

SO ORDERED

Dated July 16, 2003



*Paul Mannes*

PAUL MANNES  
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)

_____	)	
In re:	)	
	)	
USGen New England, Inc.,	)	Case No. 03-30465 (PM)
	)	
Debtor.	)	Chapter 11
_____	)	

**ORDER FOR COMPLEX CHAPTER 11 BANKRUPTCY CASE**

This bankruptcy case was filed on July 8, 2003. A Request for Designation as Complex Chapter 11 Case was filed. After review of the initial pleadings filed in this case, the Court concludes that this appears to be a Complex Chapter 11 Case and issues this scheduling order, subject to rescission, revision, or modification as provided below:

1. **Service List and Limitation on Service:** The Debtor shall maintain a service list (“Service List”), identifying the parties that must be served whenever a motion or other pleading requires notice. Upon establishment of such a list, notices of motions and other matters will be limited to the parties on the Service List.
  - a. The Service List shall initially include the following:
    - (i) Debtor’s counsel;
    - (ii) The twenty (20) largest unsecured creditors of the estate or their respective counsel; provided, however, that once an official committee of unsecured creditors or other official committee is appointed in these cases, notice hereunder will be limited to (a) one representative of each member of such committee(s), or its respective counsel, and (b) counsel to such committee(s)

- (iii) The Office of the United States Trustee for the District of Maryland (Greenbelt);
- (iv) all secured creditors known by the Debtor to assert interests in alleged cash collateral, if any;
- (v) any party that requests notice;
- (vi) any such additional parties as the Debtors may add to such list.

The entities listed above shall comprise the "Initial Service List." Notices of any motions or other pleadings must also be sent to any party whose rights are directly affected by the pleading. The limited notice to the parties on the Initial Service List shall apply to all motions, notices and other requests for relief, except: (a) matters specified in Federal Rules of Bankruptcy Procedure 2002 (a)(1), 2002 (a)(4), 2002(a)(7), 2002 (b), and 2002 (d); and (b) matters in which the applicable rules or orders of this Court permit service on fewer parties than those included on the Initial Service List.

- b. Any party in interest that wishes to receive notice, other than as listed on the Initial Service List, shall be added to the Service List by request filed in the case and served on the Debtor's counsel, and any party that wishes to be removed from the Service List may do so by sending such request to Debtor's counsel, but said request need not be filed with the Court.
- c. Parties on the Service List are encouraged to provide a fax number or e-mail address for service, and parties are encouraged to authorize service by fax or e-mail; consent to fax or e-mail service may be included in the party's notice of appearance and request for service; notwithstanding consent to e-mail service, "hard copy" shall be served by fax, overnight mail or regular mail;
- d. The Initial Service List shall be filed within three (3) days after entry of this Order. A revised list shall be filed within fifteen (15) days after the Initial Service List is filed. The Debtor shall update the Service List, and shall file in the case a copy of the updated Service List at least once per month thereafter, unless no changes to the Service List have occurred since the last time an updated Service List was filed with the Court.
- e. Notwithstanding any provision in the Order Implementing Procedures for Complex Chapter 11 Cases entered by the Judges of this Court on July 31, 2002, the Debtors need not serve First Day Motions (as this term is defined in the July 31 order) prior to filing said motions with the Court.
- f. Debtors shall serve hard copies of all pleadings filed within the first seven days of the commencement of these cases on the Judge assigned to these cases, directly to chambers, and on the Office of the United States Trustee for the District of Maryland.

2. **Hearing Days:** The Court will, from time to time, establish dates ("Hearing Day") for considering motions and other matters in these cases, which may be noted in the docket for these cases or which the Court may publish on the Court's internet site, available at:

<http://www.mdb.uscourts.gov>

3. **Setting Hearings and Giving Notice for Matters That Do Not Require Emergency or Expedited Treatment:**

All motions and other matters requiring hearing (including motions for relief from the automatic stay, but NOT including claims objections and adversary proceedings) shall be noticed for hearing on the next Hearing Day that is at least twenty three (23) days after the notice is mailed. As a preface to each pleading, just below the case caption, the pleading shall state in capital letters:

A HEARING WILL BE CONDUCTED ON THIS MATTER ON \_\_\_\_ AT \_\_\_\_  
\_M. IN COURTROOM \_\_\_\_ OF THE UNITED STATES BANKRUPTCY  
COURT FOR THE DISTRICT OF MARYLAND, 6500 CHERRYWOOD  
LANE, GREENBELT, MARYLAND 20770. IF YOU OBJECT TO THE  
RELIEF REQUESTED, YOU MUST RESPOND IN WRITING,  
SPECIFICALLY STATING YOUR OBJECTION AND ALL FACTS AND  
LAW YOU BELIEVE SUPPORT YOUR OBJECTION. YOU MUST FILE  
YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT ON  
OR BEFORE [insert date] SAID DATE BEING [insert as applicable  
SEVENTEEN DAYS (17)/TWENTY DAYS (20)] FROM THE DATE THIS  
PLEADING WAS SERVED, AS INDICATED ON THE CERTIFICATE OF  
SERVICE AT THE END OF THIS PLEADING. IN ADDITION TO FILING  
YOUR RESPONSE WITH THE CLERK, YOU MUST SERVE A COPY OF  
YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS PLEADING  
AND TO THE PARTIES ON THE SERVICE LIST. ABSENT A TIMELY  
OBJECTION, THE COURT MAY TREAT THIS PLEADING AS UNOPPOSED  
AND GRANT THE RELIEF REQUESTED WITH OR WITHOUT A  
HEARING.

In the alternative, a party filing a motion may include the above language in a separate notice filed with the pleading. The Court will set separate hearings for claims objections and adversary proceedings.

4. **Setting Hearings and Giving Notice of a Motion Requiring Emergency or Expedited Relief:**

If a motion requires emergency or expedited relief

- a. The motion shall state with specificity the reason why an emergency exists or why there is a need for expedited treatment. No separate motion for an emergency hearing is required.
  - b. Movant shall serve notice of the motion and of the hearing as set forth above, (including the language above giving notice of the hearing date and the necessity to file a response). However, the movant may choose a Hearing Day that is less than twenty three (23) days after notice is given. Movant should choose a date that allows as much time as possible for consideration and response by parties receiving the notice. The motion may be set for the next Hearing Day only if absolutely necessary. The notice shall provide that responses may be served *via* facsimile by the earlier of seventeen days from service of the motion or 24 hours before the hearing.
  - c. When the motion is called for hearing on the designated Hearing Day, the Court will first consider whether expedited treatment is required, whether adequate notice has been given, and whether there has been adequate opportunity for parties to be heard. The Court may decide to hear the matter at that time or the Court may issue other scheduling orders as the Court determines to be appropriate after consideration of the nature of the emergency, the adequacy of the notice, the impact of delay, the nature of the relief sought, and such other matters as the Court may consider to be cogent.
  - d. **Extraordinary Circumstances**: In very rare circumstances, a party may need relief that cannot be delayed until the next Hearing Day. In such circumstances, the movant may, by separate motion, request a hearing to be held prior to the next Hearing Day. If the Court grants such emergency treatment, the Court will direct the requisite notice and will set a hearing date and time. When the matter is called for hearing, the Court will first consider the propriety of emergency treatment as described in sub-paragraph (c) above.
  - e. Parties are encouraged to authorize opposing parties to serve them by fax or e-mail to facilitate notice of emergency and expedited hearings. If provided, it must be used.
5. **Proposed Hearing Agenda**: Before noon on the day that is at least two (2) business days prior to each Hearing Day, Debtors' counsel shall hand deliver to the judge's chambers a Proposed Hearing Agenda and also shall file the Proposed Hearing Agenda with the clerk. Debtors' counsel shall contemporaneously provide the Proposed Hearing Agenda to counsel for the party against whom relief is requested and all parties on the Service List by facsimile, e-mail, overnight mail or hand-delivery.
- a. The Proposed Hearing Agenda, whether or not served on parties, is merely a proposal for the convenience of the Court and counsel. It is **NOT** determinative

of the matters to be heard on that day and is not determinative of whether there will be a settlement or continuance.

- b. The Proposed Hearing Agenda shall include:
  - i. The docket number and title of each matter to be scheduled for hearing on the next Hearing Day, including all related pleadings;
  - ii. Whether the matter is contested or uncontested;
  - iii. An estimate of the time required to hear each matter;
  - iv. Other comments that will assist the Court in organizing its docket for the day (for example, if a request for continuance or withdrawal of the matter is expected); and
  - v. A suggested order in which the matters should be addressed.
- c. Before noon on the day that is at least three (3) business days prior to each Hearing Day, other parties in interest may request in writing that Debtor's counsel add matters to the Proposed Hearing Agenda. If such a request is made, the Proposed Hearing Agenda should include the matter requested or, if Debtor's counsel disagrees that the matter should be included, disclose the request and the basis for the Debtor's disagreement.
- d. On the Hearing Day, the Court may, or may not, accept the Hearing Agenda proposed by the Debtor.

6. **Participation in Some Hearings By Telephone:** Emergency and expedited hearings (and other hearings in limited circumstances) in these cases may be conducted by telephone conference. Parties shall coordinate arrangements for such telephone conference with Debtor's counsel and the judge's courtroom deputy. The Court may require parties participating by telephone to arrange for a dial-in number with a telephone conferencing service at their expense.

7. **Case Captions:** Complex cases usually involve hundreds of motions. To facilitate motion tracking by the Clerk, each answer, reply, objection, and order filed or provided by a party in this case should contain, in its title or first paragraph, a reference to the docket number of the pleadings to which it responds. EXAMPLE:

Response by XYZ Bank to Debtor's Motion For Use of Cash Collateral.

[This pleading responds to Docket # \_\_\_\_]

8. **Noticing Agent and/or Claims Agent:** Debtor's counsel shall contact the Clerk immediately to discuss the anticipated workload with respect to sending notices to parties

in interest and with respect to filing proofs of claim. If the Clerk concludes that the requirements for these functions will put unacceptable burdens on the Clerk's resources, the Debtor shall forthwith propose the appointment of a claims agent or noticing agent, or the Debtor shall propose another solution acceptable to the Clerk.

9. **Administrative Fee Procedure:** After notice and a hearing, the Court may enter an administrative order establishing procedures for interim compensation and reimbursement of professionals (**Form CCP-4**). The form may be modified as the circumstances of the case require.
10. **Procedures for Omnibus Objection to Claims:** Where the Debtor (or other party in interest) files an Omnibus Objection to Claims, the following procedures will apply:
  - a. The Objection shall include an alphabetical list of creditors whose claims are objected to together with a cross-reference to the claim number of each such claim. If the objection to a claim is based on more than one ground, the alphabetical list shall include a cross-reference to the location of each ground within the omnibus objection.
  - b. If the Objection is on a non-substantive basis that is clearly apparent from the claims docket (e.g., duplicate claims, amended or suspended claims, late-filed claims), copies of the proofs of claim need not be provided to the Court.
  - c. Where the Objection is that the proof of claim does not contain any invoices or other documents supporting the claim, a declaration to that effect (together with a hard copy of the proof of claim) shall be filed with the Court at the time the Objection is filed.
  - d. Without leave of court, no omnibus objection to claims is permitted on substantive grounds. A separate objection to each claim is required.
  - e. At least 48 hours before the hearing on an Objection based on substantive grounds, a Notice of Submission of Copies of Proofs of Claim is to be filed stating that copies of the claims together with any attachments have been delivered to chambers and that copies can be requested from the Debtor's counsel.
  - f. Any claimant may request to participate telephonically in a hearing on an Objection to proofs of claim by calling the courtroom deputy at least 24 hours prior to the scheduled hearing time. If more than one party is appearing, the Debtor's counsel shall conference all interested parties and place on call to the Court.
  - g. Where a hearing on an Objection to a claim will involve substantial time, the Court may schedule it for a separate hearing date.

11. **Debtor in Possession Bank Accounts:**

- a. Bank Accounts and Checks. Where the Debtor uses pre-printed checks, upon motion of the Debtor, the Court may, without notice and hearing, permit the Debtor to use its existing checks without the designation “Debtor in possession” and use its existing bank accounts. However, once the Debtor’s existing checks have been used, the Debtor shall, when reordering checks require the designation of “Debtor in possession” and the corresponding bankruptcy number on all such checks.
- b. Section 345 Waiver. No waiver of the investment requirements of 11 U.S.C. § 345 shall be granted by the Court, except on notice with an opportunity for hearing. However, if a motion for such a waiver is filed on the first day of a Chapter 11 case in which there are more than 200 creditors, the Court may grant an interim waiver until a hearing on the Debtor’s motion can be held.

12. **Cash Collateral and Financing Orders**

- a. Motions. Except as provided herein, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed pursuant to Federal Bankruptcy Rules 2002, 4001 and 9014 (“Financing Motions”).
  - i. Provisions to be Highlighted. All Financing Motions must (1) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (2) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement, and (3) the justification for the inclusion of such provision.
    - (A) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law).
    - (B) Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured creditor’s prepetition lien or debt or the waiver of claims against the secured creditor without first giving parties-in-interest at least 75 days from the entry of the order and the unsecured creditors’ committee, if formed, at least 60 days from the date of its formation, to investigate such matters.

- (C) Provisions that seek to waive, without notice, whatever rights the estate may have under 11 U.S.C. § 506(c).
  - (D) Provisions that grant immediately to the prepetition secured creditor liens on the Debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549.
  - (E) Provisions that deem prepetition secured debt to be post-petition debt or that use post-petition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b).
  - (F) Provisions that provide disparate treatment for the professionals retained by the unsecured creditors' committee from that provided for the professionals retained by the Debtor with respect to a professional fee carve out.
  - (G) Provisions that prime any secured lien, without the consent of that lienor.
- ii. All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations, and protection afforded under 11 U.S.C. §§ 363 and 364).
- b. Interim Relief. When Financing Motions are filed with the Court on or shortly after the date of the entry of the order for relief, the Court may grant interim relief pending review by the interested parties of the proposed debtor in possession financing arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court shall not approve interim financing orders that include any of the provisions previously identified in subsection (a)(i)(A) through (a)(i)(G) of this Rule.
- c. Final Orders. A final order shall be entered only after notice and a hearing pursuant to Federal Bankruptcy Rule 4001 and Local Bankruptcy Rule 2002-1(b). Ordinarily, the final hearing shall be held at least ten (10) days following the organizational meeting of the unsecured creditors' committee contemplated by 11 U.S.C. § 1102.
13. **Bridge Orders Not Required in Certain Circumstances: If a motion to extend the time to take an action is filed before the deadline for such action that is set by 11 U.S.C., the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules,**

**the deadline shall automatically be extended until the Court acts on the motion, except for a motion to extend the time to assume or reject an unexpired lease of nonresidential real property under 11 U.S.C. § 365(d)(4).**

14. **Exception to Local Counsel Requirement:**

- a. Local Bankruptcy Rule 9010-3 is modified in this case so that an attorney who is not a member of the Bar of the United States District Court for the District of Maryland need not be admitted pro hac vice in order to:
  - i. File a response to an objection to a proof of claim;
  - ii. Participate telephonically in a hearing during the 60-day period after the Petition Date, with permission of the courtroom deputy. However, no permission will be granted if evidence is to be presented at such hearing, or
  - iii. File a responsive pleading within the 60-day period after the Petition Date.
- b. An attorney must comply with Local Bankruptcy Rule 9010-3 to appear in person before this Court.
- c. An attorney who is a member of the Bar of the United States District Court for the District of Maryland and who represents a party as co-counsel with an attorney who has been admitted pro hac vice (1) must sign all pleadings filed on behalf of her or his client, but (2) is not required to accompany pro hac vice counsel at hearings or other Court appearances after introducing pro hac vice counsel to the Court.

15. **First Meeting of Creditors.** The Office of the United States Trustee of the District of Maryland is authorized to hold the first meeting of creditors of the Debtor pursuant to 11 U.S.C. § 341 on September 3, 2003 at such time and location as said office determines to be appropriate.

16. **Notice and Objections to this Order.** The Debtor shall give notice of this Order to all parties in interest within five (5) business days. The Clerk shall post a copy of this Order on the Court's internet site located with other matters in this case. If at anytime a party objects to the provisions of this Order, that party shall file a motion for appropriate relief, articulating the objection and the relief requested. After consideration of the motion and any responses, the Court may grant appropriate relief, if any is required. The Court may also, *sua sponte*, revise, modify, or rescind this Order.

**END OF ORDER**

cc:

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