINE

1) Getting into mediation

- Types of cases and claims that could be mediated
- Voluntary vs. Court-Ordered Mediation
- Selection of Mediator
- Client expectations

2) Preparing for mediation

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4) Concluding Mediation and Next Steps

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- Settlement Agreements
- Post-Mediation Settlements
- Court Approval

SELECT LOCAL RULES

Delaware Bankruptcy Court Local Rule 9019-5

Rule 9019-5 Mediation.

(a) Types of Matters Subject to Mediation. The Court may assign to mediation any dispute arising in an adversary proceeding, contested matter or otherwise in a bankruptcy case. Except as may be otherwise ordered by the Court, all adversary proceedings filed in a business case shall be referred to mandatory mediation, except an adversary proceeding in which (i) the United States Trustee is the plaintiff; (ii) one or both parties are *pro se*; or (iii) the plaintiff is seeking a preliminary injunction or temporary restraining order. Parties may also stipulate to mediation, subject to Court approval.

(b) Effects of Mediation on Pending Matters. The assignment of a matter to mediation does not relieve the parties to that matter from complying with any other Court orders or applicable provisions of the Code, the Fed. R. Bankr. P. or these Local Rules. Unless otherwise ordered by the Court, the assignment to mediation does not delay or stay discovery, pretrial hearing dates or trial schedules.

(c) The Mediation Process.

(i) Cost of Mediation. Unless otherwise ordered by the Court, or agreed by the parties, (1) in an adversary proceeding that includes a claim to avoid and recover any alleged avoidable transfer pursuant to 11 U.S.C. §§ 544, 547, 548 and/or 550, the bankruptcy estate (or if there is no bankruptcy estate, the plaintiff in the adversary proceeding) shall pay the fees and costs of the mediator and (2) in all other matters, the fees and costs of the mediator shall be shared equally by the parties.

(ii) Time and Place of Mediation Conference. After consulting with all counsel and *pro se* parties, the mediator shall schedule a time and place for the mediation conference that is acceptable to the parties and the mediator. Failing agreement of the parties on the date and location for the mediation conference, the mediator shall establish the time and place of the mediation conference on no less than twenty-one (21) days' written notice to all counsel and *pro se* parties.

(iii) Submission Materials. Unless otherwise instructed by the mediator, not less than seven (7) days before

the mediation conference, each party shall submit directly to the mediator and serve on all counsel and *pro se* parties such materials (the "Submission") in form and content as the mediator directs. Any instruction by the mediator regarding submissions shall be made at least twenty-one (21) days in advance of a scheduled mediation conference. Prior to the mediation conference, the mediator may talk with the participants to determine what materials would be helpful. The Submission shall not be filed with the Court and the Court shall not have access to the Submission.

(iv) Attendance at Mediation Conference.

(A) Persons Required to Attend. Except as provided by subsection (j)(ix)(A) herein, or unless excused by the Mediator upon a showing of hardship, which, for purposes of this subsection shall mean serious or disabling illness to a party or party representative; death of an immediate family member of a party or party representative; act of God; state or national emergency; or other circumstances of similar unforeseeable nature, the following persons must attend the mediation conference personally:

(1) Each party that is a natural person;

(2) If the party is not a natural person, including a governmental entity, a representative who is not the party's attorney of record and who has full authority to negotiate and settle the matter on behalf of the party;

(3) If the party is a governmental entity that requires settlement approval by an elected official or legislative body, a representative who has authority to recommend a settlement to the elected official or legislative body;

(4) The attorney who has primary responsibility for each party's case, including Delaware counsel if engaged at the time of mediation regardless of

whether Delaware counsel has primary responsibility for a party, unless Delaware counsel requests to be and is excused from attendance by the mediator in advance of the mediation conference; and

(5) Other interested parties, such as insurers or indemnitors or one or more of their representatives, whose presence is necessary for a full resolution of the matter assigned to mediation.

(B) Failure to Attend. Willful failure to attend any mediation conference, and any other material violation of this Local Rule, shall be reported to the Court by the mediator and may result in the imposition of sanctions by the Court. Any such report of the mediator shall comply with the confidentiality requirement of Local Rule 9019-5(d).

(v) Mediation Conference Procedures. The mediator may establish procedures for the mediation conference.

(vi) Settlement Prior to Mediation Conference. In the event the parties reach a settlement in principle after the matter has been assigned to mediation but prior to the mediation conference, the plaintiff shall advise the mediator in writing within one (1) business day of the settlement in principle.

(d) Confidentiality of Mediation Proceedings.

(i) Protection of Information Disclosed at Mediation. The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial or other proceeding, evidence pertaining to any aspect of the mediation effort, including, but not limited to: (A) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (B) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (C) proposals made or views expressed by the mediator; (D) statements

or admissions made by a party in the course of the mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence, any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediations or other alternative dispute resolution procedures shall apply. Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in the mediation. However, except as set forth in the previous sentence, no person shall seek discovery from any participant in the mediation with respect to any information disclosed during mediation.

(ii) Discovery from Mediator. The mediator shall not be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications or other documents received or made by the mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation. Nothing contained in this paragraph shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the Court in writing, from filing a final report as required herein, or from otherwise complying with the obligations set forth in this Local Rule.

(iii) Protection of Proprietary Information. The parties, the mediator and all mediation participants shall protect proprietary information.

(iv) Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

(e) Recommendations by Mediator. The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement

recommendation memorandum to attorneys or *pro se* litigants, but not to the Court.

(f) Post-Mediation Procedures.

(i) Filings by the Parties. If a settlement is reached at a mediation, the plaintiff shall file a Notice of Settlement or, where required, a motion and proposed order seeking Court approval of the settlement within twenty-eight (28) days after such settlement is reached. Within sixty (60) days after the filing or the Notice of Settlement or the entry of an order approving the settlement, the parties shall file a Stipulation of Dismissal dismissing the action on such terms as the parties may agree. If the plaintiff fails to timely file the Stipulation of Dismissal, the Clerk's office will close the case.

(ii) Mediator's Certificate of Completion. No later than fourteen (14) days after the conclusion of the mediation conference or receipt of notice from the parties that the matter has settled prior to the mediation conference, unless the Court orders otherwise, the mediator shall file with the Court a certificate in the form provided by the Court ("Certificate of Completion") showing compliance or noncompliance with the mediation conference requirements of this Local Rule and whether or not a settlement has been reached. Regardless of the outcome of the mediation conference, the mediator shall not provide the Court with any details of the substance of the conference.

(g) Withdrawal from Mediation. Any matter assigned to mediation under this Local Rule may be withdrawn from mediation by the Court at any time.

(h) Termination of Mediation. Upon the filing of a mediator's Certificate of Completion under Local Rule 9019-5(f)(ii) or the entry of an order withdrawing a matter from mediation under Local Rule 9019-5(g), the mediation will be deemed terminated and the mediator excused and relieved from further responsibilities in the matter without further order of the Court. If the mediation conference does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing under the Court's scheduling orders.

(i) Modification of ADR Procedure. Any party seeking to deviate from, or propose procedures or obligations in addition to, the Local Rules governing ADR shall comply with Local Rule 7001-1(a)(i).

(j) Alternative Procedures for Certain Avoidance Proceedings.

(i) Applicability. This subsection (j) shall apply to any adversary proceeding that includes a claim to avoid and/or recover any alleged avoidable transfer pursuant to 11 U.S.C. §§ 547, 548 and/or 550 from one or more defendants where the amount in controversy from any one defendant is equal to or less than $75,000.

(ii) Service of this Rule with Summons. The plaintiff shall serve with the Summons a copy of this Del. Bankr. L.R. 9019-5(j) and the Certificate (as defined hereunder) and file a certificate of service within seven (7) days of service.

(iii) Defendant's Election. On or within twenty-eight (28) days after the date that the Defendant's response is due under the Summons, the Defendant may opt-in to the procedures provided under this subsection (j) by filing with the Court on the docket of the adversary proceeding and serving on the Plaintiff, a certificate in the form of Local Form 118 ("Certificate"). The time period provided hereunder to file the Certificate is not extended by the parties' agreement to extend the Defendant's response deadline under the Summons.

(iv) Mediation of All Claims. Unless otherwise agreed by the parties, the Defendant's election to proceed to mediation under subsection (j)(iii) operates as a referral of all claims against the Defendant in the underlying adversary proceeding.

(v) Appointment of Mediator. On or within fourteen (14) days after the date that the Certificate is filed, Plaintiff shall file either: (i) a stipulation (and proposed order) regarding the appointment of a mediator from the Register of Mediators approved by the Court; or (ii) a request for the Court to appoint a mediator from the Register of Mediators approved by the Court. If a stipulation or request to appoint is not filed as required hereunder, then

the Clerk of Court may appoint in such proceeding a mediator from the Register of Mediators approved by the Court.

(vi) Election in Cases Where Amount Exceeds $75,000. In any adversary proceeding that includes a claim to avoid and/or recover an alleged avoidable transfer(s) from one or more defendants where the amount in controversy from any one defendant is greater than $75,000, the plaintiff and defendant may agree to opt-in to the procedures provided under this subsection (j) by filing a certificate in the form of Local Form 119 ("Jt. Certificate") on the docket of the adversary proceeding within the time provided under subsection (j)(iii) hereof that includes the parties' agreement to the appointment of a mediator from the Register of Mediators; provided, however, that in a proceeding that includes more than one defendant, only the defendant who agrees to opt-in is subject to the provisions hereof. The use of the term "Defendant" in this subsection (j) shall include any defendant who agrees with plaintiff to mediation hereunder.

(vii) Participation. The parties shall participate in mediation in an effort to consensually resolve their disputes prior to further litigation.

(viii) Scheduling Order.

(A) Effect of Scheduling Order. Any scheduling order entered by the Court at the initial status conference or otherwise shall apply to the parties and claims which are subject to mediation under this subsection; provided, however, that: (1) the referral to mediation under this subsection (j) shall operate as a stay as against the parties to the mediation of any requirement under Fed. R. Bankr. Proc. 7026 to serve initial disclosures, and a stay as against the parties to the mediation of such parties' right and/or obligation (if any) to propound, object or respond to written discovery requests or other discovery demands to or from the parties to the mediation; and (2) as further provided in subsection (j)(ix)(B) hereof, after the conclusion of mediation the time frames set forth in the

scheduling order entered by the Court shall be adjusted so that such time frames are calculated from the date of completion of mediation (as evidenced by the date of entry on the adversary docket of the Certificate of Completion). The stay provided for under this subsection shall automatically terminate upon the filing of the Certificate of Completion.

(B) Agreement to and Filing of Scheduling Order after Conclusion of Mediation. If the mediation does not result in the resolution of the litigation between the parties to the mediation, then within fourteen (14) days after the entry of the Certificate of Completion on the adversary docket, the parties to the mediation shall confer regarding the adjustment of the date and time frames set forth in the scheduling order entered by the Court so that such dates and time frames are calculated from the date of completion of mediation. The parties shall further agree to a related form of scheduling order or stipulation and proposed order, and the plaintiff shall file such proposed scheduling order or stipulation and proposed order on the docket of the adversary proceeding under certification of counsel. If the parties do not agree to the form of scheduling order or stipulation as required hereunder and the timely filing thereof, then the parties shall promptly contact the Court to schedule a hearing to consider the entry of an amended scheduling order.

(C) Absence of Scheduling Order. The terms of this subsection (viii) apply only if the Court enters a form of scheduling order in the underlying adversary proceeding prior to the conclusion of mediation.

(ix) The Mediation Conference.

(A) Persons Required to Attend. A representative of each party who has full authority to negotiate and settle the matter on behalf of the party must attend the mediation in person. Such representative may be the party's attorney of record in the adversary proceeding. Other

representatives of the party or the party (if the party is not the representative appearing in person at the mediation) may appear by telephone, videoconference or other similar means. If the party is not appearing at the mediation in person, the party shall appear at the mediation by telephone, videoconference or other similar means as directed by the mediator.

(B) Mediation Conference Procedures. The mediator may establish other procedures for the mediation conference.

(x) Other Terms. Unless otherwise provided hereunder, the provisions of Del. Bankr. L.R. 9019-5 (including subsections (b), (c) (iv)(B), and (d) – (h)) shall apply to any mediation conducted under this subsection (j).

Southern District of New York Bankruptcy Court General Order M-452

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PROCEDURES GOVERNING MEDIATION OF MATTERS AND THE USE OF EARLY NEUTRAL EVALUATION AND MEDIATION/ VOLUNTARY ARBITRATION IN BANKRUPTCY CASES AND ADVERSARY PROCEEDINGS	:	GENERAL ORDER AMENDING, AND RESTATING M-143, M-211 and M-390 M-452

Whereas, on November 12, 1993, this court entered General Order M-117 adopting procedures governing the mediation of matters in bankruptcy cases and adversary proceedings before this court (the "Court Annexed Mediation Program"); and

Whereas, on January 18, 1995, this court entered General Order M-143 amending and superseding General Order M-117 and setting forth the Court Annexed Mediation Program in Rules 1.0 through 8.0 of General Order M-143; and

Whereas, in order to expand the Court Annexed Mediation Program to include the use of Early Neutral Evaluation and Mediation/Voluntary Arbitration, as referred to in 28 U.S.C. § 651 through § 658, on October 20, 1999, this court entered General Order M-211, supplementing General Order M-143 by (i) providing that the provisions of General Order M-143, set forth in Rules 1.0 through 8.0, be entitled "Court Annexed Alternative Dispute Resolution Program" and apply to Early Neutral Evaluation and (ii) adding procedures governing Mediation/Voluntary Arbitration set forth in Rules 9.0 through 13.0; and

Whereas, in order to conform certain time periods set forth in its procedures to the 2009 time-related amendments to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and amend, restate and supersede General Orders M-143 and M-211 to combine them into one General Order, and to continue to include Early Neutral Evaluation within the Court Annexed Alternative Dispute Resolution Program, this Court entered General Order M-390; and

Whereas the procedures set forth in General Order M-390 may now be found on the Court's website as the "Procedures Governing the Mediation of Matters and the Use of Early Neutral Evaluation and Mediation and Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings,"

NOW, THEREFORE, IT IS

ORDERED, that the revised Procedures Governing the Mediation of Matters and the Use of Early Neutral Evaluation and Mediation and Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings, annexed hereto, are adopted, effective August 1, 2013, and shall be available in the Clerk's Office and on the Court's web site; and it is further

ORDERED, that the Court may modify the Procedures Governing the Mediation of Matters and the Use of Early Neutral Evaluation and Mediation and Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings from time to time by duly adopted General Order, making the revised Procedures available in the Clerk's Office and on the Court's website no less than fourteen (14) days before the effective date.

Dated: New York, New York
June 28, 2013

/s/ Cecelia G. Morris
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

PROCEDURES GOVERNING MEDIATION OF MATTERS AND THE USE OF EARLY NEUTRAL EVALUATION AND MEDIATION/ VOLUNTARY ARBITRATION IN BANKRUPTCY CASES AND ADVERSARY PROCEEDINGS

The procedures governing the mediation of matters and the use of early neutral evaluation and mediation and voluntary arbitration in bankruptcy cases and adversary proceedings in the United States Bankruptcy Court, Southern District of New York (the "Mediation Procedures") are set forth in the following Rules:

1.0 Assignment of Matters to Mediation.

1.1 By Court Order. The Court may order assignment of a matter to mediation upon its own motion, or upon a motion by any party in interest or the U.S. Trustee. The motion by a party in interest must be filed promptly after filing the initial document in the matter. Notwithstanding assignment of a matter or proceeding to mediation, it shall be set for the next appropriate hearing on the Court docket in the normal course of setting required for such a matter.

1.2 Stipulation of Counsel. Any matter may be referred to mediation upon stipulated order submitted by counsel of record or by a party appearing pro se.

1.3 Types of Matters Subject to Mediation. Unless otherwise ordered by the presiding judge, any adversary proceeding, contested matter or other dispute may be referred by the Court to mediation.

1.4 Mediation Procedures. Upon assignment of a matter to mediation, these Procedures shall become binding on all parties subject to such mediation.

2.0 The Mediator.

2.1 Mediation Register. The Clerk of the United States Bankruptcy Court for the Southern District of New York shall establish and maintain a Register of Persons Qualifying under Rule 2.1.A.

A. Application and Qualification Procedures for Mediation Register. To qualify for the Mediation Register of this Court, a person must apply and meet the following minimum qualifications:

(1) For General Services as a Mediator. A person must have been a member of the bar in any state or the District of Columbia for at least five (5) years; currently a member of the bar in good standing of any state or the District of Columbia; be admitted to practice in the Southern District of New York; and be certified by the Chief Judge to be competent to perform the duties of a mediator. Each person certified as a mediator should take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator.

(2) For Services as a Mediator where the Court Has Determined the Need for Special Skills.

(a) A person must have been authorized to practice for at least four (4) years under the laws of the State of New York as a professional, including but not limited to, an accountant, real estate broker, appraiser, engineer or other professional. Notwithstanding the requirement for authorization to practice under the laws of the State of New York, an investment banker professional who has been practicing for a period of at least four (4) years shall be eligible to serve as a mediator; and

(b) Be an active member in good standing, or if retired, have been a member in good standing, of any applicable professional organization;

(c) Not have:

(i) Been suspended, or have had a professional license revoked, or have pending any proceeding to suspend or revoke such license; or

(ii) Resigned from applicable professional organization while an investigation into allegations of misconduct which would warrant suspension, disbarment or professional license revocation was pending; or

(iii) Have been convicted of a felony.

B. Removal from Mediation Register. A person shall be removed from the Mediation Register either at the person's request or by Court order. If removed from the Register by Court order, the person shall not be returned to the Register absent a Court order obtained upon motion to the Chief Judge and affidavit sufficiently explaining the circumstances of such removal and reasons justifying the return of the person to the Register.

2.2 Appointment of the Mediator.

A. The parties will ordinarily choose a mediator from the Register for appointment by the Court. If the parties cannot agree upon a mediator within seven (7) days of assignment to mediation, the Court shall appoint a mediator and alternate mediator.

B. In the event of a determination by the Court that there are special issues presented which suggest reference to an appropriately experienced mediator other than the mediator chosen by the parties, then the Court shall appoint a mediator and an alternate mediator.

C. If the mediator is unable to serve, the mediator shall file within seven (7) days after receipt of the notice of appointment, a notice of inability to accept appointment and immediately serve a copy upon the appointed alternate mediator. The alternate mediator shall become the mediator for the matter if such person fails to file a notice of inability to

accept appointment within seven (7) days after filing of the original mediator's notice of inability. If neither can serve, the Court will appoint another mediator and alternate mediator.

2.3 Disqualification of a Mediator. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 or if not, disinterested under 11 U.S.C. § 101. Any party selected as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a justice, judge or magistrate.

3.0 The Mediation.

3.1 Time and Place of Mediation. Upon consultation with all attorneys and pro se parties subject to the mediation, the mediator shall fix a reasonable time and place for the initial mediation conference of the parties with the mediator and promptly shall give the attorneys and pro se parties advance written notice of the conference. The conference shall be set as soon after the entry of the mediation order and as long in advance of the Court's final evidentiary hearing as practicable. To ensure prompt dispute resolution, the mediator shall have the duty and authority to establish the time for all mediation activities, including private meetings between the mediator and parties and the submission of relevant documents. The mediator shall have the authority to establish a deadline for the parties to act upon a proposed settlement or upon a settlement recommendation from the mediator.

3.2 Mediation Conference. A representative of each party shall attend the mediation conference, and must have complete authority to negotiate all disputed amounts and issues. The mediator shall control all procedural aspects of the mediation. The mediator shall also have the discretion to require that the party representative or a non-attorney principal of the party with settlement authority be present at any conference. The mediator shall also determine when the parties are to be present in the conference room. The mediator shall report any willful

failure to attend or participate in good faith in the mediation process or conference. Such failure may result in the imposition of sanctions by the Court.

3.3 Recommendations of the Mediator. The mediator shall have no obligation to make written comments or recommendations; provided, however, that the mediator may furnish the attorneys for the parties and any pro se party with a written settlement recommendation. Any such recommendation shall not be filed with the Court.

3.4 Post-Mediation Procedures. Promptly upon conclusion of the mediation conference, and in any event no later than 3:00 P.M. two (2) days prior to the date fixed for hearing referred to in Rule 1.1, the mediator shall file a final report showing compliance or noncompliance with the requirements of this General Order by the parties and the mediation results. If in the mediation the parties reach an agreement regarding the disposition of the matter, they shall determine who shall prepare and submit to the Court a stipulated order or judgment, or joint motion for approval of compromise of controversy (as appropriate), within twenty-one (21) days of the conference. Failure to timely file such a stipulated order or judgment or motion when agreement is reached shall be a basis for the Court to impose appropriate sanctions. Absent such a stipulated order or judgment or motion, no party shall be bound by any statement made or action taken during the mediation process. If the mediation ends in an impasse, the matter will be heard or tried as scheduled.

3.5 Termination of Mediation. Upon receipt of the mediator's final report, the mediation will be deemed terminated, and the mediator excused and relieved from further responsibilities in the matter without further Court order.

3.6 Withdrawal from Mediation. Any matter referred pursuant to mediation may be withdrawn from mediation by the judge assigned to the matter at any time upon determination

for any reason the matter is not suitable for mediation. Nothing in these Mediation Procedures shall prohibit or prevent any party in interest, the U.S. Trustee or the mediator from filing a motion to withdraw a matter from mediation for cause.

4.0 Compensation of Mediators. The mediator's compensation shall be on such terms as are satisfactory to the mediator and the parties, and subject to Court approval if the estate is to be charged with such expense. In the event that the mediator and the parties cannot agree on terms of compensation, then the Court shall fix such terms as are reasonable and just.

5.0 Confidentiality.

5.1 Confidentiality as to the Court and Third Parties. Any statements made by the mediator, by the parties or by others during the mediation process shall not be divulged by any of the participants in the mediation (or their agents) or by the mediator to the Court or to any third party. All records, reports, or other documents received or made by a mediator while serving in such capacity shall be confidential and shall not be provided to the Court, unless they would be otherwise admissible. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in connection with any arbitral, judicial or other proceeding, including any hearing held by the Court in connection with the referred matter. Nothing in this section, however, precludes the mediator from reporting the status (though not content) of the mediation effort to the Court orally or in writing, or from complying with the obligation set forth in 3.2 to report failures to attend or to participate in good faith.

5.2 Confidentiality of Mediation Effort. Rule 408 of the Federal Rules of Evidence shall apply to mediation proceedings. Except as permitted by Rule 408, no person may rely on or introduce as evidence in connection with any arbitral, judicial or other proceeding,including any hearing held by this Court in connection with the referred matter, any aspect of the mediation effort,

including, but not limited to:

A. Views expressed or suggestions made by any party with respect to a possible settlement of the dispute;

B. Admissions made by the other party in the course of the mediation proceedings;

C. Proposals made or views expressed by the mediator.

6.0 Immunity. The Mediators shall be immune from claims arising out of acts or omissions incident to their service as Court appointees in this Mediation Program. See Wagshal v. Foster, 28 F.3d 1249 (D.C. Cir. 1994).

7.0 Consensual Modification of Mediation Procedures. Additional rules and procedures for the mediation may be negotiated and agreed upon by the mediator and the parties at any time during the mediation process.

8.0 Compliance With the U.S. Code, Bankruptcy Rules, and Court Rules and Orders.

Nothing in these Procedures shall relieve any debtor, party in interest, or the U.S. Trustee from complying with this Court's orders or Local Rules, U.S. Code, or the Bankruptcy Rules, including times fixed for discovery or preparation for any Court hearing pending on the matter.

9.0 Assignment of Disputes to Mediation/Voluntary Arbitration.

9.1 Stipulation of Parties. The Court may refer a dispute pending before it to mediation, and, upon consent of the parties, to arbitration if and to the extent that the mediation is unsuccessful. At the conclusion of mediation, after the parties have failed to reach agreement and upon voluntary stipulation of the parties, the mediator, if qualified as an arbitrator, may hear and arbitrate the dispute.

A. Referral to Arbitration pursuant to Bankruptcy Rule 9019 (c). Except as provided in subdivision (B) the Court may authorize the referral of a matter to final and binding arbitration under Bankruptcy Rule 9019 (c) if:

(1) The issue does not arise in an adversary proceeding; or

(2) The issue arises in an adversary proceeding in which the amount in controversy has a dollar value greater than $150,000, the issue is procedural or non- dispositive (such as a discovery dispute), and the Court retains jurisdiction to decide, after presentation of evidence, the adversary proceeding.

B. Referral of Adversary Proceeding to Arbitration pursuant to 28 U.S.C. § 654. With the consent of the parties, under 28 U.S.C. § 654, the Court may authorize the referral to arbitration of an adversary proceeding in which the matter in controversy has a dollar value that does not exceed $150,000, subject to the following provisions:

(1) Determination *De Novo* of Arbitration Awards under 28 U.S.C. § 654.

(a) Time for Filing Demand. Within 30 days after the filing of an arbitration award with the Clerk of Court in an adversary proceeding governed by Rule 9.1(B), any party may file a written demand for a determination *de novo* with the Court.

(b) Action Restored to Court Docket. Upon a demand for a determination *de novo*, the action shall be restored to the docket of the Court and treated for all purposes as if had not been referred to arbitration.

(c) Exclusion of Evidence of Arbitration. The Court shall not admit at the determination *de novo* any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration

proceeding, unless –

(i) The evidence would otherwise be admissible in the Court under the Federal Rules of Evidence; or

(ii) The parties have otherwise stipulated.

(2) Arbitration awards in a proceeding governed by Rule 9.1(B) shall be entered as the judgment of the Court after the time has expired for requesting a determination *de novo*. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court, except that the judgment shall not be subject to review in any other Court by appeal or otherwise.

(a) Filing and Effect of Arbitration Award. The Clerk of the Court shall place under seal the contents of any arbitration award made under Rule 9.1 (B) of this Court Annexed Alternative Dispute Resolution Program and the contents shall not be known to any judge who might be assigned to the matter until the Court has entered a final judgment in the action or the action has otherwise terminated.

C. Safeguards in Consent to Voluntary Arbitration. Matters referred to mediation where the parties do not reach agreement are allowed to proceed to voluntary arbitration under Rule 9.1(A) or Rule 9.1(B) by consent expressly reflected and filed with the Court where –

(1) Consent to arbitration is freely and knowingly obtained; and

(2) No party or attorney is prejudiced for refusing to participate in arbitration.

10.0 The Arbitrator.

10.1 Powers of Mediator/Arbitrator. A mediator/arbitrator to whom an action is

referred shall have the power, after a good faith attempt to mediate, and upon consent of the parties, to –

A. Conduct arbitration hearings consistent with Rule 9.1 above;

B. Administer oaths and affirmations; and

C. Make awards.

10.2 Standards for Certification as an Arbitrator. In addition to fulfilling the requirements found in Rule 2.0 The Mediator, a person qualifying as a Mediator/Arbitrator shall be certified as an arbitrator through a qualifying mediation/ arbitration program which includes an ethics component on how to retain neutrality when changing the process.

10.3 Immunity. All individuals serving as Mediator/Arbitrator in the Court Annexed Alternative Dispute Resolution Program are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

10.4 Subpoenas. The Federal Rules of Civil Procedure and Bankruptcy Procedure apply to subpoenas for the attendance of witnesses and the production of documents at a Voluntary Arbitration hearing.

11.0 Arbitration Award and Judgment.

11.1 An arbitration award made by a Mediator/Arbitrator, along with proof of service of such award on the other party by the prevailing party, shall be filed promptly after the arbitration hearing is concluded with the Clerk of the Court.

12.0 Compensation of Mediator/Arbitrator. The Mediator/Arbitrator's compensation shall be consistent with Rule 4.0 Compensation of Mediator as described above.

12.1 Transportation Allowances. Subject to Court approval, if the estate is to

be charged with such expense, the Mediator/Arbitrator may be reimbursed for actual transportation expenses necessarily incurred in the performance of duties.

13.0 Notice of Court Annexed Alternate Dispute Resolution Program. The Court, at the first scheduled pre-trial conference, shall give notice of dispute resolution alternatives substantially in compliance with Form I.

Eastern District of Virginia Bankruptcy Court Local Rule 9019-1

9016-1 Paragraph (G) is amended to conform this paragraph to the amendment made to FRCP 45(a)(2), which provides that the subpoena must issue from the Court where the action is pending. [Change effective 12/1/15.]

9016-1 Paragraph (I) is amended to conform this paragraph to the amendment made to FRCP 45(a)(3), which provides that the Clerk must issue a subpoena signed but otherwise in blank to a party who requests it. Stylistic changes are made to this paragraph, as well. [Change effective 12/1/15.]

RULE 9017-1 EVIDENCE

(A) ***Presence of Witnesses***: Any counsel desiring to ascertain the presence of witnesses summoned for any particular case shall, before the opening of Court, furnish the Clerk with a list of the names of such witnesses.

(B) ***Qualifications of Experts***: Unless the qualifications of an expert witness, including any party litigant, are admitted, a duplicate written statement of such qualifications will be submitted on the morning of trial. As to experts who are expected to appear frequently, a statement of their qualifications may be filed with the Clerk in each of the divisions of the Court for use at trial. When so filed, the Clerk will maintain the statement in a file kept for that purpose. Counsel desiring to make use of the statement will be responsible for obtaining the same from the Clerk.

(C) ***Hypothetical Questions***: [Repealed]

(D) ***Physical Examination of Litigant***: No doctor or other expert will be permitted to testify as to the nature and extent of the injuries to any litigant unless said expert has previously examined or interviewed such person, or unless such testimony is to be based on hypothetical questions. This Local Bankruptcy Rule is not intended to limit an expert, having previously examined the party, from properly demonstrating any of the injuries of a party.

Comments

9017-1(C) This paragraph of LBR 9017-1 is repealed since it was felt that the paragraph no longer is needed. [Change effective 2/1/00.]

9017-1 A stylistic change has been made to paragraph (B) of the LBR. [Change effective 12/01/09.]

RULE 9019-1 SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

(A) ***Authorization***: The Court encourages the parties to meet and consult with each other to achieve settlement. Pursuant to 28 U.S.C. §§§ 651, 652, and 653, as amended by the Alternative Dispute Resolution Act of 1998, the use of mediation as an alternative dispute resolution process in all adversary proceedings, contested and other matters, is authorized.

(B) ***Obtaining Mediation***

(1) Upon joint motion, parties may request, but are not entitled to, mediation.

(2) Any party may request mediation on motion served on all other parties. The motion must state the basis for the request for mediation and that a good faith effort was made to seek mediation by consent without success. Parties will have 14 days from the date of service to object to the motion. The court will make a determination on the motion upon notice and hearing.

(3) The Court may also order mediation *sua sponte*.

(C) ***Order to Mediate***

(1) In any adversary proceeding, contested or other matter, mediation may only be commenced upon the entry of an order to mediate by the presiding judge.

(2) An order to mediate shall, at minimum, set forth the following:

(a) the individual appointed to act as mediator;

(b) if the parties selected a non-judicial mediator or neutral, the proposed compensation that will be subject to court approval;

(c) unless otherwise ordered by the Court, that mediation processes and procedures and the duties of the parties shall be determined by the court-appointed mediator; and

(d) that the parties or the mediator provide a report to the court of the results of the mediation immediately upon the conclusion of the mediation.

(D) ***Judicial Mediators***

(1) Bankruptcy judges resident in the Eastern District of Virginia are authorized to act as mediators or neutrals.

(2) The decision regarding appointment of a judicial mediator resides exclusively with the presiding judge, and such appointment is effective only upon entry of the order to mediate.

(E) ***Non-Judicial Mediators or Neutrals***

(1) The parties by consent may request the appointment of a non-judicial mediator or neutral.

(2) Appointment of a non-judicial mediator is subject to approval by the presiding judge, and such appointment is effective only upon entry of the order to mediate.

(F) ***Communications with Mediators Prior to Entry of Order to Mediate***

(1) ***Judicial Mediators***: Prior to entry of the order to mediate, parties to the mediation shall not communicate with a judicial mediator about any matters pertaining to mediation.

(2) ***Non-Judicial Mediators***: Prior to entry of the order to mediate, parties to the mediation may communicate with non-judicial mediators only for the purpose of selection and proposed terms of engagement and compensation of a non-judicial mediator for appointment by the Court.

(G) ***Required Settlement Authority***: A judicial mediator to whom a case has been referred may require that counsel and/or a party representative with full settlement authority attend the mediation at any time the judicial mediator considers appropriate.

(H) ***Compensation of Non-Judicial Mediators or Neutrals***: No mediator or neutral may be compensated by contingent fee. Any compensation of a non-judicial mediator or neutral from the estate shall be subject to Court approval after notice and a hearing or as the Court otherwise orders.

(I) ***Effect of Mediation on Proceedings***: Unless otherwise ordered by the Court, the appointment of a mediator or neutral shall not operate to postpone or stay the scheduling of any case or controversy nor shall such appointment be grounds for the continuance of a previously scheduled trial date or the extension of any deadlines previously scheduled by the Court.

(J) ***Disclosure of Mediation Communications and Writings***: The substance of communications and writings in the mediation process shall not be disclosed to any person other than participants in the mediation process; provided, however, that nothing herein shall modify the application of Federal Rule of Evidence 408 nor shall use in the mediation process of an otherwise admissible document, object, or statement preclude its use at trial.

(K) ***Appointment of ADR Administrator***: The chief bankruptcy judge may appoint an ADR Administrator for the district. Duties of the Administrator, if appointed, shall include the following: implementing, administering, overseeing and evaluating the Court's ADR program.

(L) ***Other Governing Law***: Nothing contained in this rule shall in any manner negate or be in abrogation of any other source of authority for conducting mediation, whether by statute, rule, or otherwise.

Comments

LBR 9019-1 cross references Rule 83.6 of the Local Rules of Practice of the United States District Court for the Eastern District of Virginia, which makes that rule applicable to adversary proceedings in case before the Court. [New rule effective 3/1/01.]

9019-(1) This rule is substantively rewritten to provide additional direction to the parties and to make explicit its applicability to contested and other matters in addition to adversary proceedings. [New paragraph effective 08/01/17.]

RULE 9022-1 COURT ORDERS

(A) ***Identification of Attorney Filing Proposed Order***: On the first page of each proposed order filed with the Court, the attorney filing the same shall be identified by name, State Bar number,

Central District of California Bankruptcy Court Third Amended General Order No. 95-01

APPENDIX III

ADOPTION OF MEDIATION PROGRAM FOR BANKRUPTCY CASES AND ADVERSARY PROCEEDINGS (Third Amended General Order No. 95-01)

1.0 PURPOSE AND SCOPE

The United States Bankruptcy Court for the Central District of California (the "Court") recognizes that formal litigation of disputes in bankruptcy cases and adversary proceedings frequently imposes significant economic burdens on parties and often delays resolution of those disputes. The procedures established herein are intended primarily to provide litigants with the means to resolve their disputes more quickly, at less cost, and often without the stress and pressure of litigation.

The Court also notes that the volume of cases, contested matters and adversary proceedings filed in this district has placed substantial burdens upon counsel, litigants and the Court, all of which contribute to the delay in the resolution of disputed matters. A Court-authorized mediation program, in which litigants and counsel meet with a mediator, offers an opportunity for parties to settle legal disputes promptly, less expensively, and to their mutual satisfaction. The judges of the Court hereby adopt the Mediation Program for Bankruptcy Cases and Adversary Proceedings (the "Mediation Program") for these purposes.

It is the Court's intention that the Mediation Program shall operate in such a way as to allow the participants to take advantage of and utilize a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be those that are appropriate and applicable as determined by the mediators and the parties, and will vary from matter to matter.

Nothing contained herein is intended to preclude other forms of dispute resolution with the consent of the parties.

2.0 CASES ELIGIBLE FOR ASSIGNMENT TO THE MEDIATION PROGRAM

Unless otherwise ordered by the judge handling the particular matter (the "Judge"), all controversies arising in an adversary proceeding, contested matter, or other dispute in a bankruptcy case are eligible for referral to the Mediation Program.

3.0 PANEL OF MEDIATORS

3.1 Selection

a. The Court shall establish and maintain a panel ("Panel") of qualified professionals who have volunteered and been chosen to serve as a mediator ("Mediator") for the possible resolution of matters referred to the Mediation Program. The Panel shall be comprised of both attorneys and non-attorneys.

b. Applicants shall submit an Application (in the form attached) (the "Application") to the judge appointed as the administrator of the Mediation Program (the "Mediation Program Administrator"), setting forth their qualifications as described in Paragraph 3.3 below.

c. The judges of the Court will select the Panel from the applications submitted to the Mediation Program Administrator. The judges will consider each applicant's training and experience in mediation or other alternative dispute resolution, if any, as well as the applicant's professional experience and location. Appointments may be limited to keep the Panel at an appropriate size and to ensure that the Panel is comprised of individuals who have broad based experience, superior skills, and qualifications from a variety of legal specialties and other professions.

3.2 Term. Mediators shall serve as members of the Panel for a term of three years unless the Mediator is advised otherwise by the Court or submits a written request to withdraw from the Panel to the Mediation Program Administrator. Reappointment will occur at the judges' discretion, and an application for reappointment is not required.

3.3 Qualifications

a. Attorney Applicants. An attorney applicant shall certify to the Court in the application that the applicant:

1. Is, and has been, a member in good standing of the bar of any state or of the District of Columbia for at least 5 years;

2. Is a member in good standing of the federal courts for the Central District of California;

3. Has served as a principal attorney of record in at least 3 bankruptcy cases (without regard to the party represented) from case commencement to conclusion or, if the case is still pending, to the date of the Application, or has served as the principal attorney of record for a party in interest in at least 3 adversary proceedings or contested matters from commencement to conclusion or, if the case is still pending, to the date of the Application; and

4. Is willing to undertake to evaluate or mediate at least one matter each quarter of each year, subject only to unavailability due to conflicts, personal or professional commitments, or other matters which would make such service inappropriate.

b. Non-Attorney Applicants. A non-attorney applicant shall certify to the Court in the Application that the applicant has been a member in good standing of the applicant's particular profession for at least 5 years, and shall submit a statement of professional qualifications, experience, training and other information demonstrating, in the applicant's opinion, why the applicant should be appointed to the Panel. Non-attorney applicants shall make the same certification required of attorney applicants contained in Paragraph 3.3.a.4.

3.4 Geographic Areas of Service. Applicants shall indicate on the Application all counties within the Central District in which they are willing to serve. Applicants must be willing to travel to all such counties to conduct Mediation Conferences.

4.0 ADMINISTRATION OF THE MEDIATION PROGRAM

The Chief Judge will appoint a judge of the Court to serve as the Mediation Program Administrator. The Mediation Program Administrator will be aided by assigned staff members of the Court, who will maintain and collect applications, maintain the roster of the Panel, track and compile results of the Mediation Program, and handle such other administrative duties as are necessary.

5.0 ASSIGNMENT OF MATTERS TO THE MEDIATION PROGRAM

5.1 Assignment by Request of Parties. A contested matter in a case, adversary proceeding, or other dispute (hereinafter collectively referred to as "Matter" or "Matters") may be assigned to the Mediation Program if requested in writing by the parties in the form attached as Official Forms 701 and 702.

5.2 Assignment by Judge. Matters may also be assigned by order of the Judge at a status conference or other hearing. While participation by the parties in the Mediation Program is generally intended to be voluntary, the Judge, acting *sua sponte* or on the request of a party, may designate specific Matters for inclusion in the Mediation Program. The Judge may do so over the objections of the parties. If a Matter is assigned to the Mediation Program by the Judge at a status conference or other hearing, the parties will be presented with an order assigning the Matter to the Mediation Program, and with a current roster of the Panel. The parties shall normally be given the opportunity to confer and to select a mutually acceptable Mediator and an Alternate Mediator from the Panel. If the parties cannot agree, or if the Judge deems selection by the Judge to be appropriate and necessary, the Judge shall select a Mediator and an Alternate Mediator from the Panel.

5.3 Assignment of Non-Panel Mediators. The Judge may, in his or her sole discretion, appoint individuals who are not members of the Panel as the Mediator and Alternate Mediator at the request of the parties and for good cause shown.

5.4 Use of Official Court Order Assigning Matter to Mediation Program. The order appointing the Mediator and Alternate Mediator and assigning a Matter to the Mediation Program shall be in the form attached as Official Form 702 ("Mediation Order"). The original Mediation Order shall be docketed and retained in the case or adversary proceeding file and copies shall be mailed, by the party so designated by the Judge, to the Mediator, the Alternate Mediator, the Mediation Program Administrator, and to all other parties to the dispute.

5.5 Existing Case Deadlines Not Affected by Assignment to Mediation. Assignment to the Mediation Program shall not alter or affect any time limits, deadlines, scheduling matters or orders in the case, any adversary proceeding, contested matter or other proceeding, unless specifically ordered by the Judge.

5.6 Disclosure of Conflicts of Interest. No Mediator may serve in any Matter in violation of the standards regarding judicial disqualification set forth in 28 U.S.C. § 455.

a. Disclosure by Attorney Mediators. An attorney Mediator shall promptly determine all conflicts or potential conflicts in the manner prescribed by the California Rules of Professional Conduct and disclose same to all parties in writing. If the attorney Mediator's firm has represented one or more of the parties, the Mediator shall promptly disclose that circumstance to all parties in writing.

b. Disclosure by Non-Attorney Mediators. A non-attorney Mediator shall promptly determine all conflicts or potential conflicts in the same manner as a non-attorney would under the applicable rules pertaining to the non-attorney Mediator's profession and disclose same to all parties in writing. If the Mediator's firm has represented one or more of the parties, the Mediator shall promptly disclose that circumstance to all parties in writing.

c. Report of Conflict Issue by Parties. A party who believes that the assigned Mediator and/or the Alternate Mediator has a conflict of interest shall promptly bring the issue to the attention of the Mediator and/or the Alternate Mediator, as applicable, and shall disclose same to all parties in writing.

d. Resolution of Conflict Issue by Judge. If the Mediator and/or the Alternate Mediator does not withdraw from the assignment, the issue shall be brought to the attention of the Judge in writing by the Mediator, the Alternate Mediator, or any of the parties in the form attached as Official Form 704. The notice shall be filed with the Court, and copies of the notice shall be mailed to the Judge, all of the parties to the dispute, their counsel, if any, the Mediator, the Alternate Mediator, and the Mediation Program Administrator. The Judge will then take whatever action(s) he or she deems necessary and appropriate under the circumstances to resolve the conflict of interest issue.

6.0 CONFIDENTIALITY

6.1 In General. No written or oral communication made, or any document presented, by any party, attorney, Mediator, Alternate Mediator or other participant in connection with or during any Mediation Conference, including the written Mediation Conference statements referred to in Paragraph 7.8 below, may be disclosed to anyone not involved in the Mediation, nor may any such communication be used in any pending or future proceeding in this Court or any other court. All such communications and documents shall be subject to all of the protections afforded by FRBP 7068. Such communication(s) may be disclosed, however, if all participants in the Mediation, including the Mediator, agree in writing to such disclosure. In addition, nothing contained herein shall be construed to prohibit parties from entering into written agreements resolving some or all of the Matter(s), or entering into or filing procedural or factual stipulations based on suggestions or agreements made in connection with a Mediation Program conference ("Mediation Conference").

6.2 Non-Confidentiality of Otherwise Discoverable Evidence. Notwithstanding the foregoing, nothing herein shall require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of a Mediation Conference.

6.3 Written Confidentiality Agreement Required. The parties and the Mediator shall enter into a written confidentiality agreement in the form attached as Official Form 708.

6.4 Effect of Recorded Settlement Agreement on Confidentiality. An oral agreement reached in the course of a Mediation Conference is not made inadmissible or protected from disclosure if all of the following conditions are satisfied:

a. The oral agreement is recorded by a court reporter, tape recorder, or other reliable means of sound recording;

b. The terms of the oral agreement are recited on the record in the presence of the parties and the Mediator, and the parties express on the record that they agree to the terms recited;

c. The parties to the oral agreement expressly state on the record that the agreement is enforceable or binding or words to that effect; and

d. The recording is reduced to writing and the writing is signed by the parties and their counsel, if any, within 3 days after it is recorded.

6.5 Effect of Written Settlement Agreement on Confidentiality. A written settlement agreement prepared in the course of a Mediation Conference is not made inadmissible or protected from disclosure if the agreement is signed by the settling parties and their counsel, if any, and either of the following conditions are satisfied:

a. The agreement provides that it is admissible or subject to disclosure, or words to that effect; or

b. The agreement provides that it is enforceable or binding or words to that effect.

6.6 Court Evaluation of Mediation Program Not Precluded by Confidentiality Provisions. Nothing contained herein shall be construed to prevent Mediators, parties, and their counsel, if any, from responding in absolute confidentiality to inquiries or surveys by persons authorized by the Court to evaluate the Mediation Program.

6.7 Confidentiality of Suggestions and Recommendations of Mediator. The Mediator shall have no obligation to make any written suggestions or recommendations but may, as a matter of discretion, provide counsel for the parties (or the parties, where proceeding in *pro per*), with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Court or made available, in whole or in part, directly or indirectly, to the Judge.

7.0 MEDIATION PROCEDURES

7.1 Selection of Mediator. Counsel for the parties (or the parties, where proceeding in *pro per*), are encouraged to contact the proposed Mediator and Alternate Mediator as soon as practicable (preferably before submitting the Mediation Order to the judge for approval, if possible) to determine the availability of the Mediator and Alternate Mediator to serve in the Matter.

7.2 Availability of Mediator. If the Mediator is **not** available to serve in the Matter, the Mediator shall notify the parties, the Alternate Mediator, and the Mediation Program Administrator of that unavailability by mail in the form attached as Official Form 703 as soon as possible, but no later than 7 days from the date of receipt of notification of appointment. **Upon notification of the Mediator's unavailability to serve, the Alternate Mediator shall automatically serve as the Mediator without the necessity for further court order.**

7.3 Availability of Alternate Mediator. If the Alternate Mediator is **not** available to serve in the Matter, the Alternate Mediator shall notify the parties and the Mediation Program Administrator of that unavailability by mail in the form attached as Official Form 703 as soon as possible, but no later than 7 days from the receipt of notification by the Mediator, pursuant to Paragraph 7.1 above, of the Mediator's unavailability to serve.

7.4 Selection of Successor Mediator.

a. By Parties. Within 7 days of receipt of the Alternate Mediator's notification

of unavailability, the parties shall choose a mutually acceptable Successor Mediator and Successor Alternate Mediator by mail in the form attached as Official Form 702. (This is the same Official Form which is used to appoint the original Mediator and Alternate Mediator, as described in Paragraph 5.4 above. However, the word "Successor" **must** be inserted in the caption of the Mediation Order in front of the words "Mediator" and "Alternate Mediator"). The parties shall file such form with the Court and provide a courtesy copy to the Judge and the Mediation Program Administrator.

b. **By Judge.** If the parties are unable to agree on a choice of Successor Mediator and Successor Alternate Mediator, they shall notify the Judge and the Mediation Program Administrator of their inability to do so by mail in the form attached as Official Form 704. In that event, the Judge shall appoint the Successor Mediator and Successor Alternate Mediator.

c. **Use of Official Court Order Assigning Successor Mediator.** When the Successor Mediator and Successor Alternate Mediator have been chosen by the parties and/or appointed by the Judge, the Judge shall execute an order appointing the Successor Mediator and Successor Alternate Mediator in the form attached as Official Form 702. (This is the same Official Form which is used to appoint the original Mediator and Alternate Mediator, as described in Paragraph 5.4 above. However, the word "Successor" **must** be inserted in the caption of the Mediation Order in front of the words "Mediator" and "Alternate Mediator").

7.5 **Initial Telephonic Conference.** Promptly, but no later than 14 days of receipt of notification of appointment, the Mediator shall conduct a telephonic conference with counsel for the parties (or the parties, where appearing in *pro per*) to discuss ((a) fixing a convenient date and place for the Mediation Conference, (b) the procedures that will be followed during the Mediation Conference, (c) who shall attend the Mediation Conference on behalf of each party, (d) what material or exhibits should be provided to the Mediator before the Mediation Conference, and (e) any issues or maters that it would be especially helpful to have the parties address in their written Mediation Conference Statements.

7.6 **Mediation Conference Scheduling.** Also within 14 days of receipt of notification of appointment, the Mediator shall give notice to the parties of the date, time and place for the Mediation Conference. The Mediation Conference shall commence no later than 30 days following the receipt of notification by the Mediator, and shall be held in a suitable neutral setting such as the office of the Mediator, or at a location convenient and agreeable to the parties and the Mediator.

a. **Continuance of Mediation Conference.** The date for the Mediation Conference may be continued for a period not to exceed 30 days upon written stipulation between the Mediator and the parties. The stipulation need not be filed with the Court but the parties must mail a copy of it to the Judge and the Mediation Program Administrator.

b. **Additional Continuance.** At the written request of the parties and for good cause shown, the Judge may, in his or her sole discretion, approve an additional continuance of the Mediation Conference beyond the period specified in Paragraph 7.6.a.

7.7 **Mandatory Service of Mediation Order Prior to Mediation Conference.** Prior to the Mediation Conference, the parties' counsel shall serve a copy of the Mediation Order on the Mediator, Alternate Mediator, Mediation Program Administrator, and all parties to the dispute.

7.8 **Mediation Conference Statements.** Each party shall submit a written Mediation Conference statement ("Mediation Statement") directly to the Mediator and to the parties to the Mediation Conference no less than 7 days prior to the date of the initial Mediation Conference, unless modified by the Mediator.

a. **Format.** Mediation Statements shall not exceed 10 pages, excluding exhibits and attachments. Mediation Statements shall comply with all of the requirements of Court Manual Section 2-5, unless such compliance is excused by the Mediator.

b. **Confidentiality.** Mediation Statements shall be subject to all of the protections afforded by the confidentiality provisions contained herein and by FRBP 7068.

c. **Statements Not Filed with Court.** The Mediation Statements shall **not** be filed with the Court, and the Judge shall not have access to them. In addition, the phrase **"CONFIDENTIAL -- NOT TO BE FILED WITH THE COURT"** shall be typed on the first page of the Mediation Statements.

d. **Mandatory Contents.** Mediation Statements must:

1. Identify the person(s), in addition to counsel, who will attend the Mediation Conference as representative(s) of the party, who have authority to make decisions;

2. Describe briefly the substance of the dispute;

3. Address any legal or factual issue(s) that might appreciably reduce the scope of the dispute or contribute significantly to settlement;

4. Identify the discovery that could contribute most to preparing the parties for meaningful discussions;

5. Set forth the history of past settlement discussions, including disclosure of any prior and any presently outstanding offers and demands;

6. Make an estimate of the cost and time to be expended for further discovery, pretrial motions, expert witnesses and trial;

7. Indicate presently scheduled dates for further status conferences, pretrial conferences, trial, or otherwise; and

8. Attach copies of the document(s) from which the dispute has arisen (*e.g.*, contracts), or the document(s) whose availability would materially advance the purposes of the Mediation Conference.

e. Recommended Additional Contents. Parties may identify in the Mediation Statements the person(s) connected to a party opponent (including a representative of a party opponent's insurance carrier) whose presence at the Mediation Conference would substantially improve the prospects for making the session productive. The fact that a person has been so identified shall not, by itself, result in an order compelling that person to attend the Mediation Conference.

f. Additional Mediation Statements for Mediator Only. Each party may submit directly to the Mediator, for his or her eyes only, a separate confidential Mediation Statement describing any additional interests, considerations, or matters that the party would like the Mediator to understand before the Mediation Conference begins. Such Mediation Statements shall not exceed 10 pages, excluding exhibits and attachments, and shall comply with all of the requirements of Court Manual Section 2-5 unless such compliance is excused by the Mediator.

7.9 Mandatory Attendance at Mediation Conference.

a. By Counsel. Counsel for each party who is primarily responsible for the Matter (or the party, where proceeding in *pro per*) shall personally attend the Mediation Conference and any adjourned session(s) of that conference, unless excused by the Mediator for cause. Counsel for each party shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to settlement, in detail and in good faith.

b. By Parties. All individual parties, and representatives with authority to negotiate and to settle the Matter on behalf of parties other than individuals, shall personally attend the Mediation Conference and any adjourned session(s) of that conference, unless excused by the Mediator for cause. Each party shall come prepared to discuss all liability issues, all damage issues, and the position of the party relative to settlement, in detail and in good faith.

c. By Governmental Agencies. A unit or an agency of government satisfies

this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements.

d. **Telephonic Appearance.** Any party or lawyer who is excused by the Mediator from appearing in person at the Mediation Conference may be required by the Mediator to participate by telephone. This decision is within the Mediator's sole discretion.

7.10 **Consequences of Failure to Attend Mediation Conference and Other Violations of Mediation Program Procedures.** Willful failure to attend the Mediation Conference and/or other violations of the Mediation Program procedures shall be reported to the Judge by the Mediator by written notice in the form attached as Official Form 705, and may result in the imposition of sanctions by the Judge. The Mediator's notice shall be filed with the Court and copies of the notice shall be mailed to the Judge, all of the parties to the dispute, their counsel, if any, and the Mediation Program Administrator. The Judge will then take whatever action(s) he or she deems necessary and appropriate under the circumstances to resolve the issue of such willful failure to attend the Mediation Conference and/or other violations of the Mediation Program procedures.

7.11 **Conduct at the Mediation Conference.** The Mediation Conference shall proceed informally. Rules of evidence shall not apply. There shall be no formal examination or cross-examination of witnesses. The Mediator may conduct continued Mediation Conferences after the initial session where necessary. As appropriate, the Mediator may:

a. Permit each party (through counsel or otherwise) to make an oral presentation of its position;

b. Help the parties identify areas of agreement and, where feasible, enter into stipulations;

c. Assess the relative strengths and weaknesses of the parties' contentions and evidence, and explain as carefully as possible the reasoning of the Mediator that supports these assessments;

d. Assist the parties, through separate consultation or otherwise, in settling the dispute;

e. Estimate, where feasible, the likelihood of liability and the dollar range of damages;

f. Help the parties devise a plan for sharing the important information and/or conducting the key discovery that will assist them as expeditiously as possible to participate in meaningful settlement discussions or to posture the case for disposition by other means; and

g. Determine whether some form of follow up to the Mediation Conference would contribute to the case development process or to settlement.

7.12 Suggestions and Recommendations of Mediator. If the Mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the client. The Mediator shall have no obligation to make an written comments or recommendations, but may, as a matter of discretion, provide the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Court or made available in whole or in part directly or indirectly, to the Judge.

8.0 PROCEDURE UPON COMPLETION OF MEDIATION CONFERENCE

8.1 Upon the conclusion of the Mediation Conference the following procedures shall be followed:

a. If Matter Settled. If the parties have reached an agreement regarding the disposition of the Matter, the parties, with the advice of the Mediator, shall determine who shall prepare the writing to dispose of the Matter. If necessary, the parties may, with the Mediator's consent, continue the Mediation Conference to a date convenient for all parties and the Mediator. Where required, they shall promptly submit a fully executed settlement stipulation to the Judge for approval, and shall mail a copy to the Mediation Program Administrator. The Judge will accommodate parties who desire to place any resolution of a Matter on the record during or following the Mediation Conference.

b. Mediator's Certificate of Completion of Conference. Within 14 days of the Mediation Conference, the Mediator shall file with the Court and serve on the parties and the Mediation Program Administrator a certificate in the form attached as Official Form 706, which shows whether there has been compliance with the Mediation Conference requirements and whether or not a settlement has been reached. Regardless of the outcome of the Mediation Conference, the Mediator will **not** provide the Judge with any details of the substance of the Mediation Conference.

c. Confidential Evaluation. In order to assist the Mediation Program Administrator in compiling useful data to evaluate the Mediation Program and aid the Court in assessing the efforts of the members of the Panel, the Mediator shall provide a Mediation Conference Report to the Mediation Program Administrator in the form attached as Official Form 709. The Mediation Conference Report shall **not** be filed with the Court and the Judge shall not have access to it. In addition, the phrase **"CONFIDENTIAL -- NOT TO BE FILED WITH THE COURT"** shall be typed on the first page of the Mediation Conference Report.

9.0 *PRO BONO* AND COMPENSATED SERVICE OF MEDIATORS

9.1 Mandatory *Pro Bono* Service. The Mediator shall serve on a *pro bono* basis and shall not require compensation or reimbursement of expenses for the first full day of at least one Mediation Conference per quarter per year. If, at the conclusion of the first full day of the Mediation Conference, it is determined by the parties that additional time will be both necessary and productive in order to complete the Mediation Conference, then:

a. If the Mediator consents to continue to serve on a *pro bono* basis, the parties may agree to continue the Mediation Conference; or

b. If the Mediator does not consent to continue to serve on a *pro bono* basis, the Mediator's compensation shall be on such terms as are satisfactory to the Mediator and the parties, and shall be subject to the prior approval of the Judge if the estate is to be charged with such expense.

9.2 Compensated Service Upon Completion of Mandatory *Pro Bono* Service. After a Mediator has concluded at least one *pro bono* mediation for the particular quarter, nothing herein shall prohibit the Mediator and the parties from agreeing that the Mediator may be compensated for services rendered by the Mediator. The amount of such compensation and the terms governing the amount and payment shall be as agreed upon among the parties. If applicable, any party or parties to the mediation may apply to the Judge for authorization to compensate the Mediator from property of the estate. Nothing in this provision, however, shall require any party to compensate a Mediator other than as may be mutually agreed upon among the parties and the Mediator.

10.0 IMPLEMENTATION

10.1 The Mediation Program became effective on July 1, 1995.

10.2 Judge Barry Russell is appointed the Mediation Program Administrator.

Southern District of Florida Bankruptcy Court Local Rule 9019-2

Select Local Rule Series

- Choose -

Mediation

Local Rule Number: Rule 9019-2
9000 Series

(A) Registration of Mediators.

(1) Mediation Register. The clerk shall establish and maintain a register of qualified attorneys and retired federal and state judges who have registered to serve as mediators in adversary proceedings and contested matters in cases pending in the court. Attorneys and retired federal and state judges who meet the qualifications described in subdivision (2) shall be so registered. This subdivision shall not preclude an individual from serving as a mediator if the parties to the dispute agree upon the selection of that mediator. However, a mediator selected by the parties and not registered under this rule nonetheless shall comply with the other provisions of this rule where applicable.

(2) Qualifications of Mediator. To qualify for service as a mediator under this rule, a mediator must:

(a) (i) have completed a minimum of 40 hours in a circuit mediation training program certified by the Florida Supreme Court, (ii) have completed the American Bankruptcy Institute/St. John's University School of Law Bankruptcy Mediation Training, or (iii) be certified by the Florida Supreme Court as a circuit court mediator; and

(b) agree to accept at least 2 mediation assignments per year in cases where at least one party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono if no litigant is able to contribute compensation.

(3) Procedures for Registration. Each mediator who wishes to be included on the register must file the Local Form "Verification of Qualification to Act as Mediator".

(4) Removal from Register. The clerk shall remove a mediator from the register of mediators at the mediator's request or at the direction of a majority of the judges of the court in the exercise of their discretion. If removed at the mediator's request, the mediator may later request to be added to the register by submitting a new verification

form. Upon receipt of such request, the clerk shall add the qualified mediator to the register.

(5) Mediator's Oath. Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. §453, before serving as a mediator. The oath may be administered by any person authorized to administer oaths, and proof of the oath or affirmation shall be included on the Local Form "Verification of Qualification to Act as Mediator".

(6) Compensation of Mediators. Mediators shall be compensated at the rate set by the U.S. District Court for the Southern District of Florida, and as adopted by this court by local rule or administrative order or at such rate as may be agreed to in writing by the parties and the mediator selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference, but a case trustee's or debtor in possession's share of the cost shall be an expense of the estate.

(B) Referral of Matters to Mediation.

(1) Manner of Referral. The court may order the assignment of a matter or proceeding to mediation at a pretrial conference or other hearing, upon the request of any party in interest or the U.S. Trustee, or upon the court's own motion. The court shall use the Local Form "Order of Referral to Mediation", which shall: (a) designate the trial or hearing date, (b) direct that mediation be conducted not later than 14 days before the scheduled trial or hearing, and (c) require the parties to agree upon a mediator within seven days after the date of the order. The parties shall timely file the Local Form "Notice of Selection of Mediator", failing which the clerk shall designate a mediator from the clerk's register on a random basis within court divisions using the Local Form "Notice of Clerk's Designation of Mediator" and serve this notice on the required parties. Notwithstanding the assignment of a matter or proceeding to mediation, the court shall set such matter or proceeding for trial final hearing, pretrial conference or other proceeding as is appropriate in accordance with the Bankruptcy Rules and these rules.

(2) Disqualification of Mediator for Cause. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. §144, and shall be disqualified in any action in which the mediator would be required to do so if the mediator were a judge governed by 28 U.S.C. §455.

(3) Replacement of Mediator. If any party to the mediation conference, for any reason, objects to the designated mediator, then within three business days from the date of the notice of designation, the objecting party shall file with the clerk, and serve upon the mediator and all other parties to the mediation, a request for an alternate mediator including in the request the name of any alternate mediator already agreed

upon by the parties. If the alternate mediator has been agreed upon, the clerk shall designate that mediator. Otherwise, the clerk shall designate a second mediator from the register of mediators on a random basis and shall serve a second notice of designation on all parties to the mediation conference and on the designated mediator. Each party shall be entitled to one challenge to any clerk-designated mediator. A mediator who is unable to serve shall, within seven days from the date of the notice of designation, serve on the clerk and all parties to the mediation a written notice of inability to serve, and the clerk shall designate an alternate mediator in the manner described above.

(4) No Stay. Notwithstanding a matter being referred to mediation, discovery and preparation for trial or final hearing shall not be stayed by mediation.

(5) Types of Cases Subject to Mediation. Any adversary proceeding or contested matter may be referred by the court to mediation.

(C) Mediation Conference.

(1) Notice and Procedures. Upon consultation with the parties and their attorneys, the mediator shall fix a reasonable time and place for the mediation conference, except as otherwise agreed by the parties or by order of the court, and shall give the parties at least 14 days' advance written notice of the conference. The conference shall be set as soon after the entry of the mediation order and as far in advance of the final evidentiary hearing as practicable. In keeping with the goal of prompt dispute resolution, the mediator shall have the duty and authority to establish the time for all mediation activities including a deadline for the parties to act upon a settlement or upon mediated recommendations.

(2) Attendance of Parties Mandatory. An attorney who is responsible for each party's case shall attend the mediation conference. Each individual party and the representatives of each non-individual party shall appear with the full authority to negotiate the amount and issues in dispute without further consultation. The mediator shall determine when the parties are to be present in the conference room. No party can be required to participate in a mediation conference for more than two hours.

(3) Public Entity as Party. If a party to mediation is a public entity, either a federal agency or an entity required to conduct its business pursuant to Chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.

(4) Failure to Attend or to Participate in Good Faith. The mediator shall report to the court the complete failure of any party to attend the mediation conference and shall report to the court the failure of any party to participate in the mediation process in good faith, either of which failures may result in the imposition of sanctions by the court.

(D) Recommendations of Mediator. The mediator shall have no obligation to make any written comments or recommendations other than the report required by subdivision (E). If a written recommendation is prepared, no copy shall be filed with the court.

(E) Post-Mediation Procedures. Within seven days after the mediation conference, the mediator shall file with the court a report showing compliance or non-compliance by the parties with the mediation order and the results of the mediation, using the Local Form "Report of Mediator". In the event there is an impasse, the mediator shall report that there is a lack of agreement, and shall make no further comment or recommendation. If the parties have reached an agreement regarding the disposition of the matter or proceeding, they shall prepare and submit to the court within 14 days after the filing of the mediator's report an appropriate stipulation of settlement and joint motion for its approval. Failure to file such a motion shall be a basis for the court to impose appropriate sanctions. If the mediator's report shows mediation has ended in an impasse, the matter will be tried as scheduled.

(F) Confidentiality. Conduct or statements made in the course of mediation proceedings constitute "conduct or statements made in compromise negotiations" within the meaning of Rule 408 of the Federal Rules of Evidence, and no evidence inadmissible under Rule 408, shall be admitted or otherwise disclosed to the court.

(G) Withdrawal from Mediation. Any action or claim referred to mediation pursuant to this

rule may be exempt or withdrawn from mediation by the presiding judge at any time, before or after reference, upon motion of a party and/or a determination for any reason that the case is not suitable for mediation.

(H) Compliance with Bankruptcy Code and Rules. Nothing in this rule shall relieve any debtor, party in interest, or the U.S. Trustee from complying with any other orders of the court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or these rules.

Second Circuit Court of Appeals Local Rule 33.1

Case-Filing

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Local Rule 33.1. Civil Appeals Mediation Program

(a) Scope of Plan. The Civil Appeals Mediation Program (CAMP) applies to all civil cases except proceedings in which at least one party appears pro se, matters initially placed on the court's Non-Argument Calendar, petitions for writs of mandamus or prohibition, and habeas corpus cases and proceedings under 28 U.S.C. §2255.

(b) Referral to Circuit Mediation. When a case within CAMP's scope is docketed, the clerk refers it to the Circuit Mediation Office for review. At any time during the pendency of a case, including one outside CAMP's scope, a party may request referral to the Circuit Mediation Office or the Court may so order. The Circuit Mediation Office may recommend to the clerk the entry of orders governing the case.

(c) Mediators. The court employs mediators and may appoint attorneys to serve as volunteer mediators. Mediator disqualification is governed by the Code of Conduct for Judicial Employees.

(d) CAMP Conference. The court may direct counsel for the parties to participate in a conference to explore the possibility of settlement, narrow the issues, and discuss any matters that may expedite disposition of the appeal.

> **(1) Counsel's Participation.** Before a CAMP conference, counsel must consult with the client and obtain as much authority as feasible to settle the case. At the conference, counsel must be prepared to discuss in depth the legal, factual and procedural issues of the case.
>
> **(2) Client Participation.** A mediator may require a client to participate in a conference in person or by telephone.
>
> **(3) Conference Location.** A mediator may hold a conference in person at the Circuit Mediation Office or at another location, or by telephone or video.
>
> **(4) Survey.** After the conclusion of a CAMP proceeding, each party must complete the anonymous Post-Conference Survey and submit it electronically to this court's Director of Legal Affairs.

(e) Confidentiality. Information shared during a CAMP proceeding is confidential and is not included in court files or disclosed to the judges of this court except to the extent disclosed by an order entered as a result of a CAMP proceeding. The attorneys and other participants are prohibited from disclosing what is said in a CAMP proceeding to anyone other than clients, principals or co-counsel, and then, only upon receiving due assurance that the recipient will honor confidentiality.

(f) Grievance Procedure. Any complaint regarding the handling of any CAMP proceeding must be submitted to the chief judge of the court.

(g) Non-Compliance Sanctions. The court may, after affording notice and an opportunity to be heard, impose sanctions on an attorney or party who does not participate in good faith in the CAMP program.

Last modified at 10/26/2017

ABI Mediation Committee Mediation Model Rules

Model Rule 1
Mediation

(a) Types of Matters Subject to Mediation. The court may assign to mediation any dispute arising in a bankruptcy case, whether or not any adversary proceedings or contested matters is presently pending with respect to such dispute. Parties to an adversary proceeding, contested matter and a dispute not yet pending before the court, may also stipulate to mediation, subject to court approval.

(b) Effects of Mediation on Pending Matters. The assignment of a matter to mediation does not relieve the parties to that matter from complying with any other court orders or applicable provisions of the U.S. Code, the Bankruptcy Rules or these Local Rules. Unless otherwise ordered by the court, the assignment to mediation does not delay or stay discovery, pretrial hearing dates or trial schedules. Any party may seek such delay or stay, and the court, after notice and hearing, may enter appropriate orders.

(c) The Mediation Conference.

(i) Informal Mediation Discussions. The mediator shall be entitled to confer with any or all a) counsel, b) pro se parties, c) parties represented by counsel, with the permission of counsel to such party and d) other representatives and professionals of the parties, with the permission of a pro se party or counsel to a party, prior to, during or after the commencement of the mediation conference (the “Mediation Process”). The mediator shall notify all Mediation Participants of the occurrence of all such communications, but no advance notice or permission from the other Mediation Participants shall be required. The topic of such discussions may include all matters which the mediator believes will be beneficial at the mediation conference or the conduct of the Mediation Process, including, without limitation, those matters which will ordinarily be included in a Submission under Local Rule 1(c)(iii). . All such discussions held shall be subject to the confidentiality requirements of subsection (d) of this Local Rule 1.

(ii) Time and Place of Mediation Conference. After consulting with the parties and their counsel, as appropriate, the mediator shall schedule a time and place for the mediation conference that is acceptable to the parties and the mediator. Failing agreement of the parties on the date and location for the mediation conference, the mediator shall establish the time and place of the mediation conference on no less than twenty one (21) days' written notice to all counsel and pro se parties. The mediation conference may be concluded after any number of sessions, all of which shall be considered part of the mediation conference for purposes of this Local Rule.

(iii) Submission Materials. Each Mediation Participant (as defined below) shall submit directly to the mediator such materials (the "Submission") as are directed by the mediator after consultation with the Mediation Participants. The mediator may confer with the Mediation Participants, or such of them as the mediator determines appropriate, to discuss what materials would be beneficial to include in the Submission, the timing of the Submissions and what portion of such materials, if any, should be provided to the mediator but not to the other parties. No Mediation Participant shall be required to provide its Submission, or any part thereof, to another party without the consent of the submitting Mediation Participant. The Submission shall not be filed with the

Model Rule 1
Mediation

court and the court shall not have access to the Submission. A Submission shall ordinarily include an overview of the facts and law, a narrative of the strengths and weaknesses of a party's case, the anticipated cost of litigation, the status of any settlement discussions and the perceived barriers to a negotiated settlement.

(iv) Attendance at Mediation Conference.

(A) Persons Required to Attend. Unless excused by the mediator upon a showing of hardship, or if the mediator determines that it is consistent with the goals of the mediation to excuse such party, the following persons (the " Mediation Participants") must attend the mediation conference personally:

1) Each party that is a natural person;

2) If the party is not a natural person, including a governmental entity, a representative who is not the party's attorney of record and who has authority to negotiate and settle the matter on behalf of the party, and prompt access to any board, officer, government body or official necessary to approve any settlement that is not within the authority previously provided to such representative;

3) The attorney who has primary responsibility for each party's case;

4) Other interested parties, such as insurers or indemnitors, whose presence is necessary, or beneficial to, reaching a full resolution of the matter assigned to mediation, and such attendance shall be governed in all respects by the provisions of this subparagraph (c)(iv) of this Local Rule 1.

(B) Persons Allowed to Attend. Other interested parties in the bankruptcy case who are not direct parties to the dispute, i.e., representatives of a creditors committees, may be allowed to attend the mediation conference, but only with the prior consent of the mediator and the Mediation Participants, who will establish the terms, scope and conditions of such participation. Any such interested party that does participate in the mediation conference will be subject to the confidentiality provisions of Local Rule 1(d) and shall be a Mediation Participant.

(C) Failure to Attend. Willful failure of a Mediation Participant to attend any mediation conference, and any other material violation of this Local Rule, may be reported to the court by any party, and may result in the imposition of sanctions by the court. Any such report shall comply with the confidentiality requirement of Local Rule 1(d).

(v) Mediation Conference Procedures. After consultation with the Mediation Participants or their counsel, as appropriate, the mediator may establish procedures for the mediation conference.

(vi) Settlement Prior to Mediation Conference. In the event the parties reach an agreement in principle after the matter has been assigned to mediation, but prior to the mediation conference, the parties shall promptly advise the mediator in writing. If the parties agree that a settlement in principle has been reached, the mediation conference shall be continued (to a date certain or generally as the mediator determines) to provide the parties sufficient time to take all steps necessary to finalize the settlement. As soon as practicable, but in no event later that thirty (30) days after the parties report of an agreement in principle, the parties shall confirm to the mediator that the settlement has been finalized. If the agreement in principle has not been finalized, the mediation conference shall go forward, unless further extended by the mediator, or by the court.

(d) Confidentiality of Mediation Proceedings.

(i) Protection of Information Disclosed at Mediation. The mediator and the Mediation Participants are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the Mediation Participants or by witnesses in the course of the mediation (the "Mediation Communications"). No person, including without limitation, the Mediation Participants and any person who is not a party to the dispute being mediated or to the Mediation Process (a "Person") , may rely on or introduce as evidence in any arbitral, judicial or other proceeding, evidence pertaining to any aspect of the Mediation Communications, including but not limited to: (A) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (B) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (C) proposals made or views expressed by the mediator; (D) statements or admissions made by a party in the course of the mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence, any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediations or other alternative dispute resolution procedures shall apply. Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in the mediation. However, except as set forth in the previous sentence, no Person shall seek discovery from any of the Mediation Participants with respect to the Mediation Communications.

(ii) Discovery from Mediator. The mediator shall not be compelled to disclose to the court or to any Person outside the mediation conference any of the records, reports, summaries, notes, Mediation Communications or other documents received or made by the mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation or the Mediation Communications in connection with any arbitral,

judicial or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation. Nothing contained in this paragraph shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the court in writing, from filing a final report as required herein, or from otherwise complying with the obligations set forth in this Local Rule 1.

(iii) Protection of Proprietary Information. The Mediation Participants and the mediator shall protect proprietary information. Proprietary information should be designated as such by the Mediation Participant seeking such protection, in writing, to all Mediation Participants, prior to any disclosure of such proprietary information. Such designation shall not require the disclosure of the proprietary information, but shall include a description of the type of information for which protection is sought. Any disputes as to the protection of proprietary information may be decided by the court.

(iv) Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

(e) Recommendations by Mediator. The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement recommendation memorandum to parties, or any of them, but not to the court.

(f) Post-Mediation Procedures.

(i) Filings by the Parties. If an agreement in principle for settlement is reached (even if the agreement in principle is subject to the execution of a definitive settlement agreement or court approval, and is not binding before that date) during the mediation conference, one or more of the Mediation Participant shall file a notice of settlement or, where required, a motion and proposed order seeking court approval of the settlement.

(ii) Mediator's Certificate of Completion. After the conclusion of the mediation conference (as determined by the mediator), the mediator shall file with the court a certificate in the form provided by the court ("Certificate of Completion") notifying the court about whether or not a settlement has been reached. Regardless of the outcome of the Mediation Process, the mediator shall not provide the court with any details of the substance of the conference or the settlement, if any.

(iii) If the Agreement in Principle is not completed. If the parties are not able or willing to consummate the agreement in principle that was reached during the mediation conference, and the agreement in principal never becomes a binding contract, the substance of the proposed settlement shall remain confidential and shall not be disclosed to the court by the mediator or any of the Mediation Participants.

(g) Withdrawal from Mediation. Any matter assigned to mediation under this Local Rule may be withdrawn from mediation by the court at any time. Any Mediation Participant may file a motion with the court seeking authority to withdraw from the mediation or

seeking to withdraw any matter assigned to mediation by court order from such mediation.

(h) Termination of Mediation. Upon the filing of a mediator's Certificate of Completion under Local Rule 1(f) (ii) or the entry of an order withdrawing a matter from mediation under Local Rule 1(g) the mediation will be deemed terminated and the mediator excused and relieved from further responsibilities in the matter without further order of the court. If the Mediation Process does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing under the court's scheduling orders. However, the court shall always have the discretion to reinstitute the Mediation Process if the court determines that such action is the most appropriate course under the circumstances. In such event, Local Rule 1 and Local Rule 2 shall apply in the same manner as if the mediation were first beginning pursuant to Local Rule 1(a).

(i) Applicability of Rules to a Particular Mediation. The court may, upon request of one or more parties to the mediation, or on the court's own motion, declare that one or more of provisions of this Local Rule may be suspended or rendered inapplicable with respect to a particular mediation except Local Rule 1(d) and Local Rule 1(j). Otherwise these Local Rules shall control any mediation related to a case under the Bankruptcy Code.

(j) Immunity. Aside from proof of actual fraud or other willful misconduct, mediators shall be immune from claims arising out of acts or omissions incident or related to their service as mediators appointed by the bankruptcy court. See, Wagshal v. Foster, 28 F.3d. 1249 (D.C. Cir. 1994). Appointed mediators are judicial officers clothed with the same immunities as judges and to the same extent set forth in Title 28 of the United States Code.

Model Rule 2

Mediator Qualifications and Compensation

(a) Register of Mediators. The Clerk shall establish and maintain a register of persons (the "Register of Mediators") qualified under this Local Rule and designated by the Court to serve as mediators in the Mediation Program. The Chief Bankruptcy Judge shall appoint a Judge of this Court, the Clerk or a person qualified under this Local Rule who is a member in good standing of the Bar of the State of _____ to serve as the Mediation Program Administrator. Aided by a staff member of the Court, the Mediation Administrator shall receive applications for designation to the Register, maintain the Register, track and compile reports on the Mediation Program and otherwise administer the program.

(b) Application and Qualifications. Each applicant shall submit to the Mediation Program Administrator a statement of professional qualifications, experience, training and other information demonstrating, in the applicant's opinion, why the applicant should be designated to the Register. The applicant shall submit the statement substantially in compliance with Local Form _____. The statement also shall set forth whether the applicant has been removed from any professional organization, or has resigned from any professional organization while an investigation into allegations of professional misconduct was pending and the circumstances of such removal or resignation. This statement shall constitute an application for designation to the Mediation Program. Each applicant shall certify that the applicant has completed appropriate mediation training or has sufficient experience in the mediation process. To have satisfied the requirement of “appropriate mediation training” the applicant should have successfully completed at least 40 hours of mediation training sponsored by a nationally recognized bankruptcy organization. To have satisfied the requirement of “sufficient experience in the mediation process” the applicant must have at least ten (10) years of professional experience in the insolvency field.

(c) Court Certification. The Court in its sole and absolute discretion, on any feasible basis shall grant or deny any application submitted under this Local Rule. If the Court grants the application, the applicant's name shall be added to the Register, subject to removal under these Local Rules.

(i) Reaffirmation of Qualifications. The Mediation Program Administrator may request from each applicant accepted for designation to the Register to reaffirm annually the continued existence and accuracy of the qualifications, statements and representations made in the application. If such a request is made and not complied with within one month of such request, the applicant shall be removed from the Register until compliance is complete (the “Suspension of Eligibility”). After the passage of six months from the Suspension of Eligibility, if compliance is not complete, the applicant shall be permanently removed from the Register and may only be placed on the Registry by reapplying in the manner set forth pursuant to the provisions of subsection (b) of this Local Rule 2.

(d) Removal from Register. A person shall be removed from the Register either at the person's request or by Court order entered on the sole and absolute determination of the Court. If removed by Court order, the person shall be eligible to file an application for reinstatement after one year.

Model Rule 2
Mediator Qualifications and Compensation

(e) Appointment.

(i) Selection. Upon assignment of a matter to mediation in accordance with these Local Rules and unless special circumstances exist, as determined by the Court, the parties shall select a mediator. If the parties fail to make such selection within the time frame as set by the Court, then the Court shall appoint a mediator. A mediator shall be selected from the Register of Mediators, unless the parties stipulate and agree to a mediator not on the Register of Mediators.

(ii) Inability to Serve. If the mediator is unable to or elects not to serve, he or she shall file and serve on all parties, and on the Mediation Program Administrator, within seven (7) days after receipt of notice of appointment, a notice of inability to accept the appointment. In such event an alternative mediator shall be selected in accordance with the procedures pursuant to Subsection (e)(i) of this Local Rule 2.

(iii) Disqualification.

(A) Disqualifying Events. Any person selected as a mediator may be disqualified for bias or prejudice in the same manner that a Judge may be disqualified under 28 U.S.C. § 44. Any person selected as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a Judge.

(B) Disclosure. Promptly after receiving notice of appointment, the mediator shall make an inquiry sufficient to determine whether there is a basis for disqualification under this Local Rule. The inquiry shall include, but shall not be limited to, a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorneys and by the applicable rules pertaining to the profession of the mediator. Within ten (10) days after receiving notice of appointment, the mediator shall file with the Court and serve on the parties either (1) a statement disclosing to the best of the applicant's knowledge all of the applicant's connections with the parties and their professionals, together with a statement that the mediator believes that there is no basis for disqualification and that the mediator has no actual or potential conflict of interest or (2) a notice of withdrawal.

(C) Objection Based on Conflict of Interest. A party to the mediation who believes that the assigned mediator has a conflict of interest promptly shall bring the issue to the attention of the mediator and to the other parties. If after discussion among the mediator, the party raising the issue and the other parties the issue is not resolved and any of the parties requests the withdrawal of the mediator, the mediator shall file a notice of withdrawal.

(f) Compensation. A mediator shall be entitled to serve as a paid mediator and shall be compensated at reasonable rates, and, subject to any judicial review of the reasonableness of fees and expenses required by this subsection of Local Rule 2, the

mediator may require compensation and reimbursement of expenses ("Compensation") as agreed by the parties. Court approval of the reasonableness of such fees and reimbursement of expenses shall be required if the estate is to be charged for all or part of the mediator's Compensation and the Compensation to be paid by the estate for such mediation exceeds $25,000. If the Compensation to be paid by the estate for the particular mediation does not exceed $25,000, then court approval shall only be necessary if the estate representative objects to the fees sought from the estate. If the mediator consents to serve without compensation and at the conclusion of the first full day of the mediation conference it is determined by the mediator and the parties that additional time will be both necessary and productive in order to complete the mediation or arbitration, then:

(i) If the mediator consents to continue to serve without compensation, the parties may agree to continue the mediation conference.

(ii) If the mediator does not consent to continue to serve without compensation, the fees and expenses shall be on such terms as are satisfactory to the mediator and the parties, subject to Court approval, if required by subsection (f) of this Local Rule 2. Where the parties have agreed to pay such fees and expenses, the parties shall share equally all such fees and expenses unless the parties agree to some other allocation. The Court may determine a different allocation.

(iii) Subject to Court approval, if the estate is to be charged with such expense, the mediator may be reimbursed for expenses necessarily incurred in the performance of duties.

(g) Party Unable to Afford. If the Court determines that a party to a matter assigned to mediation cannot afford to pay the fees and costs of the mediator, the Court may appoint a mediator to serve pro bono as to that party.

Sample Notice Of Selection Of Mediator And Scheduled Mediation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: INSYS THERAPEUTICS, INC., *et al*., Liquidating Debtors.[1]	Chapter 11 Case No. 19-11292 (JTD) (Jointly Administered)
INSYS LIQUIDATION TRUST, by and through WILLIAM HENRICH, as LIQUIDATING TRUSTEE, Plaintiff, – against – XXXXXXXXXXXXXXXX, Defendant.	Adversary No.

AMENDED NOTICE OF SELECTION OF MEDIATOR
AND SCHEDULED MEDIATION

PLEASE TAKE NOTICE that mediation has been scheduled in the above-captioned case, and as grounds therefore would show:

1. On April 6, 2021, this Court entered its *Order Establishing Streamlined Procedures Governing Adversary Proceedings Brought by Plaintiff Pursuant to Sections 502, 547, 548, 549 and 550 of the Bankruptcy Code* [Docket No. 1565] ("Procedures Order").

2. Pursuant to the Procedures Order, the Parties have selected XXXXXXXXX as the Mediator for the above-captioned adversary proceeding.

[1] The Liquidating Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659), Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155).

3. The Mediator and the Parties have agreed to commence mediation at **10:00 a.m. Eastern Time on XXXXXXXXXX, 2021**, remotely via Zoom or a similar remote conferencing platform.

4. Mediation statements are due on and must be submitted to the Mediator and exchanged with the opposing party by **XXXXXXXXX, 2021**.

Dated: July 29, 2021

MONTGOMERY McCRACKEN WALKER & RHOADS LLP

Marc J. Phillips (No. 4445)
Gregory T. Donilon (No. 4244)
1105 North Market Street, Suite 1500
Wilmington, DE 19801
Telephone: (302) 504-7800
mphillips@mmwr.com
gdonilon@mmwr.com

-and-

Edward Schnitzer, Esq.
437 Madison Avenue
New York, NY 10022
Telephone: (212) 867-9500
eschnitzer@mmwr.com

Counsel to the Liquidating Trustee

MARKOWITZ
RINGEL
TRUSTY +
HARTOG
ATTORNEYS AT LAW

9130 South Dadeland Boulevard
Suite 1800
Miami, Florida 33156
t: 305.670.5000
f: 305.670-5011
w: www.mrthlaw.com

October 21, 2021

Via E-Mail Only

[NAME OF ATTY]
[NAME OF FIRM]
Counsel to _____
E-Mail:

[NAME OF ATTY]
[NAME OF FIRM]
Counsel to _____
E-Mail:

RE: _____
Case No. _____

NOTICE OF MEDIATION

Dear Counsel:

Thank you for selecting me as mediator. Mediation has been scheduled as follows:

DATE:

TIME:

LOCATION:

I. PAYMENT AND TERMS

I want to confirm that my hourly rate is $_____. I understand that the fees shall be shared by the parties, that is one-half from _____, representing _____ and one-half from _____, representing _____. Payments shall be remitted to me within ten (10) days of the date of the bill.

Please understand that I expect counsel to pay my invoice promptly and that you, rather than your clients, are engaging me to be your mediator. Your attendance at mediation shall be deemed to be consent to the responsibility for fees. If parties cancel or reschedule the mediation, I shall be entitled to compensation of fees for time spent in preparation.

II. AUTHORITY

The presence of persons with authority to settle is absolutely critical. Please let me know the names of all persons who will attend. I may consult with the parties concerning these designated representatives, their settlement authority, and level of participation in various phases of the process, prior to the formal mediation.

III. MEDIATION STATEMENTS AND CAUCUSING

I will speak with all the attorneys briefly before the mediation to get some ideas as to how to best approach the mediation for purposes of a successful outcome. Please provide me with a mediation statement no later than **_____, 2021,** by e-mail. Please do not send hard copy.

IV. CONFLICT OF INTEREST

I have determined that neither I nor Markowitz, Ringel, Trusty & Hartog, P.A. represent any of the parties to this mediation, and there are no conflicts of interest.

V. STATUTORY APPLICATION

Conduct of Mediation - Unless otherwise agreed to in writing by the parties in advance of the mediation conference, the mediation will be conducted in accordance with applicable rules (and/or the agreement between/among you) including its protections of privilege, confidentiality and/or immunity. If a Stipulation to Mediate is executed by the parties, the terms of this engagement should be incorporated by reference and be considered controlling. In the event an order of mediation is entered by the Court, this agreement shall constitute your waiver of any terms of the order that are inconsistent herewith, and shall further constitute your specific acceptance of the terms set forth herein.

VI. CONFIDENTIALITY

Conduct or statements made in the course of mediation proceedings constitute "conduct or statements made in compromise negotiations" within the meaning of Rule 408 of the Federal Rules of Evidence, and no evidence inadmissible under Rule 408, shall be admitted or otherwise disclosed to the court.

(a) Protection of Information Disclosed at Mediation. The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial

or other proceeding, evidence pertaining to any aspect of the mediation effort, including but not limited to: (A) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (B) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; (C) proposals made or views expressed by the mediator; (D) statements or admissions made by a party in the course of the mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence, any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediations or other alternative dispute resolution procedures shall apply. Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in the mediation.

(b) Discovery from Mediator. The mediator shall not be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications or other documents received or made by the mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial or other proceeding, except if a dispute arises regarding the failure of a party to attend a mediation, if a party attends a mediation without requisite settlement authority. Nothing contained in this paragraph shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the Court in writing, from filing a final report as required herein, or from otherwise complying with the obligations set forth in this Local Rule.

(c) Protection of Proprietary Information. The parties, the mediator and all mediation participants shall protect proprietary information.

(d) Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

VII. DOCUMENTS

Destruction of Documents - Forty-five (45) days after the conclusion of the mediation, all materials sent or provided to me by the parties, confidential statements, confidential communications, pleadings and other documents, including, but not limited to audio/visual tapes and electronic mail (e-mail) transmissions sent or provided to me by the parties, will

be destroyed to protect the confidential nature of the mediation. I will retain a copy of the settlement agreement, if a settlement is reached.

I look forward to seeing you at the mediation and hopefully assisting in resolving the matter.

Sincerely yours,

/s/ *Jerry M. Markowitz*

JERRY M. MARKOWITZ

JMM/yc

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

NOTICE OF MEDIATION SEEN AND AGREED BY:

(Please sign and return a copy to me via e-mail transmission to jmarkowitz@mrthlaw.com with a copy to my assistant, Yvonne Candia to ycandia@mrthlaw.com.

[Name of Company]
Counsel for_____

_____ Dated:_____, 2021
Signature

_____
Print Name

[Name of Company]
Counsel for _____

_____ Dated:_____, 2021
Signature

_____
Print Name

Name of mediating party

_____ Dated: _____, 2021

Name of mediating party

_____ Dated: _____, 2021

Sample Stipulation And Mediation Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re	:	Chapter 13
	:	Case No. XX-XXXX
XXXXX,	:	
Debtor.	:	

STIPULATION AND MEDIATION ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned parties:

1. The parties shall participate in mediation, whereby a neutral and impartial person will assist them in attempting to reach a mutually acceptable negotiated resolution of the dispute between them (the "Mediation").

2. The parties jointly accept XXXXXXX to provide mediation services to them (the "Mediator").

3. The Mediation shall be non-binding.

4. The Mediator shall not have authority to render a decision that shall bind the parties.

5. The parties are not obligated to agree to any proposals which are made during the Mediation.

6. No party shall be bound by anything said or done during the Mediation, unless either a written and signed stipulation is entered into or the parties enter into a written and signed agreement.

7. The Mediator may meet in private conference with less than all of the parties.

8. Information obtained by the Mediator, either in written or oral form, shall be confidential and shall not be revealed by the Mediator unless and until the party who provided that information agrees to its disclosure.

9. The Mediator shall not, without the prior written consent of both parties, disclose to the Court any matters which are disclosed to him or her by either of the parties or any matters which otherwise relate to the Mediation.

10. The Mediation shall be considered a settlement negotiation for the purpose of all federal and state rules protecting disclosures made during such conferences from

later discovery or use in evidence. The entire procedure shall be confidential, and no stenographic or other record shall be made except to memorialize a settlement record. All communications and conduct, oral or written, during the Mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of it having been used in connection with this Mediation process.

11. The Mediator and his or her agents shall have the same immunity as judges and court employees have under Federal law and the common law from liability for any act or omission in connection with the Mediation, and from compulsory process to testify or produce documents in connection with the Mediation.

12. The parties (i) shall not call or subpoena the Mediator as a witness or expert in any proceeding relating to the Mediation, the subject matter of the Mediation, or any thoughts or impressions which the Mediator may have about the parties in the Mediation; (ii) shall not subpoena any notes, documents or other material prepared by the Mediator in the course of or in connection with the Mediation; and (iii) shall not offer in evidence any statements, views, or opinions of the Mediator.

13. The Mediator's compensation shall be a fixed fee of $XXXXX (the "Fee") which shall be paid in advance on or before XXXXX XX, XXXX, and which shall be paid equally by (a) the Debtor and (b) XXXXXX. This Order shall constitute court approval for the Debtor to make its portion of the Fee.

14. An individual with final authority to settle the matter and to bind the party shall attend the Mediation on behalf of each party.

[Signature Page to Follow]

Consented to:

X_____ Dated:_____, 20XX
XXXXXXXX
XXXXXXXX
XXXXXXXX
XXXXXXXX

X_____ Dated:_____, 20XX
XXXXXXXX
XXXXXXXX
XXXXXXXX
XXXXXXXX

X_____ Dated:_____, 20XX
XXXXXXXX
XXXXXXXX
XXXXXXXX
XXXXXXXX

It is SO ORDERED.

Sample Mediation Agreement

MEDIATION AGREEMENT

AGREEMENT, dated as of _____ __, 20XX between XXXXXXXXXXXX ("Plaintiff") and XXXXXXXXXXXX ("Defendant"). Plaintiff and Defendant are hereinafter collectively referred to as the "Parties."

W I T N E S S E T H :

WHEREAS, there currently exists a dispute between the parties that is the subject of the action captioned XXXXXXXXXXXX v. XXXXXXXXXXXX, Adversary Proceeding No. XXXXXXXXXXXX, which is pending in the United States Bankruptcy Court for the XXXXXXXXXXXX District of XXXXXXXXXXXX (the "Court"); and

WHEREAS the Parties acknowledge that mediation is a collaborative process in which the participants (here, the Parties) work together with the aid of a neutral and impartial person (a mediator) to find a mutually acceptable negotiated resolution of their dispute.

WHEREAS, the Parties desire to attempt to settle their dispute through non-binding mediation with the assistance of XXXXXXXXXXXX as the mediator (the "Mediator").

NOW, THEREFORE, the Parties hereby mutually agree as follows:

1. The Court's Order. The Parties acknowledge that they are bound to conduct a mediation in accordance with the terms of the Order of the Court establishing mediation procedures entered on XXXXXXXXXXXX in the case captioned XXXXXXXXXXXX, Chapter 11 Case No. XXXXXXXXXXXX.

2. Impartiality of the Mediator. The Parties and their respective counsel represent and warrant that they have made a diligent effort to determine all prior contacts between them and the Mediator, and all such contacts have been disclosed to counsel for the opposing Party and the Mediator. The Parties acknowledge that the Mediator is impartial and cannot act as advocate, representative or counsel for either Party and has no authority to make binding decisions, impose settlements or require concessions by either Party, it being understood and agreed that any agreements which may be reached between the Parties as a result of the mediation process shall be embodied in a separate written agreement between the Parties prepared with the assistance of their respective counsel.

3. Caucuses and Conferences. The Parties understand and agree that, in connection with the mediation process, the Mediator may meet in confidential caucus sessions separately with each Party. The Mediator may, at the request of either Party or on his own initiative, conduct any conference pursuant to this Agreement by telephone, e-mail, fax or other means of communication, before or after a mediation session.

4. Confidentiality, Immunity and Indemnification. To enable the Parties to discuss all aspects of their dispute freely and to enable the Mediator effectively to assist the Parties in reaching a voluntary resolution of their dispute, the Parties agree as follows:

(i) All statements or other communications made in connection with the mediation conducted pursuant to this Agreement, whether made before, during or after a mediation session, shall be confidential and, unless otherwise independently admissible or discoverable, shall be inadmissible and/or privileged as settlement discussions to the extent provided by applicable law. Any information or document presented in the mediation is to be deemed confidential. The Mediator will treat as confidential and refrain from disclosing any information conveyed to the Mediator during any private

caucus unless the Party conveying such information authorizes the Mediator to disclose such information to the other Party. The exchange of information or making of communications in the mediation process shall not constitute a waiver of: (a) the attorney-client privilege, (b) attorney work-product privilege, (c) the status of information as confidential, (d) the status of information as a trade secret. No information exchanged or communication made in the mediation process shall constitute an admission for purposes of any applicable rule of evidence. The confidentiality provision set forth in this paragraph will survive termination of the mediation, whether by breach, mutual agreement of the Parties, settlement or otherwise.

(ii) The Parties agree, on behalf of themselves and their attorneys, that none of them will call or subpoena the Mediator or the law firm in which he is a member in any legal, arbitral or administrative proceeding of any kind to produce any of his notes or documents relating to the mediation or to testify concerning any such notes or documents or his thoughts or impressions. If any Party attempts to compel such testimony or production, such Party shall indemnify and hold the Mediator and his law firm harmless from, and reimburse the Mediator and his law firm for, any reasonable losses, liabilities, costs and expenses, including attorneys' fees and lost professional time, which he may suffer or incur in lawfully resisting such compulsion.

(iii) The Mediator will have the same immunity as judges and arbitrators at common law from suits for damages or equitable relief based on or concerning any action, statement, communication or omission concerning the mediation.

5. The Role of the Mediator. The Parties understand and agree that:

(i) The Mediator's task is to facilitate negotiations of the Parties, not to decide the matter for them.

(ii) The Mediator may use evaluative as well as facilitative techniques in conducting the mediation. Thus, in the confidential caucus sessions with a Party, the Mediator may play an activist role as the "agent of reality" and express opinions as to alternative outcomes if he believes that such Party is not being realistic in making an objective cost/benefit or risk/reward analysis between a particular settlement proposal and the costs and uncertainties of the litigation (or arbitration) alternative.

(iii) There is no attorney-client relationship between the Mediator and any Party to this Agreement, and each Party acknowledges that it will seek and rely on legal advice solely from its own counsel and not on any opinions that may be expressed by the Mediator. Any settlement agreement that may be reached with the assistance of counsel should be reviewed by each Parties' independent counsel.

6. Pre-Mediation Session Submissions. The Mediator will review any documents and materials that a Party regards as relevant. Each Party will provide a pre-mediation session submission to the Mediator, including a case summary and statement of position, at least ten days before the mediation session. A Party may provide the Mediator with a confidential submission addressed only to the Mediator provided that it is clearly designated as such.

7. Participation of Parties. To maximize the effectiveness of the process, each Party agrees that it will have present at each scheduled mediation session an individual with full authority to settle this matter on its behalf and with the capacity to reevaluate its position and authority to change position, if appropriate. The Parties are encouraged to consult with the Mediator in advance of the mediation session to identify the most appropriate persons to attend the mediation session.

8. Fees and Expenses. The fee for the Mediator's services hereunder shall be computed at the rate of $XXXX per hour for the time spent in connection with the mediation, including, but not

limited to, pre-hearing consultations and preparation, review of submitted materials and related research, joint mediation and caucus sessions, and all post-mediation caucuses and telephone and other mediation communications, including mediating any disputes as to a definitive settlement agreement. The Parties will share all fees and expenses of the Mediator equally. No later than ten days before the first scheduled mediation session, each Party will advance the sum of $XXXX, payable to XXXXXXXXXXXX, prior to the commencement of the mediation (the "Advance Payment"). If, more than three business days before the first scheduled mediation session, the Parties advise the Mediator in writing that the dispute has been fully settled, the Mediator will refund 75% of the Advance Payment that each Party paid. If, within three or fewer business days before the first scheduled mediation session, the Parties advise the Mediator in writing that the dispute has been fully settled, the Mediator will refund 25% of the Advance Payment that each Party paid. The Mediator will provide a detailed invoice showing his time charges. The fees of the Mediator, and all expenses incurred by the Mediator, including, but not limited to, photocopying, and overnight mail or messenger services, are payable within (15) days of a Party's receipt of an invoice from the Mediator for his fees and expenses.

9. Disposal of Documents from the Mediator. At the conclusion of the mediation process, the Mediator may, in his discretion, destroy his notes and any materials submitted to him by either of the Parties.

10. Disability. Each Party will promptly advise the Mediator and the other Party should any of its representatives have a disability and require an accommodation in order to participate in the mediation process and indicate what accommodation (if any) needs to be made.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned acknowledge that they have read, understood and agree with all matters stated in this Mediation Agreement as of the date hereinabove first written.

For Plaintiff:

For Defendant:

_____

_____

Authorized Signature

Authorized Signature

Agreed:

_____

Mediator

Sample Plaintiff Mediation Statement

XXXXXX XX, 2021

PRIVILEGED & CONFIDENTIAL – FOR MEDIATION/SETTLEMENT PURPOSES ONLY PURSUANT TO FED. R. EVID. 408 AND COURT ORDER

XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX

Re: XXXXXX ***v.*** XXXXXX**,**
Adversary Proceeding No. XXXXXX

Dear Mr. XXXXXX:

We represent the plaintiff, XXXXXX (the "Liquidating Trustee" or "Plaintiff") of the liquidating trust of XXXXXX, and its affiliated debtors (collectively, the "Debtors") in the Debtors' bankruptcy case pending in XXXXXX of XXXXXX. We submit this mediation statement in advance of the mediation scheduled for XXXXXX XX, 20XX at 12:30 p.m. concerning the above-referenced adversary proceeding.

Background

XXXXXX

XXXXXX
XXXXXX

During the ninety (90) days (the "Preference Period") prior to XXXXXX (the "Petition Date), Debtor XXXXXX paid $ XXXXXX (the "Transfers") to XXXXXX in six (6) checks. The schedule attached to the Complaint reflects:

Check Date	Check Number	Payment Amount	Invoice Number	Invoice Date	Invoice Payment Amount
				Total	**$**

In XXXXXX, the Liquidating Trustee sent a letter to Defendant (the "Demand Letter"), containing a description of the potential claims and the Transfers, demanding the return of the Transfers to the Liquidating Trustee and inviting Defendant to advise the Liquidating Trustee of any defenses. The Demand Letter contained a 90% settlement offer. In XXXXXX, the Liquidating Trustee re-sent the Demand Letter to Defendant. After eight (8) months had elapsed and having received no response to the Demand Letter, the Liquidating Trustee commenced this adversary proceeding by filing the *Complaint to Avoid and Recover Preferential Transfers And Object to Claims* against Defendant (the "Complaint") on XXXXXX, 2021.

The Preference Elements

As alleged in the Complaint, Defendant received preferential transfers that are avoidable pursuant to section 547 of the Bankruptcy Code. Section 547(b) permits the avoidance of a debtor's transfer if the transfer: (1) was of an interest in debtor's property; (2) was to or for the benefit of a creditor; (3) was for or on account of an antecedent debt owed by the debtor; (4) was made while the debtor was insolvent; (5) was made within ninety (90) days prior to the bankruptcy filing; and (6) enabled the creditor to receive a larger share of the estate than if the case was a case brought under Chapter 7 and the transfer had not been made. See 11 U.S.C. § 547(b).

If necessary, the Liquidating Trustee can establish by documentary evidence (and live or sworn testimony, if necessary) that the Transfers (1) were made from the Debtor's bank account and, thus, was of an interest in the Debtor's property; (2) were made to Defendant, a creditor of

the Debtor; (3) paid debts pursuant to a pre-petition invoices issued prior to the date of the respective Transfer; (4) were made while the Debtor was insolvent (see 11 U.S.C. § 547(f) presumption); (5) cleared within ninety (90) days prior to the bankruptcy filing; and (6) enabled Defendant to receive a larger share of the estate than if the cases were cases brought under Chapter 7 of the Bankruptcy Code and the Transfers had not been made, since the estimated distribution to unsecured creditors in the Debtor's case was estimated to be well below 100% (see Disclosure Statement Liquidation Analysis).

XXXXXX Defenses

Defendant contends that the Transfers are protected by an ordinary course of business defense. However, the Liquidating Trustee does not believe that Defendant cannot meet its burden in establishing this defense.

To establish an ordinary course defense, a defendant must show that the "transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was— (A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or (B) made according to ordinary business terms." 11 U.S.C. § 547(c)(2).

In an attempt to support its ordinary course of business defense, Defendant provided the Liquidating Trustee with XXXXXXXXXXXXX

XXXXXXX
XXXXXXX
…

Looking at the historical data provided by XXXXXX, XXXXXX was paid on average in XXXXXX days. Each preference payment was made in XXXXXX days. XXXXXXXXXXXX

XXXXXXX
XXXXXXX
…

Settlement Offer History

In the Demand Letter, the Liquidating Trustee offered to resolve the preference claim for $ XXXXXX. That offer represented a XX% discount on the total Transfers. To date XXXXXX has not provided a counteroffer.

Respectfully submitted,

_____

XXXXXXXXXXX

cc: XXXXXX

Sample Defendant Mediation Statement

FOR SETTLEMENT PURPOSES ONLY PURSUANT TO FED. R. EVID. 408

mediator

Re: XXXXX v. XXXXX; Adv. Pro. No. XXXXX (XXXX)

Dear XXXX:

In connection with the above-referenced matter, our firm is counsel to XXXXX and XXXXX (collectively, the "XXXXX"). We submit this shared mediation statement in advance of the mediation scheduled for XXXXX xx, XXXX.

By the preference complaint, the Trust seeks to avoid and recover four transfers in the aggregate amount of $ XXXXX (the "Transfers") made from the Debtors to XXXXX. Although XXXXX do not concede that the Plaintiff can sustain its burden in establishing a *prima facie* case pursuant to 11 U.S.C. § 547(b), XXXXX assert that it has a strong ordinary course of business defense which will eliminate the preference in its entirety.[1]

Ordinary Course of Business

The purpose of Section 547(c) is to "leave undisturbed normal financial relations between the debtor and its creditors, even as a company approaches bankruptcy. It protects 'recurring customary credit transactions that are incurred and paid in the ordinary course of business of the debtor and the debtor's transferee.'" In re First Jersey Sec. Inc., 180 F.3d 504, 512 (3d. Cir. 1999). Section 547(c)(2) was enacted in order to "leave undisturbed normal financial relations, because they do not detract from the general policy of the preference section to discourage unusual action by either the debtor or creditors during the debtor's slide into bankruptcy." 5 Collier on Bankruptcy P. 547.04[2][a][ii][B]. As the Transfers were payments of debt incurred by the Debtors in the ordinary course of business of the Debtors and XXXXX[2] and made in the ordinary course of business of the Debtors and XXXXX, the Transfers are protected by the ordinary course of business defense of 11 U.S.C. § 547(c)(2)(A) and is unavoidable.

Determining whether the disputed transactions are consistent with the course of dealing between the respective parties is an inherently factual analysis. Cassirer v. Herskowitz (In re Schick), 234 B.R. 337, 348 (Bankr. S.D.N.Y. 1999). Courts have relied upon several different factors in conducting a subparagraph (B) inquiry, such as (1) the length of time the parties were engaged in the type of dealing at issue, (2) whether the subject transfer was in an amount more

[1] XXXXX reserves the right to assert and any and all other defenses pursuant to 11 U.S.C. § 547(c).

[2] As the Debtors and XXXXX "performed similar transactions on at least [100 prior] separate occasions, … [and the Transfers are] transactions related to the same subject matter …, [and] [t]he goods ordered were apparently all produced and shipped as per the parties' normal procedures, … [the Transfers] were made 'in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee.'" Speco Corp. v. Canton Drop Forge. Inc. (In re Speco Corp.), 218 B.R. 390, 398 (Bankr. S.D. Ohio 1998).

than usually paid, (3) whether the payments were tendered in a manner different from previous payments, (4) whether there appears any unusual action by either debtor or creditor to collect or pay the debt; and (5) whether the creditor did anything to gain an advantage (such as gain additional *security) in* light of the debtor's deteriorating financial condition. See, e.g., Hechinger Liquidation Trust v. James Austin Co. (In re Hechinger Inv. Co. of Del. Inc.), 320 B.R. 541, 548 (Bankr. D. Del. 2004) (citing In re Allegheny Health Education and Research Foundation. 292 B.R. 68 (Bankr. W.D. Pa. 2003)).

XXXXXXX

XXXXXXX

…..

3

4

Ordinary Business Terms

In addition to having a complete defense under section 547(c)(2)(A) of the Bankruptcy Code, XXXXX submit that the Transfers were made according to the ordinary business terms and thus protected under section 547(c)(2)(B). See Camelot Music Inc. et al. v. MHW Advertising and Public Relations, Inc. (In re CM Holdings, Inc.), 264 B.R. 141, 154 (Bankr. D. Del. 2000) ("[o]nly dealings so idiosyncratic as to fall outside the broad range should be deemed extraordinary and therefore outside the scope of [Section 547(c)(2)(B)]"). In Molded Acoustical, the Third Circuit held that "ordinary business terms refers to the *range* of terms that encompasses the practices in which firms similar in some general way to the creditor in question engage, and that only dealings so idiosyncratic as to fall outside that broad range should be deemed extraordinary." 18 F.3d at 220 citing Tolona Pizza 3 F. 3d at 1033. "Precise data is not necessary to prove ordinary business terms within a creditors' industry." American Home Mortgage, 476 B.R. at 141 (citing Hechinger Liquidation Trust v. James Austin Co. (In re Hechinger Inv. Co. of Delaware, Inc.), 320 B.R. 541, 550 (Bankr. D. Del. 2004).

XXXXXXX

XXXXXXX

.....

[3] Exhibit A is a summary of all historical payments from the Debtors to XXXXX prior to the preference period, and a calculation of the number of days past due (or early) such payment was made.

[4] Exhibit B is a summary of the Transfers.

Conclusion

Based on the forgoing, XXXXX have no preference exposure. However, for settlement purposes only and in an effort to resolve this matter and save both parties time and expense, XXXXX are prepared to pay XXXXX $ XXXXX in exchange for a dismissal with prejudice and a release to XXXXX.

Sincerely,

XXXXXXXXX

cc (via email):

Sample Mediator Report

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re	:	Chapter 13
	:	Case No. XX-XXXXX
XXXXXXX,	:	
	:	
Debtor.	:	

MEDIATOR REPORT

The undersigned was appointed mediator with respect to certain disputes in the above-captioned case pursuant to that *Stipulation and Mediation Order* [Dkt No. 104] (the "Stipulation"). Pursuant to the Stipulation, the undersigned conducted a full day in-person mediation on XXXXX XX, XXXX. Pursuant Local Bankruptcy Rule 9019-1(f)(i), the undersigned reports as follows:

(i) The Matter settled at mediation in principle subject to definitive documentation and court approval.

Dated: XXXXX XX, XXXX
New York, New York

/s/ XXXXX
XXXXX

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF FLORIDA
_____DIVISION

In re:

_____/

REPORT OF MEDIATOR

The undersigned court-appointed mediator, reports to the court as follows:

A. A mediation conference was conducted on _____.

B. The conference resulted in the following:

_____ Agreement signed (total resolution).

_____ The parties reached an impasse.

_____ The parties settled the following issues:

_____ The conference was continued and an additional mediation conference will be scheduled.

_____ The matter was settled prior to mediation conference.

Dated: October 21, 2021.

JERRY M. MARKOWITZ
Mediator
9130 South Dadeland Boulevard
Two Datran Center, Suite 1800
Miami, Florida 33156-7849
Telephone: (305) 670-5000
Facsimile: (305) 670-5011

By: /s/ Jerry M. Markowitz
JERRY M. MARKOWITZ
Florida Bar No. 182420
E-mail: jmarkowitz@mrthlaw.com

Attendees:

_____, Esq.
(Counsel to _____)

_____ (name)
(_____, as _____)

_____, Esq.
(Counsel to _____)

_____, (name)
(_____, as _____ _____)

Served via email on October 21, 2021 to:

_____, Esq.
(Name of firm)
E-Mail:

_____, Esq.
(Name of firm)
E-Mail:

Sample Settlement Agreement

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: XXXXXXXXX., *et al.*, Liquidating Debtors.[1]	Chapter 11 Case No. XX-XXXXX (JTD) (Jointly Administered)
XXXXXXX, Plaintiff, – against – XXXXXXXX, Defendant.	Adversary No. XX-XXXX

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement" or "Settlement Agreement") is entered into by and between XXXXXXX (the "XXXXXXX" or the "Trustee") and the XXXXX ("XXXXXX," and together with the Trustee, the "Parties"), with reference to the following facts:

WHEREAS, on XXXXXXX XX, XXXX (the "Petition Date"), XXXXXXX, XXXXXXX and XXXXXXX (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"); and

WHEREAS, on XXXXXXX XX, XXXX, the Debtors filed their Second Amended Joint Plan of Liquidation (the "Plan"); and

[1] The Liquidating Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659), Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155).

WHEREAS, on XXXXXXX XX, XXXX, this Court entered an order (the "Confirmation Order") confirming the Plan; and

WHEREAS, on XXXXXXX XX, XXXX (the "Effective Date"), the Plan became effective, the Trust was created, and the Trustee was appointed; and

WHEREAS, on or about XXXXXXX XX, XXXX, the Trustee filed the complaint (the "Complaint") in the above-captioned adversary proceeding, seeking avoidance and recovery of transfers totaling $XXXXXX pursuant to, *inter alia*, sections 547 and 548 of the Bankruptcy Code (the "Preference Claim") from and against XXXXXXXX, among other things; and

WHEREAS, the Trustee and XXXXXXXX engaged in negotiations aimed at reaching a consensual resolution of the Preference Claim; and

WHEREAS, pursuant to the Confirmation Order, the Trustee is authorized to settle the Preference Claim without Court approval; and

WHEREAS, in an effort to avoid the need for further litigation between the Parties to resolve the foregoing disputes, and in an effort to avoid the substantial costs, uncertainty and delay to both Parties that would result from further litigation of the Preference Claim, the Parties enter into this Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Each and every fact set forth above is incorporated herein by this reference as though set forth in full. These recitals are an integral part of this Agreement and are hereby agreed to be true for the purpose of this Agreement.

2. In full settlement of the Preference Claim, XXXXXXXX (a) shall pay to the Trustee the total sum of $XXXXXX (the "Settlement Amount") on or before XXXXXX XX, 2021, (b) releases any and all claims, liabilities, obligations, and demands of every kind and

nature, in law, equity, and otherwise that XXXXXXXX may have against the Debtors and its bankruptcy estates arising from or relating to the Preference Claim, and (c) releases and waives any right to file a claim for the Settlement Amount pursuant to 11 U.S.C. § 502(h). The Settlement Amount shall be made on or before XXXXXX XX, 2021, by wire to:

XXXXXXXXXXX
XXXXXXXXXXX
XXXXXXXXXXX
XXXXXXXXXXX

3. In consideration for payment of the full Settlement Amount, and conditional upon XXXXXXXX' payment of the full Settlement Amount to the Trustee, the Trustee (a) releases any and all claims, liabilities, obligations, and demands of every kind and nature, in law, equity, and otherwise that the Debtor's bankruptcy estate may have against XXXXXXXX arising from or relating to the Preference Claims; and (b) shall file a notice of dismissal with prejudice of the Complaint within five (5) business days of receipt of the Settlement Amount.

4. Except as set forth herein, the Parties acknowledge that they have relied solely upon their own judgment, belief, and knowledge of the existence, nature, and extent of each claim, demand, cause of action or right that each of the Parties may have against the other, and that each of the Parties has not been influenced to any extent in entering into this Agreement by any representation or statement regarding any such claim, demand, cause of action or right made by any other party hereto.

5. Each signatory hereto represents that he or she has the authority to execute this Stipulation on behalf of the party for whom it is executed and to bind that party to all terms set forth herein.

6. This Agreement may be executed in any number of original, facsimile, copied, or electronic counterparts, and all counterparts shall be considered together as one Agreement. A faxed, copied, or electronic counterpart shall have the same force and effect as an original signed counterpart. Each of the Parties hereby expressly forever waives any and all rights to raise the use of a facsimile machine or email to deliver a signature, or the fact that any signature or Agreement or instrument was transmitted or communicated through the use of a facsimile machine or email, as a defense to the formation of a contract.

7. This Agreement is to be interpreted without regard to the draftsperson. The terms and intent of this Agreement, with respect to the rights and obligations of the Parties, shall be interpreted and construed on the assumption that the Parties participated equally in its drafting.

8. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representative, successors, and assigns.

9. Should any dispute arise regarding this Agreement, the Court shall have exclusive jurisdiction to determine the same.

XXXXXXXX

By: _____
Name:
Title:
Address:
Telephone:
Email:

DATED: August __, 2021

XXXXXXXXX

By: _____
Name:
Title:
Address:
Telephone:
Email:

DATED: August __, 2021

Faculty

Isley M. Gostin is counsel at Wilmer Cutler Pickering Hale and Dorr LLP in Washington, D.C., and has experience representing clients in all stages of complex litigation and bankruptcy proceedings, including discovery, motions, mediation, trial and appeals. She has litigated seven trials, many cases in the courts of appeals, and three merits cases before the U.S. Supreme Court, focused primarily on bankruptcy issues. Prior to joining the firm, Ms. Gostin clerked for Hon. Robert E. Gerber of the U.S. Bankruptcy Court for the Southern District of New York. She is a 2020 honoree of ABI's "40 Under 40" class, co-authored *ABI's Quick Evidence Handbook, Second Edition*, and currently serves as the Education Director for the ABI's Litigation Committee. Ms. Gostin received her B.A. *cum laude* from Harvard College and her J.D. *cum laude* from Harvard Law School.

Jerry M. Markowitz is a founding shareholder of Markowitz Ringel Trusty + Hartog, P.A. in Miami and a member of the firm's Bankruptcy and Creditors' Rights practice group. He concentrates his practice in the areas of creditors' and debtors' rights, including workouts, bankruptcy, asset recovery, insolvency, receiverships, reorganizations, restructuring and mediation. Mr. Markowitz is listed in *The Best Lawyers in America*, *Chambers USA* in the bankruptcy and restructuring category, the "Top 250 Attorneys in South Florida" by the *South Florida Legal Guide*, *Super Lawyers* "Top 100 Lawyers in Florida," and the "Best of the Bar" by the *South Florida Business Journal*. He was also was also recognized by *Florida Trend*'s Hall of Fame for being named in their Florida Legal Elite list for the past 10 years. Mr. Markowitz is a member of the Florida Bar, ABI (for which he has served on its Board of Directors, the American Bar Association's Business Law, Business Bankruptcy Committee and Commercial Financial Services Committee Sections, and the Continuing Legal Education Committee for the University of Miami Bankruptcy Skills Workshop (for which he has served as chairman and co-chairman), and he is a member of, and a former president of, the Bankruptcy Bar Association for the Southern District of Florida. He is also the past president of the University of Miami School of Law Alumni Association. As an active ABI member, Mr. Markowitz is a regional chair for ABI's Endowment Fund and co-Education Director of ABI's Mediation Committee. He also sits on the advisory board of ABI's Caribbean Insolvency Symposium, and has served as faculty for the ABI/St. John's University School of Law's mediation training program. He is a certified mediator in Florida. Mr. Markowitz received his B.S. in business administration with a concentration in accounting from the University of Florida and his J.D. from the University of Miami School of Law.

Daniel R. Schimizzi is a partner with Whiteford Taylor Preston LLP in Pittsburgh and a member of the firm's Business Reorganization and Bankruptcy group. He focuses on commercial bankruptcy and insolvency law, and represents clients in various industries including energy, health care, industrial and restaurant, in all aspects of business reorganizations, loan restructurings, bankruptcies and related litigation. Mr. Schmizzi is a member of the American, Pennsylvania and Allegheny County Bar Associations (ACBA) and the ACBA's Bankruptcy and Commercial Law Section. He also is a member of ABI, the Judith K. Fitzgerald Bankruptcy Inns of Court and the Turnaround Management Association, for which he serves as board member. Mr. Schmizzi has been listed in *Pennsylvania Super Lawyers* as a Bankruptcy "Rising Star" since 2018, and he is listed in *The Best Lawyers in America* for Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law as one of

the "Ones to Watch" for 2022. He received his B.A. *cum laude* in 2008 from the University of Pittsburgh and his J.D. *cum laude* in 2011 from Duquesne University Law School.

Edward L. Schnitzer is chair of Montgomery McCracken Walker & Rhoads LLP's Bankruptcy & Financial Restructuring Department in New York and serves as an *ex-officio* member of the firm's Management Committee. He focuses his practice on bankruptcy and reorganization matters. Mr. Schnitzer has experience representing unsecured creditor committees, litigation & liquidation trustees, debtors, banks, equity committees and creditors in all aspects of bankruptcy practice, with particular expertise in bankruptcy litigation, including the prosecution and defense of preferences, fraudulent transfers and other avoidance actions, claims objections, and collection and turnover actions. He is a court-approved mediator in the U.S. Bankruptcy Courts for the District of Delaware and the Southern and Eastern Districts of New York, and he has mediated disputes in the *Health Diagnostic*, *Standard Register*, *Borders* and *WP Steel* bankruptcy cases. He also is a member of the New York City Bar Association's *Pro Bono* Bankruptcy Panel, and has represented individuals in need of *pro bono* assistance in adversary proceedings. Mr. Schnitzer received his B.A. *cum laude* from the University of Pennsylvania and his J.D. from Columbia University School of Law, and he earned a Certificate of Completion for the Inaugural Bankruptcy Mediation Class from St. John's University School of Law and the Hugh L. Carey Center for Dispute Resolution.