IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

In re: )

)

BENDER SHIPBUILDING & REPAIR CO., INC., ) Case No. 09-012616-MAM-11

)

Debtor. ) Chapter 11

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BENDER SHIPBUILDING & REPAIR CO., INC., )

acting by and through its Plan Administrator, )

)

Plaintiff, )

)

v.

**ORDER AUTHORIZING AND APPROVING**

**CASE MANAGEMENT PROCEDURES GOVERNING**

**MULTIPLE ADVERSARY PROCEEDINGS**

**ARISING UNDER 11 U.S.C. §§ 105, 542, 547, 549 AND 550**

The matter came before the Court for hearing on August 10, 2011 on the Motion of

Counsel for the Chapter 11 Plan Administrator for the above-captioned debtor (the “Debtor”) for an Order Authorizing and Approving Case Management Procedures Governing Multiple Adversary Proceedings Arising Under 11 U.S.C. §§ 105, 542, 547, 549 and 550 (the “Procedures Motion”). Appearances were as noted on the record.

Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Procedures Motion. The Court, having reviewed and considered the Procedures Motion and the objections delivered to the Court in connection with the hearing on the Procedures Motion, if any, and having determined that due, proper, timely adequate and sufficient notice and opportunity to be heard with respect to the Procedures Motion and all of the relief requested therein has been afforded to interested parties and that no further notice be given, finds that relief requested in the Procedures Motion is necessary, appropriate and in the best interests of the bankruptcy estate, the creditors and other interested parties.

Based on the arguments of counsel, moving documents and the record made at the hearing, and the Court’s findings of fact and conclusions of law, if any, having been recorded in open court following the close of evidence,

**IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT**:

1. The relief requested in the Procedures Motion is **GRANTED**;

2. The Procedures governing all parties to the Adversary Proceedings identified on

Exhibit A to the Procedures Motion are as follows:

## Applicability of the Procedures and the Procedures Order:

The Procedures and the Procedures Order shall apply to all of the Adversary Proceedings, except as otherwise provided herein.

## Extensions:

The Plan Administrator shall have the authority to extend the time to file an answer or other responsive pleading to a complaint filed in connection with the Adversary Proceedings. The parties shall be permitted to enter into informal, written extension agreements or stipulations to extend the time to respond to the complaint in an Adversary Proceeding without the necessity of filing those agreements or stipulations with the Court.

## Omnibus Status Conferences and Pretrial Hearings:

(i) Omnibus Hearings shall be scheduled approximately every thirty (30) to forty-five (45) days at the convenience of the Court to address all pending matters filed prior to said hearing. Within 24 hours of each Omnibus Hearing, the Plan Administrator shall submit a proposed agenda to the Court’s chambers and shall publish that agenda for viewing by all counsel at <http://csattorneys.com/practices/bender-shipbuilding-preference-litigation/>.

Said agenda shall be informational only and shall not supplement or be a substitute for the Court’s official docket.

(ii) Appearances at Omnibus Pretrial Hearings. Defendants in each of the Adversary Proceedings are not required to appear at the Omnibus Pretrial Hearings unless (a) such defendants have requested relief from the Court that will be heard at the scheduled Omnibus Pretrial Hearing; (b) the Plan Administrator has requested relief against such defendants from the Court that will be heard at the scheduled Omnibus Pretrial Hearing and such defendants intend to contest that relief; or (c) the Court has directed the defendant to appear. In its discretion, the Court may from time to time permit parties to appear telephonically, provided however, that the Court’s telephone conference facilities are limited in relation to the size of the multiple parties involved.

## Pending Discovery Requests:

To the extent that any party has propounded discovery to date, the deadlines for responses are hereby extended to be consistent with the timelines of this order.

## Discovery:

(i) Applicable Rules. The discovery provisions of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) shall govern the discovery to be conducted in the Adversary Proceedings, unless otherwise provided herein or in further order of the Court.

(ii) Discovery. The parties’ initial disclosures are due thirty (30) days after the entry of the Case Management Order. All discovery is to be completed within one hundred twenty (120) days of the entry of the Case Management Order.

(iii) Expert Discovery. The Plan Administrator shall disclose any expert witnesses seven (7) days after the close of discovery as set forth in the preceding paragraph. The defendant(s) shall disclose expert witnesses fourteen (14) days after close of discovery. All expert discovery shall be completed within forty-five (45) days of the close of discovery as set forth in the preceding paragraph.

## Summary Judgment Motions:

(i) Timing. Motions for Summary Judgment shall not be filed no later than fourteen (14) days after close of expert discovery as set forth is Section F(iii).

(ii) Hearings. Summary judgment motions shall be heard at the next scheduled Omnibus Pretrial Hearing, except as otherwise ordered by the Court.

## Pre-Trial Jurisdictional Matters:

Retention of Jurisdiction and Authority over Adversary Proceedings. This Court shall retain the jurisdiction and the authority to preside over all Adversary Proceedings and to adjudicate all pre-trial matters, including the presentation of all dispositive motions and issuance of decisions on them.

## Mediation:

(i) Thresholds. All of the Adversary Proceedings in which (a) the Plan Administrator seeks an aggregate monetary recovery of $50,000 or more, or (b) the parties otherwise agree in writing to submit to mediation, shall be referred to mandatory mediation (collectively, the “Mediation Cases”).

(ii) Location. Since the Adversary Proceedings are proceedings before this Court, Alabama is the proper forum for mediation.

(iii) Mediators. The mediations shall be conducted by a mediator mutually selected by the Plan Administrator and the defendant. The cost of the mediation shall be equally shared between the parties. If the parties cannot mutually agree upon a mediator, the Court shall appoint a mediator on notice of the parties.

(iv) Scheduling. The parties shall cooperate with each other regarding the scheduling of mediations. All Mediation Cases must be mediated within one hundred sixty (160) days of the entry of the Case Management Order.

(v) Participation in Mediation. The parties to the Mediation Cases shall participate in mediation as scheduled and presided over by the mediator in good faith and with a view toward reaching a consensual resolution. Each mediation shall be attended in person by a representative for each of the parties with full settlement authority and, if a defendant is represented, their legal counsel, as well as counsel for the Plan Administrator (who shall have settlement authority).

(vi) Mediator’s Directives. The mediator, in a separate notice or other communication that need not be filed, may require the parties to provide to

the mediator any relevant papers and exhibits, a statement of position, and a settlement proposal. In the mediator’s discretion, upon notice (which need not be filed), the mediator may adjourn a mediation. The mediator may also continue a mediation that has been commenced if the mediator determines that a continuation is in the best interests of the parties.

(vii) Failure to Comply. Upon notice and a hearing, a party’s failure to appear at the mediation or otherwise comply with the Case Management Order with respect to mediation in good faith, may result in the imposition by the Court of sanctions, which may include the entry of judgment in favor of the Plan Administrator and the award of costs and attorneys’ fees.

(viii) Confidential Settlement Communications. Pursuant to Federal Rule 408 of the Federal Rules of Evidence, all settlement discussions and communications by, between and among the parties in connection with the mediation shall be confidential and inadmissible.

(ix) Report on Mediation. If an Adversary Proceeding settles or fails to settle at the conclusion of mediation, then the Plan Administrator shall so advise the Court at the next regularly scheduled Omnibus Hearing.

## Miscellaneous:

(i) Conflicts. These Procedures shall control with respect to the Adversary Proceedings to the extent of any conflict with other applicable rules or orders entered prior to the date hereof.

(ii) Extensions of Deadlines. The deadlines and other provisions contained in the Case Management Order may be extended or modified by the Court upon written motion and for good cause shown or consent of the parties pursuant to written agreement or stipulation, which agreement or stipulation need not be filed with the Court.

(iii) Relief from Procedures. Nothing herein shall prevent the Plan Administrator or any defendant in an Adversary Proceeding from seeking relief from the provisions of these Procedures, upon a showing of good cause, by appropriate motion to the Court in accordance with the procedures set forth herein.

(iv) Exchange of Documents and Information. Nothing herein shall prevent

the parties to any Adversary Proceeding from voluntarily exchanging information or engaging in settlement discussions at any time; provided, however, that any voluntary exchange of information shall in no way be construed as a waiver of any of the requirements or limitations contained in these Procedures.

(v) Construction. The Procedures set forth in the Procedures Order shall be construed by the parties in a manner that promotes the expeditious and economical resolution of the Adversary Proceedings and administration of these bankruptcy cases.

3. The Court shall retain jurisdiction with respect to all matters relating to the

interpretation or implementation of this Order.

DATED:

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Margaret A. Mahoney

United States Bankruptcy Judge