

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

In re:

OGGUSA, Inc.,

Debtor.

Chapter 11

Case No. 20-50133-grs

Honorable Gregory R. Schaaf

**PROCEDURES GOVERNING
AVOIDANCE ACTION ADVERSARY PROCEEDINGS**

This cause came before the Bankruptcy Court on the motion (the “*Motion*”) of Oxford Restructuring Advisors LLC, the Plan Administrator for the GenCanna Wind-Down Trust (the “*Plan Administrator*”) to establish procedures governing Avoidance Action Adversary Proceedings.¹ A hearing was held on the Motion on December 16, 2021, at which time all interested parties were offered an opportunity to be heard with respect to the Motion. The Bankruptcy Court entered an order approving the Procedures on [____], 2021 [Dkt. ---.] Under the terms of that Order, the following procedures shall govern Adversary Proceedings as defined in the Motion:

I. Applicability of Procedures

a. *General Applicability*

The procedures (the “*Procedures*”) set forth here shall apply to all Adversary Proceedings as defined in the Motion, except as otherwise provided in §§ I(b) and I(c) below. The Procedures shall continue to govern Adversary Proceedings unless expressly modified by order of the Bankruptcy Court.

b. *Objections*

Any defendant may object to being subject to the Procedures by filing and serving a written objection within 14 days of being served with a summons and complaint (each, a “*Complaint*”). Upon receipt of a timely objection, the Bankruptcy Court shall hear such objection at the next Omnibus Hearing (defined below) and determine whether and to what extent the Procedures shall apply to an objecting defendant.

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

c. *Exceptions*

The Plan Administrator shall include a statement in the initial adversary Complaint as to whether a particular Adversary Proceeding is governed by the Procedures. In any Adversary Proceeding excepted from the Procedures by the terms of the order approving the Procedures, or in which the Bankruptcy Court deems the Procedures inapplicable, the Federal Rules of Bankruptcy Procedure (the “*FRBP*”), Local Rules for the United States Bankruptcy Court for the Eastern District of Kentucky (“*Local Rules*”), and further orders of this Bankruptcy Court shall govern all such Adversary Proceedings.

II. Answer Deadlines & Extensions

a. *Responsive Pleading Deadline*

Unless otherwise extended as provided below, defendants in pending Adversary Proceedings shall file an answer or other responsive pleading to Complaints filed by the Plan Administrator within 60 days of being served with a summons and Complaint against such party (the “*Responsive Pleading Deadline*”).

b. *Service of Procedures; Notices of Deadlines*

At the time the Plan Administrator serves a summons and copy of the Complaint in any Adversary Proceeding, the Plan Administrator shall simultaneously serve the following documents on each defendant: a copy of the Procedures and the Order approving the Procedures; and a cover notice, the form of which is attached to the Procedures as *Exhibit A*, which specifies the defendant’s Responsive Pleading Deadline.

c. *Extensions*

The Plan Administrator shall have authority to extend the time to file an answer to any Complaint or other responsive pleading filed in connection with Adversary Proceedings through informal, written extension agreements or stipulations without seeking Bankruptcy Court approval.

III. Discovery Matters & Protocol

a. *Continued Adversary Proceedings*

All Adversary Proceedings shall be deemed Continued Adversary Proceedings unless a party submits an Election Notice (as defined herein) in accordance with the Procedures. For all Continued Adversary Proceedings, the following

provisions of the Federal Rules of Civil Procedure (the “*FRCP*”) as adopted by the FRBP shall be modified as follows:

i. Suspension of Certain FRCP 26 Requirements

Parties to Continued Adversary Proceedings do not need to file FRCP 26(f) reports or FRCP 26(a)(1) disclosures; and no formal discovery deadlines will be set by the Bankruptcy Court so long as the parties remain engaged in settlement negotiations.

ii. Informal Discovery

Parties to a Continued Adversary Proceeding may engage in informal discovery by exchanging information to facilitate settlement. During this period, the parties may not serve formal discovery requests on each other including, but not limited to: requests for production of documents; interrogatories; or requests for admission (collectively, “*Discovery Requests*”). The Plan Administrator shall inform the Bankruptcy Court of the status of Continued Adversary Proceedings on or before each Status Hearing date as detailed in Section V(c).

b. Disputed Adversary Proceedings

i. Election Notice

Any party to a Continued Adversary Proceeding may elect to deem the Continued Adversary Proceeding a Disputed Adversary Proceeding by providing written notice of such election (the “*Election Notice*”) to all counsel of record in the Continued Adversary Proceeding by e-mail correspondence, facsimile, overnight delivery, or hand delivery. An Election Notice shall be binding on all parties to the Continued Adversary Proceeding, and any Continued Adversary Proceeding in which an Election Notice has been tendered shall be considered a Disputed Adversary Proceeding, subject to the scheduling and discovery guidelines set forth below.

ii. Modified FRCP 26 Requirements

Parties to Disputed Adversary Proceedings are not required to participate in a FRCP 26(f) discovery conference or file a FRCP 26(f) discovery report with the Bankruptcy Court. Parties to Disputed Adversary Proceedings shall file and serve initial disclosures under FRCP 26(a) within 30 days from the date an Election Notice is served in accordance with the Procedures (the “*Initial Disclosure Date*”).

iii. *Discovery Schedule*

All written and oral fact discovery shall be completed within 6 months of the Initial Disclosure Date (the “*Discovery Deadline*”) without prejudice to any party to a Disputed Adversary Proceeding requesting an extension of the Discovery Deadline.

iv. *Initial Pretrial Conference*

Any Disputed Adversary Proceeding shall be set for an initial pretrial status hearing (the “*Pretrial Status Hearing*”) at the first Omnibus Hearing that is at least 14 days after the Discovery Deadline. Upon the close of discovery, the Plan Administrator shall promptly inform the Bankruptcy Court and the defendant of such occurrence, and the proposed Pretrial Status Hearing date. Unless otherwise authorized by the Bankruptcy Court for good cause shown, all parties to Disputed Adversary Proceedings shall appear at the Pretrial Status Hearing through counsel.

IV. Mediation

The parties to a Disputed Adversary Proceeding shall engage in non-binding mediation at any time following service of any Complaint.

a. *Location*

Unless both parties agree to hold the mediation in-person, all mediations shall be held remotely via video conference. If in-person, the mediations shall be in one of the following locations: Lexington, Kentucky; Chicago, Illinois; Los Angeles, California; Miami, Florida; or New York, New York, unless both parties agree to another location.

b. *Mediators*

Mediations shall be conducted by Douglas L. Lutz of Frost Brown Todd LLC; and Francis L. Carter of Francis L. Carter P.A., with the cost of such mediation to be shared equally between the Creditor Trust and defendant. The parties may use an alternate mediator by informal agreement that need not be filed with the Bankruptcy Court. Upon request, the Plan Administrator shall provide the defendant with a list of acceptable private mediators, or the parties may, by mutual agreement, select an alternate mediator. In the event the defendant does not consent to either of the aforementioned mediators, and the parties cannot agree on an alternative mediator, either party may request a conference with the Bankruptcy Court to address the Bankruptcy Court’s approval of a mediator not suggested by either party.

c. *Scheduling*

The Plan Administrator, working with the mediator's calendar clerk or office, will commence scheduling mediations upon the availability of the mediator and the parties shall cooperate with each other regarding the scheduling of mediations. In the event parties cannot agree to a mediation date, the mediator shall have the power to unilaterally set a date.

d. *Participation in Mediation*

Parties who participate in mediation shall do so as scheduled and in good faith, with a view toward reaching a consensual resolution. Each mediation may be attended by a representative for each of the parties with full settlement authority and by counsel for the defendant, if the defendant is represented by legal counsel, as well as counsel for the Plan Administrator (who shall have settlement authority). In the event a mediation is held in-person, any representative may attend remotely via video conference.

e. *Mediator's Directives*

The mediator, in a separate order or other communication that does not need to be filed with the Bankruptcy Court, may require that the parties provide him or her with relevant papers and exhibits, position statements, and settlement proposals for use during mediation. In the mediator's discretion, upon notice (which does not need to be filed with the Bankruptcy Court), the mediator may adjourn a mediation. The mediator may also continue a mediation that has been commenced if the mediator determines that continuation is in the best interests of the parties.

f. *Failure to Comply*

Upon notice and a hearing, a party's failure to appear at mediation or otherwise comply with the Procedures with respect to mediation in good faith may result in the Bankruptcy Court imposing sanctions against the non-compliant party, which may include the Bankruptcy Court entering judgment in favor of the Plan Administrator and awarding the Plan Administrator costs including attorneys' fees and expenses.

g. *Confidential Settlement Communications*

Under Rule 408 of the Federal Rules of Evidence, all settlement discussions and communications by, between, and among the parties in connection with a mediation shall be confidential and inadmissible at trial.

h. *Report on Mediation*

The Plan Administrator shall advise the Bankruptcy Court of the results of all concluded mediations at each regularly scheduled Omnibus Hearing as set forth in § V below.

V. Status & Motion Hearings

The Plan Administrator will present status reports on the Adversary Proceedings and the Bankruptcy Court shall hold hearings in connection with Adversary Proceedings as needed. The Plan Administrator shall file all substantive motions in these Adversary Proceedings pursuant to the FRBP and the Local Rules.

VI. Settlements & Dismissals

Under Section 3.04(n) of the Wind-Down Trust Agreement, the Plan Administrator has authority to settle and dismiss Adversary Proceedings in its discretion and without Court approval under FRBP 9019.

VII. Modified Notice Procedures for Service by the Plan Administrator

a. *Generally*

Subject to the exceptions provided in the following provisions, the Plan Administrator may serve all notices and other pleadings related generally to Adversary Proceedings (other than the summons and Complaint) via the Bankruptcy Court's CM/ECF system and notice on parties registered to receive CM/ECF notices in this case shall be deemed sufficient under the circumstances.

b. *Service by the Plan Administrator – Requests for Substantive Relief*

If the Plan Administrator files any motion or pleading requesting substantive relief, the Plan Administrator shall serve such motion or pleading in accordance with Section VII(A) above and serve any affected defendant or other party who is not registered in CM/ECF (a) by email, notwithstanding, if such party consents in writing to receive service by email; and (b) by first class mail. Where allowed, service by email shall be effective as of the date such email is sent to the email address furnished by such consenting party.

c. *Adequacy of Service*

The notice procedures described in this Section VII shall be deemed sufficient and adequate notice under each of the circumstances described under FRBP 2002, 5005, 9013 and 9019 and Local Rules 2002-1, 5005-4, 9013-1 and 9019-1.

VIII. Miscellaneous Provisions

a. *Conflicts*

Except as to Adversary Proceedings that have been excepted from the Procedures under §§ I(b) and I(c), if conflicts arise between the Procedures and any other applicable rules, the Procedures shall control with respect to Adversary Proceedings.

b. *Extending Deadlines & Modifications*

Other than as provided in the Procedures, the deadlines and other provisions contained in the Procedures may only be extended or modified by the Bankruptcy Court upon written motion and for good cause shown. Good cause for extending or modifying a deadline shall include the consent of the parties. Nothing contained in the Procedures shall prejudice the rights of any party to seek an order: (a) limiting or expanding notice of, and hearings related to, such filings upon a showing of good cause; or (b) enlarging or reducing any time period under FRBP 9006(b) or (c).

c. *Relief from Procedures*

None of the Procedures shall prevent any party to an Adversary Proceeding from seeking relief from the provisions of the Procedures by appropriate motion to the Bankruptcy Court upon a showing of good cause.

d. *Exchanging Documents & Information*

None of the Procedures shall prevent the parties to an Adversary Proceeding from voluntarily exchanging information or engaging in settlement discussions at any time. Voluntary exchanges of information shall not be construed as a waiver of any of the requirements or limitations contained in the Procedures.

e. *Construction*

The Procedures shall be construed by the parties in a manner that promotes the most expeditious and economical resolution of the Adversary Proceedings and administration of the Debtor's bankruptcy case.

f. *Service of Procedures*

The Plan Administrator shall serve a copy of the Procedures and the Order approving the Procedures on each defendant in each Adversary Proceeding

and on any defendant in subsequently filed Adversary Proceedings by U.S. mail, postage prepaid.

By: /s / Aaron L. Hammer

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