

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION**

In re:)	
)	
JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i>,)	Case No. 16-21142-11
)	
Debtors.)	(Jointly Administered)
)	

**MOTION OF JD HOLDINGS, LLC FOR ENTRY OF SCHEDULING ORDER RE:
CONTESTED UBS FEE APPLICATION**

JD Holdings, LLC (hereinafter “JDH”), moves for an order setting forth a schedule for taking and completing discovery, filing motions, filing witness and exhibit lists, providing various pretrial filings, and a hearing date. JDH states the following in support of this motion.

1. On April 4, 2018, UBS filed an application for payment of transaction fees based on a September 14, 2016 letter agreement (hereinafter the “UBS Agreement”). Doc.#1966. JDH filed its objection to that application on April 25, 2018. Doc. #2077. In objecting, JDH relied on, among other bases, that UBS had materially breached the UBS Agreement and that the compensation allowed UBS, if any, should be different than the compensation provided for under the UBS Agreement based on the elements in Section 328.

2. The UBS fee application and JDH objection make the matter a contested matter pursuant to Bankruptcy Rule 9014. LBR 7026.1, which applies to contested matters, anticipates requests for production of documents, requests for admission, interrogatories, and depositions. LBR 7026.1(b) provides that the parties should complete discovery within four months of the entry of a scheduling order, and that the Court, for good cause, may shorten or lengthen that time. In objecting to the UBS fee application, JDH set forth examples of areas on which discovery was needed, including the role, if any, UBS played in the confirmed Plan, whether UBS performed the UBS Agreement in good faith and accordance with the implied standard of

conduct applicable to such professionals, and UBS's role in the insoluble title insurance problems posed in connection with a 363 sale. Doc. #2077 at 7-10. JDH has served requests for production on UBS, and those requests, attached hereto as Exhibit C, reflect in part the subject matter of anticipated discovery. Interrogatories are needed to determine the identity of potential deponents knowledgeable of the facts and circumstances concerning a particular subject matter and to narrow or at least identify the facts in dispute. Requests for admission can be used to make the hearing more efficient.

3. Given that the UBS fee application was contested by JDH, on April 30, 2018, JDH counsel emailed a proposed discovery and hearing schedule to UBS counsel and asked for UBS counsel's thoughts. See Exhibit A attached hereto. JDH counsel provided that proposed schedule after discussion of the subject with UBS counsel and in response to the request of UBS counsel. On May 10, 2018, UBS counsel responded: "UBS believes there are no dispositive or significant facts in dispute and accordingly, there is no need for discovery or a future evidentiary hearing." See Exhibit B attached hereto. If UBS believes there are no material fact issues, then UBS can move for summary judgment at any time, and JDH can point out why summary judgment is inappropriate, including relying on Fed. R. Civ. P. 56(d) to defer ruling until discovery is taken. UBS's belief is not a basis for not cooperating in developing a proposed scheduling order. The UBS fee application and the JDH objection raise various issues that merit discovery.

4. The processing and judicial management of this contested matter will be efficient, measured, and reliable if governed by a scheduling order with discovery deadlines and limits, with filing dates for motions and pretrial matters such as witness and exhibits lists, with filing dates for dispositive motions, a date for a pretrial conference, and a hearing date.

WHEREFORE, JDH request that the proposed scheduling order attached hereto as Exhibit D be entered by the Court.

Dated: May 12, 2018.

Respectfully submitted,

GERMAN MAY PC

By: /s/ Kirk T. May

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ATTORNEYS FOR JD HOLDINGS, L.L.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of May, 2018, a true and correct copy of the foregoing document was electronically filed with the court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Kirk T. May

Attorney for JD Holdings, LLC