

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
WCI Communities, Inc., .
et al., .
Debtor(s). . Bankruptcy #08-11643 (KJC)
.....

Wilmington, DE
August 5, 2008
11:00 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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1 THE CLERK: All rise. Please be seated.

2 THE COURT: Good morning all.

3 MR. SCHLERF: Good morning, Your Honor, Jeffrey
4 Schlerf for the new Debtors, Your Honor, WCI Communities, Inc.,
5 and affiliated Debtors. Your Honor, first of all, I'd like to
6 express my appreciation for the additional time. I guess the
7 24 hour rule really makes a lot of sense, and maybe it should
8 be 24 hours and 53 minutes.

9 Your Honor, these cases are moving fast, there is a lot of
10 quick preparation for the filings, and I think the purpose of
11 the hearing this morning not only should be for the purpose of
12 getting some First Day relief, Your Honor, but making sure that
13 the Court is getting up to speed on the cases. The papers are
14 I think fairly detailed, Your Honor, they're not -- aren't too
15 many First Day Motions.

16 THE COURT: Well, there are enough.

17 MR. SCHLERF: Kudos should go to co-counsel for a
18 great --

19 THE COURT: I got them. And I did have the
20 opportunity to read them.

21 MR. SCHLERF: Great, Your Honor. But as a case, Your
22 Honor, that's this large with this many Debtors in industry
23 that while there have been filings, not quite as many maybe in
24 Delaware, I think it's important that a case have a soft
25 landing, and part of that make sure that the Court is up to

1 speed on the cases and what needs to be done.

2 Your Honor, we filed a number of Pro Hac Motions for co-
3 counsel, White & Case; they're on the docket. I think that
4 this morning Mr. Lauria might be the only one speaking on
5 behalf of White & Case, depending on how things go. We've
6 worked out most issues with the U.S. Trustee. Mr. Lauria, I
7 don't believe, has appeared before you, Your Honor, but he's
8 appeared in this Court in other matters through the years.
9 He's the Chairman of the restructuring practice at White & Case
10 and I'd like to introduce him, he's -- again, we filed a Motion
11 for Pro Hac Vice.

12 THE COURT: Very well, thank you.

13 MR. LAURIA: I'm going to hurry up here so I can still
14 say good morning. Good morning, Your Honor, my name is Tom
15 Lauria, I'm with the law firm of White & Case. We represent --
16 or we hope to represent, I guess is a better way to put it for
17 today, the Debtors in these Chapter 11 cases. I want to start
18 out by thanking the Court and also apologizing. Come to think
19 of it, that sounds a little bit like what I'll probably be
20 doing tonight when I get home.

21 THE COURT: Yes, that may be a tougher road for you --

22 MR. LAURIA: Yeah --

23 THE COURT: -- than the one here.

24 MR. LAURIA: I hope that's so actually. But we do
25 appreciate the Court hearing us on such short notice. We

1 apologize for the mass of paper that we submitted and I think
2 the old -- I guess it's Mark Twain who said, "If I had more
3 time I'd have written a shorter letter." We've been scrambling
4 quite a bit the last few days, and in particular over the
5 weekend, to put these papers together to do everything that we
6 can to try to ensure that these Debtors will be able to
7 continue operating a business that conventional wisdom suggests
8 struggles mightily in the Chapter 11 environment.

9 Let me start, if I may, by just talking a little bit about
10 the business and a little bit about how we got here, and put a
11 little color on the description that we set forth in the papers
12 that we filed.

13 THE COURT: All right.

14 MR. LAURIA: WCI Communities is a fully integrated
15 luxury home builder. It's been in business for over 50 years.
16 And in addition to building primarily high-end single family,
17 multi-family and condominium style homes, it has worked hard to
18 build a reputation of quality and reliability. The companies
19 that comprise the Debtors' enterprise specialize in creating
20 amenity-rich communities in choice locations up and down the
21 East Coast of the United States, but primarily in Florida.
22 These are generally planned communities that include golf
23 courses, in some cases marinas, in some cases are beach front
24 properties with beautifully manicured public areas. The
25 company operates and has projects in seven states: Florida,

1 New York, New Jersey, Connecticut, Maryland, Virginia and
2 Massachusetts.

3 Over the term of its existence, WCI has completed over 60
4 communities in those areas and completed construction of over
5 15,000 homes. In addition, WCI has built and completed
6 approximately 70 condominium towers, containing over 53,000
7 residential units. A classic example of a WCI single family
8 home community would be either the Pelican Preserve, located in
9 Bonita Springs, Florida, or the Heron Bay Community, located in
10 Coral Springs, Florida. Both of these communities contain
11 homes built around amenities that include golf courses, tennis
12 courts, pools, club houses, one or more fitness centers and
13 walking trails. The average sale price historically in these
14 projects has been approximately \$800,000 per home.

15 The classic WCI luxury tower project would probably be The
16 Seasons property, located in Naples, Florida. This is a
17 waterfront property. It's just over 20 floors. I apologize
18 for not knowing how many over 20 floors it is. It has 75
19 units. The average size of the units range -- well, it range -
20 - units range from 3 to 6,000 feet, and pricing was 2½ million
21 to \$14 million per unit when this project was in its prime in
22 2004. Amenities include theaters, fitness centers, a pool,
23 spa, club and a private oceanfront beach. To further put color
24 on the type of projects and construction that these Debtors
25 have long been engaged in, I would encourage the Court, if it

1 gets a chance, to take a look at the company's webpage.
2 There's a good deal of material there that really shows the
3 quality and the type of projects that these Debtors produce.

4 Currently the Debtors are building or conducting
5 operations in approximately 40 communities. And they have a
6 current inventory of approximately 347 single family homes
7 offered on the market for prices ranging from approximately
8 \$200,000 up to 3 million. And they have 517 tower units that
9 are completed that are being offered on the market for
10 approximately prices of \$400,000 up to over \$5 million. The
11 aggregate market value of these completed units and homes is
12 over \$1 billion. In addition, the company owns approximately
13 12,000 undeveloped acres, much of it which is considered prime
14 in the location or community where it is and can be developed
15 into over 15,000 homes. Based on historic pricing and subject
16 to future trends, if fully developed, the company believes that
17 this property would generate total revenues of over \$20
18 billion.

19 The Debtor's business is managed and conducted by nearly
20 4,000 people in the aggregate. Of these, just under half,
21 about 1,800, are actual employees of the company, the other
22 half are commissioned sales representatives who are independent
23 contractors. That number does not include literally thousands
24 of additional people who are employed by contractors, suppliers
25 and service providers that are directly involved in providing

1 services, amenities or contract related work at the projects of
2 the Debtors. Notably, the numbers that I just mentioned, the
3 1,800 employees in particular, reflects a reduction in force of
4 over 2,000 employees since this business hit its peak in
5 performance in May of 2006.

6 Size and scale of this business is also something that I
7 think is worthy of note and also is a demonstration of the
8 impact of the current economic downturn. In 2005 the company
9 had gross revenues of over \$2.6 billion. In 2006 revenues were
10 \$2 billion, by 2007 that number had fallen to \$1 billion, and
11 during the first half of 2008, total revenues are approximately
12 370 million.

13 At June 30th of this year the company had total book
14 assets of approximately \$2.2 billion. That was comprised of
15 about \$1.6 billion of real estate assets, \$230 million of
16 property, plant and equipment, about \$60 million of cash and
17 about \$60 million of accounts receivable. At that time the
18 company also had about \$1.9 billion in total liabilities. This
19 is comprised in large part of senior secured bank debt and
20 total obligations owed under a series of note issues. I'll
21 just outline them very quickly for the Court, we've set this
22 forth in the papers.

23 The bank debt today totals about \$760 million. That does
24 not include approximately \$50 million in issued but undrawn
25 LC's which are currently outstanding. That number is broken

1 down into three components: a term loan facility under which
2 Key Bank is the agent. The total balance is approximately \$225
3 million; a revolving credit facility with Bank of America, a
4 total balance of approximately \$489 million. That's also the
5 facility under with the outstanding but undrawn LC's exist; and
6 a tower facility with Wachovia, total balance approximately \$52
7 million.

8 Now, of those amounts, the terms and revolver are sharing
9 a first lien position on substantially all the assets of the
10 Debtors with the exception of the tower assets. And
11 conversely, the tower facility enjoys a first lien on the tower
12 assets. In a restructuring that occurred earlier this year,
13 each bank group took a junior lien on the others' principle
14 collateral and entered into a inter-creditor agreement which
15 sets for the ways in which they would be able to exercise
16 remedies with respect to the respective collateral pools.

17 In addition to the securities that I described, I think
18 it's also worthy of note that roughly 50 of the Debtors are
19 guarantors of the bank debt. In addition, the company has
20 approximately \$815 million in the total at principle amount
21 outstanding notes. These notes are all subordinated
22 obligations subject to senior debt, which includes principally
23 debt -- funded debt, it excludes trade obligations from the
24 definition of senior debt.

25 There are three categories of subordinated notes. The

1 senior subordinated notes, which we've got three series there,
2 the 2012's, which are 9½% interest, that's \$200 million. We
3 have \$125 million of 2013 notes that accrue 7½% interest, and
4 we have \$200 million 2015 notes, which accrue interest at the
5 rate of 6½%. Separately we have two series of junior
6 subordinated notes that total \$165 million. One series matures
7 in 2035, carries interest at the rate of 7¼% at present and is
8 in the amount of \$100 million, and the other series matures in
9 2036 and carries interest at the rate of 7.54%, that's a \$65
10 million issue.

11 A final category of subordinated debt is the convertible
12 notes, which are due in 2023, carry interest at the rate of 4%,
13 and those notes are outstanding in the amount of \$125 million.
14 Importantly, those notes, in addition to having a maturity in
15 2023, also had a put-right that was to be paid today by 5
16 o'clock, which those noteholders in fact exercised and is
17 probably one of the principle causes of the filing of the
18 Chapter 11 case at this time. But that really oversimplifies
19 things, and I don't mean to suggest to the Court that there's
20 any one event that we would point to and say that's the reason
21 we're here.

22 WCI's Chapter 11 is really a direct consequence of what
23 we've called in our papers a perfect storm of economic events.
24 And by perfect storm, I mean not only the bad things that we
25 have all read so much about that happened starting last summer,

1 but I think first you have to understand that this business had
2 grown markedly in the 2000's, really since 2000, and had become
3 a favored source of lending and investment that further spurred
4 its growth. And it's fair to probably characterize the growth
5 of the business as being massive since 2000. Indeed, in 2002,
6 revenues for the total business were about 1.2 billion, and as
7 I previously mentioned, 3 years later they were more than
8 double that, up to \$2.6 billion.

9 The consequence of this being in a favored industry at
10 favored time was that capital was readily available and was
11 there to build a business that was designed to continue
12 capitalizing on the upside in the real estate market and
13 perception that growth would continue perhaps indefinitely. So
14 the company got to the point where it's got \$2 billion of debt,
15 as I've outlined already, and at its peak had a total market
16 capitalization of well over a billion dollars in terms of the
17 value of it's equity, currently has 42 million shares
18 outstanding. The stock hit a high price of about \$30 a share
19 and immediately prior to the bankruptcy was trading right
20 around \$1. I think yesterday it was at 68 cents.

21 In any event, the business was built for the purposes of
22 growth and to be able to continue funding a business real
23 estate development home building that is inherently a capital
24 intensive business. Unfortunately, a balance sheet like that
25 and a structure that accommodates that type of activity and

1 growth does not accommodate a downturn very well. And as a
2 consequence, when the one-two punch of the sub-prime collapse,
3 followed by the general dislocation of the credit markets last
4 Fall, the company found itself in a position where on the one
5 hand demand for properties had literally fallen off the table,
6 and at the same time, the company's own access to capital had
7 effectively been cut off. So we kind of got hit from both
8 ends.

9 As the impact of these two events have continued and
10 spread, the business has declined in a relatively dramatic and
11 steady fashion. As I already mentioned to the Court, revenues
12 have gone from \$2 billion to a rate this year where we may be
13 lucky to hit 750 million in total revenues. During that period
14 in time, as I mentioned, the company has really tried to do
15 everything it can to manage its way through. The company has
16 made enormous cutbacks in development, essentially
17 discontinuing all future development of undeveloped projects,
18 taking them off the table, dramatically cutting back plans for
19 future development, enormous reductions in workforce, and
20 numerous renegotiations of its senior credit documents to
21 address covenant and related issues.

22 Through all of this, the company has been able to generate
23 positive cash flow, but it simply can't sell homes at a price
24 that is equal to the all-in cost of those homes. The company's
25 obviously also struggling under the carrying cost of nearly \$2

1 billion of debt. Annual interest expense right now is running
2 at well over \$150 million.

3 All of this is bad, but the spark in the tinder box was
4 that August 5th put-right. The company saw that coming and was
5 trying to plan for it since early in the year. The hope was
6 that there would be some improvement in the market. When it
7 became apparent that that wasn't going to happen, the company
8 developed an out-of-Court plan to offer to exchange the notes
9 on very favorable terms that would increase the coupon to -- in
10 the final offer 17%, and it would have provided those notes
11 with a third lien on all of the company's assets. In order to
12 induce the senior lenders to agree to and support that
13 exchange, we proposed to raise second lien financing that would
14 have been used to substantially pay down the first lien debt.
15 The attempt was made to raise \$350 million of second lien debt
16 for market. Unfortunately, the market would not provide the
17 second lien debt --

18 THE COURT: Well, let's left of it anyway. What's
19 left of the second lien market anyway.

20 MR. LAURIA: Well, by your current test, nothing. And
21 the bondholders wouldn't agree to the exchange. We had a
22 number of holdout holders who indicated even if we did
23 successfully clear the other getting points of the deal that
24 they would not tender.

25 So toward the middle of last week, the company really

1 started to realize that the contingency planning exercise that
2 we'd started just a couple of weeks ago was shifting from the
3 background to the foreground. Faced with the default and
4 potential acceleration of substantially off of its debt and the
5 potential exercise of remedies by Creditors, including the
6 potential seizure and offset of the company's cash, which is
7 its lifeblood obviously, the decision was made that there was
8 effectively no choice but to seek Chapter 11 protection. So
9 begrudgingly, we really shifted into high gear over the last
10 week and things accelerated over the weekend. We grew
11 concerned that as the news out in the market had really gotten
12 worse about the company, we had experienced some additional
13 downgrades from the rating agencies, that as early as Monday we
14 could start experiencing injury to the business that might, in
15 fact, be irreparable.

16 And so the decision was made Sunday night by the Board of
17 Directors to commence a Chapter 11 case Monday morning before
18 the markets opened. That was a decision that was ultimately
19 facilitated by our ability to negotiate an agreement with our
20 senior secured lenders regarding the use of cash collateral
21 during the initial stage of the case, which is one of the
22 important pieces of relief that we're going to ask the Court
23 for today. So yesterday morning we entered Chapter 11; WCI and
24 126 of its direct and indirect wholly owned subsidiaries.

25 After getting the petitions filed and getting our papers

1 filed, we spent the balance of yesterday principally focused on
2 communicating with our employees, vendors and key business
3 partners regarding the filing and the consequences thereof,
4 hoping to do everything we could to keep the ship pointed in
5 the right direction. But we now face two daunting tasks,
6 having gotten into Chapter 11; one urgent and the other more
7 urgent.

8 The urgent task is to figure out how to restructure the
9 company's capital in order to maximize stakeholder recoveries
10 before the ongoing downturn in the market further erodes value.
11 That's going to be very difficult, given the number of
12 stakeholders that we have to deal with and the potentially
13 conflicting interests. But the more urgent task and what
14 brings us before you today is the triage-like exercise of
15 keeping the patient alive.

16 We have against us the conventional wisdom that a
17 homebuilder really can't operate in bankruptcy. That's in
18 large part because a homebuilder, at the end of the day, has to
19 be the custodian of other people's money to get to a closing
20 table to transfer title to a house. You have to be able to convey
21 clear title, and you have to be able to convince your customers
22 that there will be somebody there, or some mechanism for
23 performing the warranty obligations that attach to a new home.
24 People who buy a new home from the builder put value on that
25 warranty, and the uncertainty surrounding the ability to

1 perform because of our Chapter 11 is going to be a real
2 challenge to keeping this business going.

3 So in addition to the conventional First Day relief, which
4 we have tried to keep to a minimum, although I recognize that
5 the stack is fairly respectable, we also have crafted a package
6 of proposed orders that if approved by Your Honor we believe
7 will optimize our ability to successfully build, market and
8 sell homes while we remain in Chapter 11. Those motions are,
9 in particular, items 8 through 15 in the package that we
10 provided to the Court and are designed to address the core
11 pitfalls that we believe this particular homebuilder will face
12 and hopefully be able to resolve while sitting in Chapter 11.

13 In particular, we're attempting to keep our contractors at
14 work, maintain our insurance, surety and bond relationships.
15 We need to be able to deliver clear title at closing. We need
16 to be able to assure customers that our bankruptcy does not put
17 in any way their capital at risk or result in funds that have
18 been provided for closing flowing to somebody who's not
19 supposed to get them as per the closing statements. We need
20 title companies to be able to and be willing to issue title
21 insurance at closing. We need our brokers to know that they
22 will be paid their commissions for putting together their
23 contacts and closing them. We need our communities to know
24 that their amenities will be maintained and continued at
25 current levels, and we need to be able to honor our obligations

1 to our home buyers, both those we currently have and those we
2 hope to have in the future. So to that end, we fashioned this
3 proposed relief that will permit the business to stay afloat
4 while we address our other urgent issue.

5 Before turning to the specific motions, there are a couple
6 of other matters I would like to bring to the Court's
7 attention. Further to our effort to maximize the viability of
8 this business in Chapter 11, we've left two important
9 components of the business out of the Chapter 11 case at this
10 point. The first is our watermark reality brokerage business.
11 That is conducted by a subsidiary known as Prudential Florida
12 WCI Reality. This is a brokerage, this is where the 1,800
13 brokers are located, and this is a business that is created as
14 a franchisee of Prudential Realty. Our belief was, in studying
15 this, that if this entity were to go into Chapter 11, it would
16 be effectively impossible to retain the brokers. These are
17 people who effectively are free to move around as they like,
18 and our concern was that by putting their contact into Chapter
19 11 that they would simply move to the competition and that that
20 business would vaporize. So even though this entity is a
21 guarantor of the bank debt and the bond debt, we have, at this
22 point, not put it into Chapter 11 in the hopes that our
23 Creditors will be patient and work with us and not take any
24 action that would necessitate a Chapter 11 for that entity.

25 We also have not filed for Chapter 11 relief as to WCI

1 Mortgage, LLC. This is a wholly owned subsidiary that provides
2 mortgage services. It's a joint venture between WCI and Wells
3 Fargo Bank, pursuant to which Wells Fargo provides exclusive --
4 exclusively provides mortgages for transactions financed
5 through WCI Mortgage. And again, it was a business that we
6 determined would not be able to function, in any sense of the
7 word, as a Chapter 11 debtor. But what we will be doing today
8 with respect to those entities is asking the Court's permission
9 to continue transacting business with those entities, and as
10 required as to the watermark reality business, to continue
11 funding certain expenses to that operation.

12 In addition we have not -- we control but do not really
13 own literally dozens of homeowner and condo associations, and
14 also amenity clubs, some of which are structured as equity
15 ownership for the members and some of which are structured as
16 non-equity ownership. We did not file those entities into
17 Chapter 11, we thought it would be totally counter-productive.
18 However we do need to have the ability to fulfil our
19 obligations to and through those entities.

20 A further matter I wanted to bring to the Court's
21 attention, something I alluded to earlier in my remarks, we
22 believe that as a matter of business exigency, we're going to
23 need to have a third party to support our ongoing warranty
24 obligations in order to induce people to buy homes through this
25 business. We are very close to having a completed proposal

1 with a third party that has a very strong balance sheet that we
2 believe would bring the credibility to the performance of that
3 obligation such that if at any time WCI was not able to
4 continue performing its warranty obligations, the consuming
5 public would be comfortable that there would be somebody there
6 to do it. Unfortunately, we've not been able to get to a point
7 where we're prepared or able to bring that matter to the
8 Court's attention today. I did want to mention it, though,
9 because it's important and because as soon as we can get that
10 deal buttoned down we would hope to be able to come back here
11 on very short notice at least for an interim approval of that
12 arrangement.

13 A final matter I wanted to mention before getting into the
14 meat of the motions is that since we've filed, we've become
15 aware of a handful of situations that we haven't yet addressed
16 in our First Day relief. In particular, we have a hotel
17 property that we're involved with that we are required to fund,
18 and without some special agreements made, again, subject to
19 Court approval, we are not in a position to be able to fund
20 that business at this point, and we believe there's substantial
21 value there, and we are in negotiations with our counter-
22 parties to try to reach terms that we would bring to Your
23 Honor.

24 In addition, there are customer issues that have come up,
25 which although relatively minor in the big picture, can have a

1 way of blowing up and becoming big things. As I mentioned,
2 this business has a reputation of providing quality and
3 reliability. We have a couple of homes that had mold problems
4 and had moved the homeowners into property that we're renting
5 for them while we cure that problem. And we discovered that
6 somehow the rent check didn't get paid before we commenced
7 Chapter 11. And we're going to try to come back in very
8 quickly with some sort of relief so that we can deal with that
9 situation and other similar situations where we're really
10 preserving the enterprise by being a good neighbor, if you
11 will, and taking care of our homeowners.

12 I guess with that said, I can take a brief breather and
13 ask if the Court has any questions and then we can turn to the
14 First Day Motions.

15 THE COURT: I have one initially, and that is -- and I
16 haven't had a chance to review all of the petitions, I have
17 read all of the motions requesting various types of relief, but
18 has the Debtor checked the single asset real estate box with
19 respect -- any of the Debtors checked the single asset real
20 estate box?

21 MR. LAURIA: We have not checked the box. We
22 recognize that's an issue that we may have to address, and I
23 think we're trying to keep our powder dry on that topic at this
24 point.

25 THE COURT: All right. That was the only preliminary

1 question that I had.

2 MR. LAURIA: Thank you, Your Honor. I'm -- would now
3 propose that we, subject to the Court's guidance, that we turn
4 to the First Day Motions and just go through them in order as
5 presented.

6 THE COURT: That's fine.

7 MR. LAURIA: Your Honor, our first motion is our
8 request for joint administration. I think this is a plain
9 vanilla request. I don't have anything to add beyond what's in
10 the motion, subject to the Court's comment. I do believe the
11 United States Trustee has one issue that they wanted to raise.

12 THE COURT: All right, let me hear from the U.S.
13 Trustee then.

14 MS. LEAMY: Good afternoon, Your Honor, Jane Leamy for
15 the United States Trustee. With respect to the Joint
16 Administration Motion, the U.S. Trustee is fine with it except
17 for the request with respect to the caption that's to be used
18 in the cases. We recognize that the requirements of the
19 Bankruptcy Code are routinely modified to allow for a
20 consolidated caption, but generally that includes an agreement
21 that other Debtors will be listed in a footnote, the names of
22 the Debtors, a main address and the last four digits of the tax
23 ID number. The Debtors here have a concern, I believe, because
24 of the number of Debtors that it would be burdensome. Our
25 position, however, is that parties receiving papers in this

1 case should know the names of the other Debtors and should not
2 have to go to the docket every time to see who they're dealing
3 with. So we've asked the Debtors to include a caption. It
4 could certainly be broken up on two pages. I understand one
5 page might be too much, there might not be room for the title,
6 but that's our position. Thank you, Your Honor.

7 THE COURT: All right, thank you. Does anyone else
8 care to be heard in connection with this motion? Well, that's
9 a question I haven't had before, but I'll just -- from my own
10 standpoint, I don't find it, you know, ideal that anyone has to
11 page through pages of captions before they get to the
12 substantive motion involved anyway. Is there a way that with
13 respect to the docket we could have a single place where or a
14 single docket entry a statement of Debtors that could be
15 referred to in a footnote? With every pleading to say, "Go to
16 Docket Number So-And-So," and all the Debtors will be listed
17 kind of thing?

18 MR. LAURIA: Your Honor, I think that would be a great
19 fix and something we would certainly do and in fact, it would
20 allow us to put that information in a way that people could
21 read it. We actually experimented with trying to accommodate
22 the U.S. Trustee's request, and I don't know if you can see it
23 from here but it's --

24 THE COURT: I can see enough.

25 MR. LAURIA: It would result in lots of people

1 probably wearing glasses that aren't currently wearing glasses.

2 THE COURT: And I don't know if the company's website
3 is set up to have a bankruptcy type information section, but
4 maybe it could be placed there as well so people wouldn't have
5 to get to the bankruptcy docket to find that information
6 either.

7 MR. LAURIA: We are working on creating a Chapter 11
8 page to the website, but certainly it seems workable to me that
9 we would file a pleading that would list and identify each of
10 the Debtors and that we could just refer to that with a
11 footnote on the front page of pleadings. That would probably
12 be a beautiful solution.

13 THE COURT: All right, and to say it'll be located on
14 the company's website --

15 MR. LAURIA: Sure.

16 THE COURT: -- at some point. All right. I won't ask
17 the U.S. Trustee to agree to that, but hopefully that'll help
18 with the concern that was expressed. I have no other
19 questions. So you can revise the Form of Order and submit it
20 under certification.

21 MR. LAURIA: All right, thank you, Your Honor. Your
22 Honor, by the way, I have probably two housekeeping matters I
23 ought to take up here. I have original copies of all of the
24 orders and I also -- we have copies available for anybody else
25 who wants to take a look. If I may approach?

1 THE COURT: Yes, you may. Thank you.

2 MR. LAURIA: Your Honor, our second motion is the
3 Motion for an Extension of Time to file our schedules of assets
4 and liabilities, schedules of executory contracts and unexpired
5 leases, and statements of financial affairs. As I think the
6 Court can gather from the papers, this is a very large, very
7 complex business enterprise. There is a lot going on right now
8 just to keep the company going. The people at the
9 headquarters, in particular in the financial function of the
10 company have been under extraordinary pressure, and are already
11 substantially understaffed, and so we have asked for an order
12 extending the existing 30 day period by 60 days so that the
13 filings would be due in 90 days, as opposed to 30 days from the
14 commencement. I think the basis for the relief is set forth in
15 the motion. I'll be happy to answer any questions, and I think
16 The U.S. Trustee may have a comment on this one as well.

17 THE COURT: All right. Does anyone else care to be
18 heard in connection with this motion?

19 MS. LEAMY: Your Honor, Jane Leamy for the United
20 States Trustee. We don't dispute that given 127 Debtors
21 there's going to be a need for extra time here. The only issue
22 that we had was that is this really a motion for today, given
23 that there's already a 30 day window that the Debtor's have, so
24 it seems more appropriate that this should go out on notice.

25 THE COURT: Does anyone else care to be heard?

1 ALL: (No verbal response).

2 THE COURT: Any response from the Debtor, Mr. Lauria?

3 MR. LAURIA: Thank you, Your Honor. We considered the
4 U.S. Trustee's point and just feel that if there is not -- if
5 we don't know there's an extension and a deadline we're working
6 against, and wouldn't know that for sure for 20 days, it would
7 be an enormous gamble on our part to not direct the forces
8 towards this effort immediately, which I think would be
9 counterproductive given all the other things that people really
10 have to do to keep the wheels on the wagon right now. So we
11 would -- we would ask that the order be entered today.

12 THE COURT: Why don't we do this? Why don't we give a
13 60 day extension without prejudice -- and I'm guessing your
14 Form of Order says that, may say that anyway. It does --
15 without prejudice to request a further extension. Okay. So
16 I'm looking at the Form of Order which I'll mark up the first
17 decretal paragraph on page 2, fourth line would say, "30 days
18 for a total of 60 days from the petition date." Okay with
19 that?

20 MR. LAURIA: Yes, Your Honor.

21 THE COURT: Okay, with those modifications, I'm
22 signing that order.

23 MR. LAURIA: Thank you. Our third motion that we
24 would ask the Court to consider is our application for
25 authority in approving the appointment of Epic Bankruptcy

1 Solutions, LLC as noticing claims and balloting agent for the
2 Bankruptcy Court. We believe this is, again, another customary
3 relief, we assume the Court is familiar with Epic and their
4 services. Our arrangement with them is completely standard and
5 with no unusual terms or provisions.

6 THE COURT: All right. Does anyone else care to be
7 heard in connection with this motion? I hear no response. I
8 have no questions. That order has been signed.

9 MR. LAURIA: Thank you, Your Honor. Our fourth motion
10 is the Debtor's Motion for Order Authorizing Continued Use of
11 existing cash management system and bank accounts and business
12 forms, authorizing continued post-petition inter-company
13 transactions, and waiving investment and deposit requirements.
14 I am happy to walk the Court through this motion in as much
15 detail as the Court would like, or address particular questions
16 or concerns that the Court has. Suffice it to say that in the
17 big picture that we do have a relatively complicated inter-
18 company system, with numerous accounts at numerous different
19 banks. We have done the best we can to explain how money flows
20 and how money is transferred between and among both the Debtors
21 and the non-Debtors. We have discussed this motion and the
22 requested relief with the United States Trustee and have agreed
23 to a couple of modifications; one, that we will give the United
24 States Trustee notice of any account that we open or close, and
25 two, that the payments that are made to the non-Debtor entities

1 will be in accordance with the budget attached to the Cash
2 Collateral Order. In addition, the United States Trustee had
3 expressed concern about the time of waiving rights as to our
4 Section 345 waiver, and what we have proposed to, with the
5 United States Trustee, is that their office simply be carved
6 out that relief such that the U.S. Trustee should be free upon
7 disclosure by us of everything that we're doing with all of our
8 accounts if -- which we would, at a point time, believe come
9 into compliance with 345. If we're not, or if the United
10 States Trustee, rather, believes that we're not, the Trustee
11 would be free to raise that issue and seek whatever remedy it
12 thought was appropriate at any time. In other words, we're not
13 -- we're not trying to create a deadline by which the U.S.
14 Trustee would waive or relinquish any rights.

15 THE COURT: And has the U.S. Trustee agreed to that?

16 MR. LAURIA: I'm actually not sure.

17 THE COURT: All right, let me hear from the U.S.
18 Trustee.

19 MS. LEAMY: Your Honor, with respect to this motion,
20 we did have several concerns, one being the -- well, with the
21 345 waiver, it's really our preference to have a time period
22 that the Debtor must comply with the requirements of 345, say a
23 45 day period. If they can't comply with that period, then to
24 seek a further order of the Court or to seek a further waiver.
25 Here they're really putting the onus parties to come back to

1 the Court and file an objection, and they're --

2 THE COURT: Well, what happens otherwise --

3 MS. LEAMY: -- kind of giving themselves an unlimited
4 period of time.

5 THE COURT: -- normally, is that the waiver gets
6 extended from time to time, and the benefit of the suggestion
7 that the Debtor's making here, it seems to me, eliminates the
8 need -- which in my experience, the U.S. Trustee usually agrees
9 to anyway -- to come back for further extensions. Yet, at the
10 same time, it leaves open the right of the U.S. Trustee to
11 challenge at any time whether the waiver should exist. Now, I
12 don't -- it doesn't strike me viscerally that because the U.S.
13 Trustee might be the movant in such an action that it carries
14 with it any evidentiary burden that it wouldn't otherwise have
15 with respect to the Debtor's duties under 345. So the concept
16 itself is not problematic to me, although I confess no one's
17 asked for that before.

18 MS. LEAMY: Your Honor, that's fine. I would just
19 like to see the revised Form of Order that the Debtors have
20 proposed.

21 THE COURT: Okay. And I take it the form that's been
22 given me needs several modifications based upon the agreements
23 that have been reached.

24 MR. LAURIA: Yes.

25 THE COURT: Okay.

1 MS. LEAMY: The other issue on this motion, Your
2 Honor, were the inter-company transfers to non-Debtors. There
3 was disclosure regarding some of the transfers to JV's, the
4 payroll, but with respect to the other transfers, I don't think
5 the motion really had sufficient information regarding what was
6 going out the door. It was explained to me by the Debtors what
7 was going out the door. We're okay if it's subject to the
8 budget, but I think something should be on the record regarding
9 what in the budget refers to those JV entities since they're
10 non-Debtors.

11 THE COURT: All right. Mr. Lauria?

12 MR. LAURIA: Your Honor, I think that the budget
13 discloses that there's -- we anticipate as much as a million
14 dollars a week, or as we actually asked permission to do in
15 motion -- pardon me for a moment. Motion 12 is our Motion for
16 Authority to pay homeowner's association, condominium unit
17 association, and membership club obligations, and that really
18 specifies the amounts that we anticipate paying out. In
19 combination with the disclosure that we will be funding
20 separately certain amounts to WCI Realty, I think it's all
21 covered in separate relief as far as specificity, and we have
22 line items in the budget attached to the Cash Flow Order, in
23 particular the HOA item in the cash flow budget, which includes
24 the amounts to the associations and to WCI Realty, and the land
25 development line, which includes amounts to be paid out to the

1 non-Debtor joint ventures. So I think that it's all covered
2 through those entries, and I would hope that that is
3 satisfactory to the U.S. Trustee.

4 THE COURT: Well, let's do this. That's information
5 that obviously will be of interest to a committee, and so let's
6 build a provision into the order that says upon request of the
7 U.S. Trustee or, you know, any of the other noticed parties
8 under the Financing Order, I guess, which would include a
9 committee, that to the extent that they would like periodic
10 reporting of disbursements to non-Debtor entities, that the
11 Debtor will provide it. So why don't you build that into the
12 reporting requirements.

13 MR. LAURIA: All right. Thank you.

14 THE COURT: Okay. Now, will there be a need, even
15 with the revisions, to have a hearing date as the original
16 order -- Form of Order suggests?

17 MR. LAURIA: Well, I think as a technical matter, yes,
18 because we would intend to create an objection opportunity for
19 everybody else but the U.S. Trustee.

20 THE COURT: Okay.

21 MR. LAURIA: And in that regard, we had a brief
22 discussion before we got started this morning about setting
23 August 27th as a date for additional matters here.

24 THE COURT: There's something -- something in the air
25 because I thought that was the date that would be best. So say

1 we'll August 27th at 10 o'clock.

2 MR. LAURIA: I think as we go through the orders,
3 there are a number of them that have a requirement for a
4 hearing date, so I will try to catch them and point them out as
5 we go through them.

6 THE COURT: All right, so you'll submit an order -- a
7 revised order on that motion under certification.

8 MR. LAURIA: Thank you, Your Honor. Our next motion
9 is the Debtor's Motion for Authority to pay pre-petition wages,
10 compensation, and employee benefits.

11 THE COURT: Okay, let me just say something
12 preliminarily now because it arises, in my view, first in this,
13 but in other motions which follow, and that is in an attempt to
14 -- in my attempt to make a principled application of still new
15 Rule 6003, I think it's necessary to make a decision with
16 respect to any given motion, First Day Motion, whether the rule
17 applies or not. Now, I guess you could argue that if it
18 applies, there's an overlap between immediate and irreparable
19 harm and the necessity of payment doctrine. There's a
20 distinction how much of a difference there really is, I don't
21 know. I've never had to adjudicate the issue because I've been
22 able to conclude under the record that's been made either by
23 the first day affidavits or otherwise that when it's
24 applicable, the standards of the rule have been met. But the
25 issue I have, beginning with this proposed Form of Order -- not

1 the relief, but the Form of Order -- if you look at the last
2 page of the order, and tell me when you're there.

3 MR. LAURIA: Yes, Your Honor.

4 THE COURT: The second decretal paragraph says,
5 "Ordered that notwithstanding the possible applicability of
6 Rules 6003 and 6004." It's clear to me that on this motion,
7 6003's applicable, and you have to meet that standard. And I
8 can't waive it, it's either met or it's not met, at least
9 that's the position I've taken since the rule went into effect.
10 So assuming that the Debtor's proofs meet the standard, I don't
11 mind your referring to the possibility of the applicability of
12 6004, but 6003's in.

13 MR. LAURIA: All right.

14 THE COURT: And I'll have that comment with respect to
15 some other motions as we go. But with that, you may proceed
16 with the motion.

17 MR. LAURIA: Thank you, Your Honor. And, you know, it
18 really causes me to think that one of the things that I should
19 have done as a housekeeping matter that I haven't done, I'm
20 sure we're going to think of others, we have submitted to the
21 Court a first day affidavit, that is the affidavit of Ernie
22 Scheidemann, who is here in the courtroom, is the Debtor's CFO.
23 And I think we can offer up that he would be able to confirm to
24 the Court that were he called to testify, the statements
25 contained in his affidavit would reflect his testimony. And I

1 would like to offer the affidavit as direct evidence in support
2 of all of the relief that we're asking for today.

3 THE COURT: All right. Is there any objection? I
4 hear no response. It's admitted.

5 MR. LAURIA: Your Honor, on the basis of that, with
6 that evidentiary record, we would submit that there is, in
7 fact, an appropriate predicate for the Court to find that the
8 standard has been met and, indeed, that the failure to grant
9 the relief requested in this motion would result in immediate
10 and irreparable harm to the business. As I mentioned in my
11 opening and as the affiant has testified, we have over 1,800
12 employees who are there and who are the people who are going to
13 ultimately either cause this business to succeed or fail, but
14 if they aren't comforted that they're going to be paid and
15 retain their benefits on a going forward basis, we really can
16 have no assurance that we even have a business.

17 THE COURT: All right. Does anyone else care to be
18 heard in connection with this motion?

19 MS. LEAMY: Jane Leamy for the United States Trustee.
20 With respect to the Employee Motion, we had requested that the
21 Debtors put a limitation in the order that it's subject to the
22 limitation -- the 10950 limit, Sections 507(a)(4) and (a)(5).
23 I believe they have agreed to that.

24 THE COURT: Yes, the motion alleges that no payments
25 are to be made in excess of that amount.

1 MS. LEAMY: And we had also asked for a cap in total
2 payments to be made under the order.

3 THE COURT: Has the Debtor agreed to that?

4 MR. LAURIA: Yes, we have, Your Honor.

5 THE COURT: All right.

6 MR. LAURIA: We've agreed to put in a cap of \$5.1
7 million, which is the aggregate amount of the cash payment
8 obligations that are set forth in the motion, with a little
9 comfort room in case we have missed something, to save the
10 money and expense of having to renotice and come back to Court
11 on items like that. We will further agree that to the extent
12 we have payments exceeding the cap, that we would provide
13 notice -- I'm sorry, to the extent that we -- as we identify
14 any additional amounts, we will provide notice to the U.S.
15 Trustee, the banks, and the committee.

16 THE COURT: All right, now, part of what's proposed to
17 be paid is severance, but according to the motion, it's to
18 {quote} "rank and file employees," so therefore, no Section 503
19 issues are implicated. Is that correct?

20 MR. LAURIA: That is correct, Your Honor. In fact, I
21 would like to make clear on the record that we are not seeking
22 approval to implement or make payment of any amount that could
23 be considered a KERP or KEEP type payment.

24 THE COURT: All right. The only other thing that I'll
25 direct the Debtor here, as I do with these First Day Motions

1 for wage payments and benefit payments, and that is, again,
2 consistent with the strictures of Rule 6003, while I will
3 ultimately sign an order authorizing the relief, I ask that the
4 -- and direct that the Debtor not make any payment within the
5 first 20 days that doesn't have to be made, understanding that
6 there's some -- some of these items on which the Debtor is
7 current and which no payment would necessarily be due during
8 that 20 day period, and others in which it might be behind or
9 with respect to which the payments will fall due and should be
10 made within the 20 day period.

11 MR. LAURIA: I think we understand, Your Honor --

12 THE COURT: Okay.

13 MR. LAURIA: -- and we'll, of course, heed that
14 guidance.

15 THE COURT: Thank you. All right, so you'll submit a
16 revised order under certification?

17 MR. LAURIA: We will, Your Honor.

18 THE COURT: All right.

19 MR. LAURIA: Next we have the Debtor's Motion for
20 Authority to pay pre-petition trust fund taxes in the ordinary
21 course of business. Again, we view this as a relatively plain
22 vanilla request. We are only seeking to pay actual trust fund
23 taxes which, in effect, are taxes paid with other people's
24 money that we hold. We have done our best in the time
25 available to estimate this amount. We believe it's

1 approximately \$800,000. Standing here today, I can't represent
2 to the Court that it might not turn out to be more than that,
3 and so what we would like to propose, I guess, is a further
4 modification or, if clarification on the record is adequate,
5 that we would give notice to the U.S. Trustee, the committees,
6 and the banks if we identify and determine that we have
7 additional trust fund tax obligations in excess of the \$800,000
8 amount.

9 THE COURT: All right. Does anyone else care to be
10 heard in connection with this motion?

11 MS. LEAMY: Jane Leamy for the United States Trustee.
12 Your Honor, on this motion we understand it's for trust fund
13 taxes, not all taxes, but given that a number has been
14 identified in the motion, it's payment of a pre-petition
15 amount, it seems appropriate that there should be a number
16 specified in the order. I'm not sure the Debtors have agreed
17 to that.

18 THE COURT: Well, maybe we could pick a cap.

19 MR. LAURIA: Well, Your Honor, as the lawyer here, I'm
20 certainly not in a position -- I mean, I'd just be making a
21 number up at this point.

22 THE COURT: Well, let's make one up then. How about
23 \$1 million? You'll be back here before the end of the month,
24 should there be some issue which arises in the interim, which
25 I'd be willing to hear on short notice if necessary.

1 MR. LAURIA: All right.

2 THE COURT: All right. I figure that as a percentage
3 of what you estimated, that's probably enough of a cushion. I
4 do have a, again, a comment about the Form of Order and, again,
5 the reference to Rule 6003. In the motion, the Debtor takes
6 the position, arguably correctly, that these funds are not the
7 Debtor's funds and, therefore, aren't property of the estate
8 under 541(d). If that's the case, then I'm not sure that 6003
9 is implicated because it's not property of the estate, so I
10 would ask that you unstraddle yourself from that fence and,
11 again, in a principled way, stay with what you alleged in the
12 motion, and you can eliminate the reference to 6003.

13 MR. LAURIA: So which side of the fence do you want us
14 to be on, Your Honor?

15 THE COURT: Well, it seems to me that based on what
16 you allege in the motion, you would end up on the 541(d) side,
17 and not on the 6003 side, but if anyone here has a contrary
18 view, I'm open to it. All right.

19 MR. LAURIA: I have a feeling that's one we're going
20 to talk about again.

21 THE COURT: It may be and, you know, it's not meant to
22 foreclose others from -- this is the first day, after all.

23 MR. LAURIA: Right.

24 THE COURT: All right, let's move on.

25 MR. LAURIA: Okay. Your Honor, our next motion, item

1 7 in the Court's book, is the Debtor's Motion for an Interim
2 and Final Order prohibiting utility companies from altering,
3 refusing or discontinuing service to the Debtors, deeming
4 utility companies adequately assured of future payment, and
5 establishing procedures for determining requests for additional
6 adequate assurance. Just to bring a couple of facts and items
7 to the front here, the Debtor currently believes that it pays
8 approximately \$1.2 million per month in utility bills. We're
9 seeking to post deposits equal to about 50% of that which would
10 be roughly \$616,000. One thing that we wanted to make sure we
11 were clear on, to the extent that we have deposits or security
12 posted with any utility, we would want to credit against our
13 50% deposit on an interim basis the net amount of that deposit
14 or security after taking into account any offset of any pre-
15 petition amount which we hadn't paid. So that, for example, if
16 we have \$5 of collateral with the utility, and we have a pre-
17 petition bill of \$2 that we haven't paid, we would want to have
18 that \$3, the surplus, calculated to determine what we'd have to
19 pay to provide the 50% security on an interim basis,
20 recognizing that the utilities will have an opportunity to come
21 in and argue that that's, for some reason, inadequate.

22 THE COURT: Well, I didn't gather that from the
23 motion. What I gathered from the motion was that the relief
24 that was being requested was that with respect to those
25 utilities that had pre-petition deposits and at least 50% of

1 the monthly average payment, that no new deposit was being
2 proposed. What you're now suggesting, I think, is a further
3 modification, unless I missed something to --

4 MR. LAURIA: The only thing I was trying to be clear
5 is that if they're entitled to an offset to reduce the deposit
6 that they currently have, we would take that reduction into
7 account before determining if we already have 50% up or need to
8 put more up.

9 THE COURT: Well, it seems to me that they can offset
10 without relief from the stay, but here's my concern --

11 MR. LAURIA: Okay.

12 THE COURT: -- but I'll give you a way to address it
13 without, I think, creating too much heartburn. As I read the
14 new 366, it requires a post-petition deposit or other form of
15 security. Now, I have once -- and I knew once I did it once,
16 someone else would ask for it, so I did it reluctantly, but at
17 least I'll be consistent, for good or for ill. In the absence
18 of objection and, of course, this is the first day so it's not
19 surprising that there might not be a utility objecting, I'll
20 allow the relief with respect to those utilities as the Debtor
21 has proposed it, and to have pre-petition deposits of 50% or
22 more of the average use. Now, the presumption upon which I
23 grant that relief is the Debtor has alleged in it's motion that
24 it is current with it's utilities. But I don't find that as a
25 matter of fact. It's open to debate if someone wants to come

1 in and challenge it. What I will say, though, is if there is a
2 utility who wants a post-petition deposit, even if it has a
3 pre-petition deposit, I will allow that utility to raise the
4 objection at the final hearing, which we'll set for the 27th,
5 without having to go through the procedure that's set forth in
6 the motion. Because I don't think because debatably, arguably,
7 a post-petition deposit is called for that the utilities should
8 be forced to wait through the procedure. I feel differently
9 with respect to those utilities who are being offered new
10 money, so to speak. Any questions about that?

11 MR. LAURIA: No, Your Honor.

12 THE COURT: All right, does any one else care to heard
13 in connection with this motion?

14 MR. LAURIA: Oh, Your Honor, I'm sorry, there's one
15 clarification I want -- further clarification I want to make
16 for the -- to reflect an agreement that we reached with the
17 U.S. Trustee.

18 THE COURT: Okay.

19 MR. LAURIA: There is a decretal paragraph on the
20 bottom of page 4 of the order which recites as follows, "In the
21 event that the Debtors terminate the services of any utility
22 company, such utility company must immediately refund without
23 exercising any purported right of set-off or recoupment the
24 entire amount of it's utility deposit to the Debtors." And the
25 U.S. Trustee was concerned about this type of relief being in

1 an order without the utilities having an opportunity to be
2 heard, and we understand that concern. On the other hand, we
3 were concerned that if we didn't make known our intention in
4 this regard that we wouldn't be able to get it into a final
5 order, so we have agreed that we would qualify this language to
6 provide that this will only become effective upon entry of a
7 final order.

8 THE COURT: All right, that's fine. And I see you
9 also, in this Form of Order, when it's revised and submitted,
10 calls for an objection date, so why don't we make that August
11 20th at 4 o'clock Eastern time.

12 MR. LAURIA: That will be fine, Your Honor. Thank
13 you.

14 THE COURT: Okay. Now, that having been said, let me
15 ask, is there a formation meeting scheduled or to be scheduled,
16 Ms. Leamy?

17 MS. LEAMY: Not yet, Your Honor. We're looking at
18 probably next Wednesday or Thursday.

19 THE COURT: Oh, okay. I'm going to leave the
20 objection date for now where it is. Okay.

21 MR. LAURIA: Your Honor, our next motion, this is
22 under Tab 8, is the Debtor's Motion for Authority to implement
23 procedures to pay certain pre-petition claims of contractors,
24 material men, and vendors. We have split the relief here,
25 really, into two pieces, and I think I can say that given the

1 nature of our business, the largest portion by far of what
2 we're covering here in terms of dollars is liabilities or
3 obligations that are protected under state law by mechanics and
4 material men liens statutes, and what we have attempted to do
5 is basically create a mechanism for paying and resolving those
6 matters with minimal Court involvement and expense to the
7 parties. And in particular, we think that given the fact that
8 these are parties who, at the end of the day, are entitled to
9 lien protection, we think it would be extraordinary that their
10 lien would attach to property that is not of a sufficient value
11 to pay the claim in full. At the end of the day, forcing this
12 through some sort of courtroom exercise would result in a lot
13 of unnecessary expense, and at the end of the day, we would
14 have to still deliver clean title when we go to close and, you
15 know, we'd have expense on that side of the account as well.
16 So we want to be in a position to be able to clean these things
17 up and off so that we can keep them out of the way in the
18 conducting of the business.

19 THE COURT: Well, to the extent that projects aren't
20 finished, make sure nobody walks away.

21 MR. LAURIA: Right. We hope.

22 THE COURT: All right. Does anyone else care to be
23 heard in connection with this motion?

24 MR. LAURIA: Oh, Your Honor, actually there was one
25 further point I wanted to mention. With respect to the

1 unsecured portion, the non-lien claimants, what we have tried
2 to do is build in a bit of a carrot and a stick mechanism that
3 we actually had some great success with in another Chapter 11
4 case, the Merritt case. We can't claim credit for having
5 designed the mechanism, it was a creation Judge Lynn in that
6 case, but the mechanism is largely replicated here where the
7 claimant is warned that the consequence of demanding a payment
8 of a pre-petition amount is a condition to the performance of
9 post-petition services or delivery of post-petition supplies
10 could end up constituting a violation of the stay and subject
11 such party to disgorgement of anything they extract and
12 potentially other liability. And I will -- I can report to the
13 Court that in the Merritt case, which was about a, I guess,
14 about an \$11 billion power generating company, we were able to
15 get through that case paying through the whole 2½ years of the
16 case, just about \$100,000 in pre petition trade claims, you
17 know, otherwise critical vendors. It's amazing that most of
18 these people figured out a way to continue doing business with
19 us without extracting these payments, so we thought it would be
20 a good mechanism to propose here, hopefully to the same end.

21 THE COURT: Thank you.

22 MS. LEAMY: Jane Leamy for the United States Trustee.
23 With respect to this motion, Your Honor, we had a couple of
24 concerns. First of all, it breaks it up into the lien vendor
25 claimants and the non-lien vendor claimants. The lien vendor

1 claimants, there's an estimate of 15.3 million that would need
2 to be paid; not clear if that's necessary in the first 20 days
3 of the case. But the bigger concern we have is with respect to
4 the non-lien vendor claimants, there's no amount given in the
5 motion, and we would want a cap in the order. So I'm not sure
6 how the Debtors get to that point, not having given an estimate
7 of the amount paid to the non-lien vendor claimants. There
8 also -- there's no list that was provided. The United States
9 Trustee did ask for a list of who those vendor claimants might
10 be. So our objection would be that there should be a cap in
11 this order, but in the absence of being able to come up with
12 one for the vendors, I don't think that this relief is
13 appropriate on the first day.

14 THE COURT: Any response?

15 MR. LAURIA: Well, Your Honor, I can certainly say
16 that as a starting point, we accept the Court's prior
17 admonition -- admonishment, I guess is what I should say --
18 that we will not pay anything during this period that is not --
19 the 20 day period that is not required to prevent immediate
20 irreparable harm to the company. As far as coming up with a
21 specific amount, or even an estimated amount, for the non-lien
22 claimants, we just haven't been able to gather the data
23 together to be able to come up with a meaningful number. I
24 mean, there are any number of small service providers
25 throughout this organization that may, in fact, be owed money

1 at this point. We don't know how much they're owed, we don't
2 know how many of them there are, and we don't know who would
3 come forward with issues or problems that could put them into
4 critical vendor position. So we're kind of at a loss to just
5 pick a number out of the air. I guess if the Court requires,
6 we will, and we'll be prepared to come back with more
7 definition at a later time.

8 THE COURT: Well, without in any way suggesting that
9 the Debtor would be unmindful of it's fiduciary obligations, it
10 seems to me that a First Day Order giving carte blanche is not
11 appropriate, and maybe even during a break today you can
12 consult your client and come up with some reasoned figure so
13 that, you know, we're not open-ended.

14 MR. LAURIA: All right. I was hoping that the
15 acknowledged imposition of the 6003 standard would diminish the
16 Court's concern.

17 THE COURT: Well, see, at this point, you know,
18 especially without the oversight of a committee, and as this --
19 you know, I haven't heard all the motions yet, but as this
20 First Day Hearing is developing, it's taking a typical path,
21 and that is the only voice on this side of the Bench making
22 other suggestions, at least in the courtroom, is the U.S.
23 Trustee. And, you know, I like to leave a little room so that
24 when the committee's appointed, it's not faced with having to
25 climb all the way up the hill.

1 MR. LAURIA: Understood, Your Honor.

2 THE COURT: All right. And I do -- on the proposed
3 Form of Order, we'll need to make the 6003 fix to make it clear
4 that I do think on this one 6003 is applicable. And I refer to
5 the next to last decretal paragraph on page 4 of the proposed
6 form. So we'll come back to that one before we adjourn today.

7 MR. LAURIA: Your Honor, do I -- just to make sure I
8 understand, what the Court is looking for is a cap amount on --

9 THE COURT: Yes, the U.S. Trustee said with respect to
10 the lien claimants, the motion indicates it's 5.3 -- 15.3
11 million, but no amount with respect to the non-lien vendors.
12 And I guess a list can be provided at some later date, but
13 there needs to be some reasoned estimate of what those payments
14 will be.

15 MR. LAURIA: We'll endeavor to do so. In fact, I may
16 be able to just take a -- whenever the Court wants us to try to
17 deal with that.

18 THE COURT: And I'm hoping you'll be able to. And if
19 you can't comfortably come to such a figure, you know, I'd be
20 willing to call this an interim order and have you come back at
21 the end of the month and, you know, finalize it, if that's
22 helpful.

23 MR. LAURIA: I think the key for us is that we, at
24 this point, that we know that we pay some of these people, you
25 know, as issues come up. So maybe what we do is come up with a

1 number and -- with the understanding that it's without
2 prejudice to coming back with more if we need it.

3 THE COURT: Yes, that's okay with me. All right.

4 MR. LAURIA: Our next motion under Tab 9, it's got a
5 long title, it's the Debtor's Motion for Entry of an Order
6 authorizing Debtors to maintain insurance and surety bond
7 programs, maintain insurance premium financing program, pay
8 insurance and surety bond premiums in the ordinary course of
9 business, and pay all obligations associated therewith, and
10 separately, determining that insurance and surety companies can
11 not terminate or otherwise modify existing insurance and surety
12 bonds without obtaining relief from the automatic stay. In
13 describing this motion briefly for the Court, I guess I'll
14 start at the bottom first. We have had the unfortunate
15 experience going into Chapter 11 where we have a surety who has
16 purported to terminate a number of sureties or bonds that do
17 not provide for termination. And we are in the process, I
18 think, of filing adversary proceedings to seek remedies with
19 respect to that wrongful purported termination. But it caused
20 us to think that it would be helpful with respect to the surety
21 community at large that we're dealing with to have an order
22 that just makes it clear to people that before they take action
23 of this type, any kind of termination notice, that they need to
24 first get relief from the Court. The automatic stay, as has
25 been decided in cases such as 48th Street Steakhouse and others,

1 prohibits even the delivery of a termination notice. And so we
2 just thought it would probably be penny -- it would be the
3 opposite of penny wise and pound foolish. We would save us all
4 some trouble if we had something to give to people on the front
5 end rather than trying to fix it after the fact. Aside from
6 that, Your Honor, I believe that the relief that we seek here
7 is fairly standard and is clearly essential to the ongoing
8 performance of business. We have to have our insurance, we
9 have financed a substantial amount of our insurance and need to
10 be able to continue making our insurance premium finance
11 payments, I think the first of which comes due next week. And
12 so we would ask that this motion be granted, subject to any
13 particular questions or concerns the Court has.

14 THE COURT: All right. Does anyone else care to be
15 heard in connection with this motion?

16 MR. PENNINGTON: I do, Your Honor. Tom Pennington of
17 the Tennessee Bar.

18 THE COURT: Hold on. Wait until you get to a
19 microphone, sir.

20 MR. PENNINGTON: Tom Pennington of the Tennessee Bar.
21 I'm here with Mr. Riley from the local office of Duane Morris
22 on behalf of Safeco Insurance Company, who has a number of
23 bonds outstanding for the benefit of the Debtor and its
24 subsidiaries and recently cancelled a number of those bonds.
25 I'd be interested to see what sort of an adversary proceeding

1 this generates as -- in my understanding of the well settled
2 law is that a bond principle has no interest in the bond and no
3 interest in the proceeds. It is a direct line between the
4 surety and the obligee. Now, if they're the obligee on some
5 bonds, I can see where the Debtor might have an interest in
6 prohibiting or trying to undo a pre-petition cancellation.
7 Here, however, I don't think -- unless there's more than meets
8 the eye, 362 applies. It applies to anyone who so much as
9 gives notice after the petition is filed. But it doesn't have
10 anything to do with whether or not, if a bond requires that the
11 Debtor get notice, then they have to apply. If the bond does
12 not require the Debtor to get notice, then that's just between
13 the obligee and the surety. So I don't have any real problem
14 with most of the motion here, but this part about prohibiting
15 sureties from cancelling if they had the other -- if they
16 otherwise had the right to do so is a problem. Now, if they
17 had to give notice --

18 THE COURT: Let me ask this. Have -- are there any
19 bonds concerning which you've not issued termination notices?

20 MR. PENNINGTON: Oh, yes, a number of them.

21 THE COURT: So there's still some, at least in your
22 view, outstanding?

23 MR. PENNINGTON: Right. These -- we had been led to
24 believe that these projects were either dormant or were in the
25 process of being abandoned, so we didn't think we were doing

1 anything material, but we're happy to have that discussion with
2 the Debtor. But I think if you look at a bond, which is a
3 financial accommodation of sorts, a credit enhancement if you
4 will, to require a surety to continue to enhance the credit of
5 the Debtor, perhaps against its will, you're getting up on a
6 line there that may be problematic. I understand how this stay
7 applies to notice. I don't have any problem with that. But as
8 far as impinging upon the rights of a surety to notify where it
9 is capable of doing so, direct to the obligee without involving
10 the Debtor, I think that's a bit much. So if we can work the
11 language out, you know, that breaching the notice requirements
12 or something on that order, then I think we can get this order.

13 THE COURT: Well, my guess is the Debtor's concern
14 goes a little deeper than just whether or not it gets notice,
15 but let me -- let me first -- well, anything further from you?

16 MR. PENNINGTON: I have a few questions about what the
17 scope of this thing is supposed to be, but go ahead, ask, ask -
18 -

19 THE COURT: No, I was going to hear from others, and
20 then ask the Debtor to respond to concerns.

21 MR. PENNINGTON: Yeah, the -- there's, I guess, a
22 question about whether or not in those circumstances where
23 certificates of renewal are required on an annual basis or a
24 quarterly basis or however, are -- would this order require the
25 surety to issue new paper, in effect? Don't know the answer to

1 that. If a bond expires by it's own terms or is discharged,
2 does that somehow impact all of this? And I'll wait to hear
3 the response. Thank you, Your Honor.

4 THE COURT: Does anyone else care to be heard before I
5 go back to the Debtor? I hear no further response.

6 MR. LAURIA: Your Honor, I'll start just one point of
7 clarification. I'm told by my colleagues that in fact we have
8 actually filed the adversary proceedings against Safeco. I
9 don't -- I presume service will occur in due course. Happy to
10 provide counsel with a courtesy copy of the complaints,
11 however. And I don't intend, nor do I think it would be
12 appropriate, to join issue here on the matters covered by that
13 application which relate to pre-petition conduct. This relief
14 is only directed to post-petition conduct, and, again, relying
15 on the second circuit's decision in 48th Street Steakhouse where
16 the action that was found to be violative to the stay was not
17 the delivery of a termination notice to the Debtor, who
18 happened to be a tenant in a property, but rather the delivery
19 of a termination notice to the Debtor's sub-tenant, which had
20 the effect -- or the -- I'm sorry, the Debtor's -- the Debtor
21 was the sub-tenant and the delivery of notice was to the
22 Debtor's tenant, having the effect of terminating the Debtor's
23 estate in the premises without any notice or requirement of
24 notice to the Debtor. It was nevertheless found to be a
25 violation of the automatic stay. And I think, without much

1 extrapolation, the Court can find that that principle applies
2 here, that whether or not a notice has to be delivered to the
3 Debtor or to a third party, the estate clearly has an interest
4 in that surety. Indeed, without -- in many cases, without
5 that bond staying up, we may lose our right to develop property
6 as required by local law or state statute, which could severely
7 impair the value of assets to the estate. So I think that just
8 the fact that a notice has to be delivered to some third party
9 rather than the Debtor should not excuse the surety from taking
10 action that may end up, as a consequence of that action,
11 depriving the Debtor of important estate rights.

12 THE COURT: Well, see, what it -- the objection, I
13 think, is that the entry of the order addresses directly the
14 subject of the adversary and is really a preliminary -- it's a
15 TRO, in effect, it seems to me. And unless I misunderstand the
16 objection here, what Safeco's saying is that you can't -- it's
17 not appropriate in this order to effectively issue a TRO. Now,
18 if 362 applies, it applies. You don't need a Court order for
19 that, that statute says it's in. And if any party wishes to
20 act at its peril in possible stay violations, it faces the
21 consequences. But it seems to me today isn't the time or place
22 to address the substance of that issue, and that somehow the
23 order has to be crafted so that substantive rights aren't
24 affected, and both sides of that dispute are left to what other
25 further determination the Court is going to be asked to make.

1 MR. LAURIA: Your Honor, we completely agree with
2 that. The action that is the subject of the litigation that's
3 been commenced separately by way of adversary proceeding is
4 exclusively related to pre-petition conduct, as to which we do
5 not argue that the automatic stay has any application
6 whatsoever. That litigation will address issues related to the
7 propriety of the action, the entitlement of the action, whether
8 or not the termination was wrongful, and if it was, the
9 consequences of that termination, presumably under non-
10 bankruptcy law. So I think we -- I want to be clear, it's
11 certainly our intention that we have two separate issues here
12 that, although they touch up against each other on the moment
13 of the petition filing, have nothing to do with each other.
14 What, I guess, the tangential relationship is our concern that
15 we may have other sureties, or perhaps even Safeco, now that
16 we're in Chapter 11, seeking to deliver termination notices and
17 taking the position, despite what we believe is clear case law,
18 that they are not violating the stay in doing so. And Your
19 Honor, we could clearly just leave this and deal with it after
20 the fact. I think there conceivably are, you know, a couple of
21 consequence of that which fly in the face of, certainly,
22 judicial efficiency. Number one, a wrongful termination may or
23 may not result in the bond being reinstated, may result in us
24 having a damage claim, but that damage claim, at some level,
25 may not really put us back whole and get us back to where we

1 were. And so we're trying to prevent the harm from happening.
2 And, you know, I mean I guess I understand the Court's point
3 that, you know, is this like a TRO. I guess the automatic stay
4 is a TRO, in effect. And we aren't trying to expand the
5 automatic stay; I don't even think we're trying to go into an
6 area of controversy. I think, you know, the case law is fairly
7 clear on it's breadth. We're just trying to have an
8 opportunity to have a hearing about the stay and what it means,
9 and let this Court decide before the harmful act has been done
10 on a go forward basis, as opposed to after the fact and then
11 trying to figure out if there is a remedy that is available.

12 THE COURT: Well, all right. I think the best --
13 look, even before my time on the Bench, I did spend a number of
14 years doing commercial real estate, including construction
15 matters, so I understand the dynamics here, and I understand
16 the consequences of having the sureties run away. They are
17 real and can be significant. But again, we're here on the
18 first day, and I think -- at least in the face of objection, I
19 think the best thing that we can do at this point is to simply
20 amend the order to say something like -- and I'm looking at
21 page 3, the next to the last decretal paragraph -- you know,
22 "To the extent that the stay applies and prevents notice of
23 termination or otherwise modifying or canceling the insurance
24 policies, relief from stay must first be obtained by motion."
25 I know that doesn't give the Debtor what it would like to have

1 here, but again, understanding that we're here on the first day
2 with limited notice to parties who may be affected by this --
3 yes, one made it, but there may be many others who were unable
4 to do so. You know, making substantive decisions is something
5 that I try not to -- I try to avoid until parties have had an
6 appropriate opportunity to think through what rights they may
7 have and, frankly, to have the Debtor convince them that
8 precipitous action is not appropriate for whatever reason. I
9 say that, and then I would suggest during the break they
10 consult with counsel and see whether there is other language
11 which would -- which is further language changes which are
12 required in order to satisfy the concerns that have been
13 expressed. So we will come back to that one. In fact, I think
14 I'll take a short break now, 10 minutes, and then we'll come
15 back and pick up with the list. All right?

16 MR. LAURIA: All right.

17 THE COURT: Thank you.

18 MR. LAURIA: Thank you, Your Honor.

19 (Court in recess)

20 THE CLERK: All rise. Please be seated.

21 MR. LAURIA: Thank you, Your Honor. My understanding,
22 I think we've reached an agreement with Safeco that Safeco will
23 withdraw its objection to the language, provided that we agree
24 to have a hearing on the 27th, with full reservation of
25 everybody's rights at that time to litigate to the Court what,

1 if any, relief would be appropriate on a going-forward basis.

2 THE COURT: So that the order that I would be entering
3 on this motion is in the nature of interim relief?

4 MR. LAURIA: Correct.

5 MR. PENNINGTON: That's right, Your Honor, and I agree
6 not to change the status quo (indiscern.).

7 THE COURT: All right, well, I'm okay with that, but,
8 you know, the opportunity to do that should not be limited to
9 Safeco.

10 MR. LAURIA: Agreed. We're going to notice this out
11 to all carriers and sureties.

12 THE COURT: All right.

13 MR. LAURIA: And we can have a hearing with whoever
14 wants to come about what relief should be appropriate past the
15 27th.

16 THE COURT: All right, I'll reserve the day.

17 MR. LAURIA: Thank you.

18 MR. PENNINGTON: Thank you, Your Honor.

19 THE COURT: All right, then you also need to make the
20 6003 fix --

21 MR. LAURIA: Yes.

22 THE COURT: -- in the Form of Order. Okay.

23 MR. LAURIA: Thank you, Your Honor. Before we go to
24 the next motion, we did have a chance to discuss a cap for the
25 non-lien vendors, and what we would propose is \$5 million,

1 subject to, of course, the understanding that we're only paying
2 what's necessary to avoid immediate and irreparable harm to the
3 estate, but that the cap on non-lien vendors would be \$5
4 million.

5 THE COURT: U.S. Trustee have a position?

6 MS. LEAMY: Your Honor, the only issue is I haven't
7 seen any type of list that would relate to that, so I'm not
8 sure -- I didn't discuss this with them at the break, so this
9 is the first I'm hearing of it. I'm just not sure what the
10 basis is for the 5 million, that's all.

11 THE COURT: Well, I'm assuming the answer will be it's
12 the Debtor's best estimate, but if you have something else, Mr.
13 Lauria, you can tell me.

14 MR. LAURIA: Yes, Your Honor, it is our best estimate,
15 done on the fly. I can tell the Court that there is one
16 potentially very large claim involving the Regent Hotel at One
17 Bell Harbor that could be as much as \$3.8 million, so we wanted
18 to make sure that we were able to deal with that situation
19 because the melting down of that could be a very serious
20 problem. So in addition, we added another million-two to give
21 us some room with smaller situations, and I think, as I
22 mentioned before, we wanted to be able to reserve our right to
23 come back, should we need to, with additional requests to
24 increase the amount and with substantiation, of course, for
25 that.

1 THE COURT: All right, well, do you want to use -- do
2 you want to put the order in the form of interim relief and
3 then set it for final hearing at the end of this month, or
4 simply order the relief that you've requested, with leave to
5 come back on a separate motion at some later time?

6 MR. LAURIA: I'd like to do the latter.

7 THE COURT: Okay, that's all right with me. I'm
8 satisfied with the explanation with respect to the proposed
9 cap. I will direct, however, that a list of these vendors be
10 provided to the U.S. Trustee.

11 MR. LAURIA: Of course, thank you.

12 THE COURT: All right.

13 MR. LAURIA: We can, I guess, now move forward to item
14 10.

15 THE COURT: Yes, and it's really -- 10 and 11 are
16 related.

17 MR. LAURIA: They are.

18 THE COURT: And just preliminarily, let me share my
19 thoughts with you. I guess the motion at 11 is more of a
20 comfort order, I guess, than anything else, except that taken
21 together, I'm really authorizing, on the first day, sales free
22 and clear. Now, you could argue that sales in the ordinary
23 course do not need to be the subject of a Court order, but
24 understanding the industry, I can understand why you want the
25 order. But my concern arises in the situation -- and there may

1 be others, but it's the only one that came immediately to mind
2 -- in which the Debtor is required, at least under the second
3 motion, to reserve only those proceeds, net proceeds, which it
4 walks away from the settlement table with, even though the
5 liens might be in excess of that amount, and the order
6 specifically says that we only have to escrow that which we
7 actually get. Well, if that came up separately in the context
8 of a 363 sale, a lienholder objector might have an argument
9 that the sale shouldn't be permitted because the liens exceed
10 the value of the property. So my concern is that while the
11 Debtor, obviously, has made an attempt to protect the interests
12 involved, that the order could be read to allow relief which
13 otherwise under the Bankruptcy Code wouldn't be -- arguably
14 wouldn't be permitted. Can you address that?

15 MR. LAURIA: Yes, Your Honor. I think I'm prepared to
16 suggest that we limit the relief to situations where the amount
17 of the lien is less than the proceeds back to the Debtor from
18 the transaction, and if we have any situation where that is not
19 the case, we would be required to come back in and get further
20 relief. And I'm offering that up because I think that for
21 99.9% of the situations, maybe 100%, of what we currently have
22 in the pipeline, there's no possibility that that could occur.
23 So we cured the Court's valid technical concern in a way that
24 will not impair our ability to accomplish the objective.

25 THE COURT: And another thought I had was that in

1 light of all the other relief that's being granted today, that
2 it seems to me those problems would likely not exist anyway.

3 Now, with --

4 MR. LAURIA: As they say --

5 THE COURT: -- operations as extensive as this Debtor
6 has, you know, maybe there's always something that will fall
7 into that category, but --

8 MR. LAURIA: Right.

9 THE COURT: -- it doesn't strike me that it ought to
10 be a big piece of the puzzle.

11 MR. LAURIA: We would be satisfied to modify the order
12 as just discussed on the record, Your Honor.

13 THE COURT: Okay. The only other comment I had
14 preliminarily, again, taking these two motions together, was
15 with respect to the Form of Order on the First Fidelity motion.
16 And I guess -- well, I'll just express the concern. In the
17 third decretal paragraph, I'm being asked to sign an order that
18 says, "Pursuant to Section 541(d), property that's held in
19 Trust in connection with closings or pending closings are not
20 deemed property of the Debtor's estate." Well, arguably, you
21 know, depending upon the circumstances, the property is being
22 held, at least in part, for the benefit of the Debtor and there
23 is some argument that could be made, I guess, that it is
24 property of the estate. So I understand why the order is
25 couched in the terms it is, and I guess that was the Debtor's

1 judgment that that's what would best facilitate the
2 transactions that we have in process and that are to be
3 undertaken. But on the other hand, one thought I had was,
4 well, maybe I would not like to see the estate give up some
5 argument later that maybe it would have an interest in such
6 funds, depending upon, you know, what the contract and closing
7 status might or might not be. That was my comment with respect
8 to that.

9 MR. LAURIA: Your Honor, it's a fair point and
10 actually one that we had some discussion about, and we, I
11 think, the Debtor on the whole, felt that the ability to argue
12 later about holding proceeds that are currently held in escrow
13 while potentially having some value is materially outweighed by
14 the potential harm if we can't get people to close
15 transactions. I mean, we've got 255 sales in the pipeline
16 right now, and as I think we discussed at the outset, we have
17 nearly 1,000 finished properties that, you know, are sitting
18 there vacant that we really need to be able to move. And if we
19 can't get people comfortable that they're not taking some sort
20 of extraordinary risk by dealing with the Debtor, we're just
21 very concerned that there will be a really huge chilling effect
22 from the Chapter 11 that would shut down the business, and
23 indeed, when we get to the cash collateral budget, you know,
24 we've taken this concern so seriously, you'll see, that we
25 don't anticipate any sales closing as per the budget for the

1 first 3 weeks being in Chapter 11. We're hopeful that that is
2 going to prove to be grossly pessimistic and we'll be here
3 smiling the next time we see you, but we're very -- you know,
4 we've tried to balance these things, and we think we really
5 have to give a strong message to people at this point that
6 they're not going to somehow lose their money because it's in
7 the hands of the Debtor.

8 THE COURT: All right, let me ask whether you have
9 anything further in support of either of those two motions.

10 MR. LAURIA: I do not, Your Honor.

11 THE COURT: All right. Does anyone else care to be
12 heard in connection with either of those two motions?

13 MS. LEAMY: Jane Leamy for the United States Trustee.
14 With respect to the first motion, Your Honor, we understand the
15 need for the relief sought. There's a concern with respect to
16 part 3 of the motion, Procedures for Resolution and Payment of
17 Certain Lien Claims. The motion sets up a procedure whereby
18 liens will attach to the proceeds of the sales of the homes.
19 However, it provides procedures for the lien claimants to
20 follow, and the concern is, again, that there really hasn't
21 been sufficient notice to these parties. There isn't really a
22 chance for them to come back and complain once this order is
23 entered.

24 THE COURT: Well, actually, there is a remedy. It
25 does -- puts the burden to come to the Court, but not the

1 burden of persuasion on the movant, and that is the rule which
2 permits reconsideration of First Day Orders, and which
3 expressly provides that it doesn't change the burden which
4 otherwise applies with respect to the movant.

5 MS. LEAMY: Okay.

6 THE COURT: So I guess there is that protection.

7 MS. LEAMY: I agree, Your Honor, I think it's rarely
8 used. I think people are unlikely, unless it's an interim
9 order, to probably raise a concern or an issue, unless they
10 know that there's a separate hearing date that they can lodge
11 objections. The other issue that we have with respect to this
12 order was the -- on the last page of the order, the second
13 ordered paragraph, provides that it's binding on any Chapter 11
14 or 7 Trustee, and just wasn't sure that that's really necessary
15 for this order.

16 THE COURT: Well, you know, I looked at it more in the
17 nature -- it's, I guess, analogous to what would be a
18 reclamation procedures type of order that typically does go out
19 on notice with the chance for people to respond if they so
20 choose. I don't necessarily, in concept, have a problem with
21 the procedures. It's standard provisions in orders to bind an
22 11 or 7 Trustee, but I -- in my view, that's never an absolute
23 perpetual bar against the Trustee from coming back to the Court
24 and saying that he or she should be relieved of that
25 restriction for whatever reason. Of course, it's always hard

1 now to predict what circumstances will be, especially these
2 days, you know, at any time in the near future. So let me ask
3 if the Debtor would consider putting this out on notice.

4 MR. LAURIA: Your Honor, I think that to really
5 accomplish the objective, we need to get relief that people can
6 count on, and in fact, that was the thinking that went into the
7 inclusion of the making it binding on a Chapter 7 or 11
8 Trustee. You know, our home buyers, you know, don't know
9 Chapter 11, aren't expert at Chapter 11, and now is not the
10 time that they're going to invest in getting educated. We're
11 just trying to be able to tell them that just 'cause we say
12 it's so, if somebody else, you know -- we go Chapter 7 or a
13 Trustee's appointed, you're not gonna meet somebody else who's
14 gonna take away from you what you thought you were putting up
15 in a secure fashion.

16 THE COURT: Well, I'm just talking about part 3 of the
17 relief that's requested in the motion, and that is with respect
18 to the procedures, but not in any way impairing what the Debtor
19 wanted to move forward with in the interim.

20 MR. LAURIA: And just -- I was planning on pointing
21 out what the Court pointed out; that in fact, if anybody, on
22 notice, has an objection, all they have to do is raise it, and
23 we still have the same burden that we currently have. It
24 doesn't shift the burden to them. It seems to me that that
25 would be an adequate protection here. If not, you know, really

1 we have to figure out a way to make this work for the Court,
2 obviously.

3 THE COURT: Well, let's do this. Build in a provision
4 to the order that says to the extent anyone affected by it
5 wants to bring a Motion for Consideration, they can file what
6 we'll call an objection, and I'll consider it a Motion for
7 Reconsideration by the objection deadline which we've set for
8 the other motions, August 20th at 4 o'clock, and I'll hear it on
9 the 27th at 10. So that while it does require the filing of a
10 piece of paper, it does get the party to the Court right away.

11 MR. LAURIA: For clarification, Your Honor, could I
12 ask if -- is that -- that just applies to the -- a lienholder?

13 THE COURT: Those who are affected by the procedures
14 set forth in part 3 of the motion.

15 MR. LAURIA: Got it. Thank you, Your Honor.

16 THE COURT: Does anyone else care to be heard?

17 MR. LAURIA: I'm sorry.

18 THE COURT: All right, I hear no further response.
19 Okay, then with respect to both of those motions, orders will
20 be submitted under certification with the modifications we've
21 talked about. Okay.

22 MR. LAURIA: Thank you. Oh, Your Honor, one -- I'm
23 sorry. One thing I wanted to make clear. The order on the
24 first of these two motions, we added an additional decretal
25 paragraph dealing with escrow agents who -- third party escrow

1 agents where we're involved in a closing who had expressed
2 apprehension in actually distributing funds after the Chapter
3 11 was filed yesterday, so we added language in to specifically
4 address that situation, and I wanted to make sure that that was
5 brought to your attention.

6 THE COURT: Well, I would expect blacklines with the
7 orders that come in under cert, but tell me specifically what
8 the situation was, or situations were, that needed to be
9 addressed.

10 MR. LAURIA: If I can consult with my colleagues just
11 for a second.

12 THE COURT: Certainly.

13 (Counsel confer)

14 MR. LAURIA: Your Honor, my understanding is that we
15 had two situations yesterday, two transactions that had been
16 scheduled to close, and in both of those the escrow agents were
17 concerned that because they were dealing with the Debtor-in-
18 Possession that it is possible that they could be viewed as
19 doing something wrongful by disbursing the funds as per the
20 closing statement. So the paragraph that we added in is now
21 the top decretal paragraph on page 6, and I -- certainly it was
22 my intention to have submitted, together with the clean order,
23 a blackline reflecting that added paragraph, but which simply
24 authorizes and directs an intermediary to disburse funds as per
25 the closing statement, to insulate them -- we'll be able to

1 show a particular order that will give them comfort that
2 they're not going to get in trouble by --

3 THE COURT: All right.

4 MR. LAURIA: -- so proceeding.

5 THE COURT: These are circumstances in which funds
6 have already been advanced, but not disbursed?

7 MR. LAURIA: Correct.

8 THE COURT: Now, drawing from my experience in one of
9 my mortgage cases, let me ask this. Do you have circumstances
10 out there under which closings may have occurred where the
11 closing agent disbursed funds that he or she might not yet have
12 received, actually? So, you know, understanding that in some
13 jurisdictions, attorneys largely serve as closing agents and
14 use their escrow accounts to fund these closings, anyone stuck
15 in that middle, that you're aware of?

16 MR. LAURIA: We have not had that situation brought to
17 our attention.

18 THE COURT: Okay, good.

19 MR. LAURIA: Wait 'til tomorrow.

20 THE COURT: All right, let's press on.

21 MR. LAURIA: All right. Your Honor, I think that
22 brings us to Tab 12, the Debtor's Motion for Authority to pay
23 homeowner association, condominium association, and membership
24 club obligations. This is one of the motions that I had
25 alluded to earlier. We are an owner of and, in many instances,

1 still control these separate non-profit entities; they're set
2 up as non-profit corporations and provide amenities and other
3 services at our projects. We -- as I mentioned, we felt
4 strongly that it would be imprudent not to bring these entities
5 into the Chapter 11 situation, but feel that it's absolutely
6 essential to the operation of the business that we continue to
7 perform our obligations. And in most of these situations,
8 we're obligated to fund the deficit in the operation of the
9 particular amenity until we have sold a threshold, which is
10 generally 90% of the properties at the project.

11 THE COURT: So that applies not just to the control of
12 the Homeowners Association, but with respect to the affiliated
13 amenities as well?

14 MR. LAURIA: That's correct.

15 THE COURT: Okay.

16 MR. LAURIA: That's correct. And once we get to the
17 90% threshold, then we just pay -- we turn over control, and we
18 just pay our prorationate share with respect to the remaining
19 parcels of properties, or units, that have not been sold. The
20 aggregate amount that we seek here is approximately \$3.6
21 million with respect to pre-petition obligations that are in
22 the pipeline, and I'm happy to answer any question the Court
23 has with respect to the particulars, but this is a critically
24 important piece of relief for the business.

25 THE COURT: I would just say you need to make the 6003

1 fix in the Form of Order. Beyond that I had no other comments.
2 Let me ask whether others wish to be heard in connection with
3 this motion.

4 MR. LAURIA: Perhaps I can save the U.S. Trustee the
5 problem by saying that we agree to cap the pre-petition relief
6 we're seeking at 3.6 million.

7 MS. LEAMY: Fine, Your Honor, thank you.

8 THE COURT: All right. All right, so you'll submit a
9 revised order under certification?

10 MR. LAURIA: We will, Your Honor.

11 THE COURT: Okay.

12 MR. LAURIA: The next motion, under Tab 13, the
13 Debtor's Motion for Authority to honor and maintain certain
14 customer programs in the ordinary course of business. Again,
15 we have had a number of programs and policies in place as
16 inducements to get people to buy into our projects. Our
17 intention here is to be able to continue honoring the
18 obligations that are in place, and we really have, I think,
19 four categories of items that are covered by the motion. The
20 biggest ticket item by far is the sales incentive program,
21 where we have offered, in some cases, cash discounts or amenity
22 memberships or payment of closing costs and related expenses.

23 THE COURT: No second homes yet in that program?

24 MR. LAURIA: Not yet. We'll let you know, though.
25 The aggregate cost is between $\frac{1}{2}$ a point and $\frac{3}{4}$ of a point on

1 total sales, and we expect this exposure to be a total of about
2 \$2.25 million, not all of which would be paid in cash. And I
3 think to allay concerns of the United States Trustee, we have
4 agreed to clarify that the cash payments would not exceed 2.25
5 million with respect to the sales incentive program. As to the
6 other three components, they are decidedly smaller. We have a
7 coupon gift card and certificate program that we think has an
8 exposure of about \$100,000. We have a agreement to take
9 merchandise back that people have bought at the clubs. We
10 think there's perhaps as much as \$2,000 of exposure there. And
11 we have advanced payments for events on our premises: weddings,
12 tournaments, meetings, et cetera, and we think we're holding
13 about \$50,000 in the aggregate in deposits there. And our
14 request is simply to be able to honor these obligations on a
15 go-forward basis so the Chapter 11 case doesn't impact this
16 aspect of our business.

17 THE COURT: All right, other than the 6003 fix in the
18 order, I have no comments. Does anyone else care to be heard?
19 I hear no response.

20 MR. LAURIA: Thank you.

21 THE COURT: All right, so you'll revise that order to
22 include the cap?

23 MR. LAURIA: We will, Your Honor.

24 THE COURT: All right.

25 MR. LAURIA: Next, under Tab 14, is the Debtor's

1 Motion for Authority to honor and maintain home warranty
2 programs in the ordinary course of business. This motion
3 relates to -- we had hoped at one point to have a Part A and a
4 Part B; Part A relating to existing warranty obligations, and B
5 on a go-forward basis. We're not there on Part B, so that
6 relief isn't in the motion that was filed. This motion seeks
7 to give us permission to honor our -- the performance and
8 perform our ongoing warranty obligations with respect to homes
9 that we've already sold. We accrue this liability in an
10 aggregate amount of about \$19.2 million, based on historic
11 experience with warranty issues and related expenses. This is
12 not an expense that we expect to pay immediately or in one lump
13 sum, or over a short time. That's the aggregate exposure that
14 we're asking for protection on, and basically be able to
15 communicate the message to homeowners in the communities that
16 we own and operate that these obligations will be honored. But
17 we will, of course, in the 20-day period following entry of the
18 order, only pay those obligations that are necessary to prevent
19 immediate and irreparable harm.

20 THE COURT: All right, and the Form of Order will deal
21 with 6003 accordingly. Does anyone else care to be heard in
22 connection with this motion? I hear no response. Well --

23 MR. LAURIA: We've picked up a little speed here.

24 THE COURT: Maybe there's -- hold on, there's -- can I
25 then sign the order that's been -- in the form that it's been

1 submitted?

2 MR. LAURIA: Pardon me, Your Honor?

3 THE COURT: Can I then -- am I then free to sign the
4 order in the form in which it's been submitted?

5 MR. LAURIA: Yeah, I think the only thing you want to
6 do --

7 THE COURT: Is cross out --

8 MR. LAURIA: The word "possibly."

9 THE COURT: Okay. All right, that order's been
10 signed.

11 MR. LAURIA: Thank you. Under Tab 15 is the Debtor's
12 Motion for Authority to return home buyer deposits. This is, I
13 guess, as the Court can recognize, closely related to some of
14 the other relief we've already addressed. We are currently
15 holding about \$17.6 million in escrow with respect to deals
16 that -- or properties that we haven't sold, and we are aware,
17 as of the petition, of situations where there have been
18 terminations or breaches that we believe would result in our
19 obligation to pay out approximately \$1.8 million of that amount
20 that we currently hold. What we're seeking is authority to be
21 able to distribute those amounts as required, and also, to the
22 extent that subsequently events arise, either terminations or
23 breaches that would entitle a prospective home buyer to a
24 return of a deposit, that we'd be able to do so. In discussing
25 this motion with the U.S. Trustee, there were two issues; one,

1 the obvious point of the cap, and two, a concern that we had
2 provision in a decretal paragraph, basically implementing a
3 release by virtue of returning the deposit. And we have agreed
4 that we would specify, I hope on the record is sufficient, that
5 the cap here would be \$17.6 million. We've got some concern
6 about putting the number in the order, just under the theory
7 that it becomes an invitation for people to be aggressive, and
8 so we would like not to have to put that number in the order
9 and are hopeful that the statement on the record that the cap
10 here is the 17.6 that we're holding. We also would agree that
11 the terms of the contract will govern the rights of the parties
12 after we return any deposit. In practice, generally a release
13 is granted when the deposit is returned, so I don't think that
14 we're really impacting where we're going to end up, as a
15 practical matter, by revising that paragraph as requested by
16 the U.S. Trustee.

17 THE COURT: U.S. Trustee have any response?

18 MS. LEAMY: Thank you, Your Honor. Subject to seeing
19 the Form of Order, I think that the second issue would be
20 satisfied by just providing that the contract is what governs,
21 rather than the provision in the order right now that
22 terminates the contract and may go farther than what the
23 underlying contract provides.

24 THE COURT: So you disagree with the Debtor and would
25 like it specifically mentioned in the order?

1 MS. LEAMY: Well, I -- if that part is just on the
2 record, I think it should be in the order, yes. With respect
3 to the cap, initially, you know, there's cash going out the
4 door here, so it seems appropriate that there would be a cap,
5 since there is a number mentioned in the motion. These
6 amounts, I understand, however, are escrowed, so I'm not sure
7 whether they're property of the Debtor's estates or not. In
8 that event, I don't know that it's really necessary, so we
9 would be able to live with that statement on the record as to
10 the cap.

11 THE COURT: All right. I do think the U.S. Trustee is
12 right, that the language of the decretal paragraph that deals
13 with what happens when the deposit is returned ought to
14 specifically say subject, you know, to whatever rights any
15 party may have under applicable non-bankruptcy law, or words to
16 that effect. And I don't have any problem with not putting the
17 amount in the order, but in a revised order, you might say --
18 add somewhere in the, I guess, recital paragraph, "subject and
19 in accordance with the record made at the hearing on August
20 5th." That way maybe we'll know there's -- be reminded there's
21 something on the record about that. Although I will say, on
22 the Debtor's concern that it might cause people to be
23 aggressive, I rarely see anybody who's shy here, so -- but I'm
24 content with what the Debtor proposes then.

25 MR. LAURIA: Thank you, Your Honor.

1 THE COURT: All right.

2 MR. LAURIA: I think that takes us to our last request
3 for relief today, which is under Tab 16, and that is the
4 Debtor's Emergency Motion Pursuant to 11 U.S.C. Sections 105,
5 361, 362, 363, 364 and 552, and Bankruptcy Rule 4001(b) of the
6 Federal Rules of Bankruptcy Procedure, for a) entry of
7 stipulation interim order, authorizing use of cash collateral,
8 granting adequate protection to pre-petition secured parties,
9 and granting related relief, and b) scheduling an interim and a
10 final hearing. Your Honor, we, as I think I related at the
11 commencement of the hearing, spent a substantial amount of time
12 with our pre-petition lenders negotiating an order that permits
13 us to use cash collateral pursuant to a budget and providing
14 adequate protection that we believe is relatively vanilla in
15 nature. My partner, Sandy Qusba, who's here, was the principle
16 negotiator, and if it's okay with Your Honor, I would like to
17 defer to Mr. Qusba to describe the terms of the agreement, or
18 if the Court has any questions, to address any questions that
19 the Court has.

20 THE COURT: Not at this point, thank you.

21 MR. LAURIA: Thank you. I'm happy to answer any
22 questions or turn it over.

23 THE COURT: Well, no, you may turn it over.

24 MR. LAURIA: Okay.

25 MR. QUSBA: Your Honor, Sandy Qusba from White & Case.

1 Just a couple of comments with respect to the proposed order.
2 We received some comments from the United States Trustee which
3 we addressed with each of our bank agents who are represented
4 here by counsel. I do have a blackline demonstrating or
5 showing the changes that were made to the order that was filed
6 with the motion, if I may approach?

7 THE COURT: You may.

8 (The Court receives document)

9 THE COURT: Thank you.

10 MR. QUSBA: I'd be happy to walk the Court through the
11 proposed changes.

12 THE COURT: If you would.

13 MR. QUSBA: First change, Your Honor, is paragraph E
14 in the Findings, page 2 of the blackline. At the request of
15 the United States Trustee, we added "subject to the rights
16 reserved in paragraph 8." This is the lead-in, Your Honor, to
17 the stipulation and acknowledgments made by the Debtor with
18 respect to the bank's pre-petition obligations and liens.
19 Paragraph 8 is a cross-reference to the reservation of rights
20 on the investigation period, as well as a budget for the
21 investigation itself.

22 The next change, Your Honor, is in paragraph 3, it's an
23 ordering paragraph, page 8 of the blackline. At the request of
24 the United States Trustee once again, we will provide and
25 furnish to the pre-petition agents, as well as to any statutory

1 committee appointed in these cases, reconciliation statements
2 to our budget. I think you've made reference to that in an
3 earlier motion as well, and so this will be congruent with
4 that.

5 Next, Your Honor, the changes that are reflected in the
6 blackline are in paragraph 4, page 9. This relates to our
7 carve-out. As you'll note, there are a number of strike-
8 throughs; principally the objection here by the United States
9 Trustee, and of course they can elaborate. But the carve-out
10 was triggered upon the delivery of a default notice by the pre-
11 petition agents or upon a responsible officer of the Debtor
12 becoming -- having knowledge of the occurrence of a default.
13 My understanding is that because a responsible officer may have
14 knowledge of the occurrence of a default, the Official
15 Committee of Creditors and their professionals may not know
16 that, and they may not know when the carve-out period is
17 actually commenced, and so in fairness, we have struck that
18 out. As you'll note later on, and I'll take you to it in a
19 minute or two, we have put in a provision in the order which
20 requires the Debtors to notify not only the pre-petition
21 agents, but any statutory committee, along with the United
22 States Trustee if a responsible officer does become aware of an
23 event of default.

24 Your Honor, the next change is on page 11 of the
25 blackline, it is paragraph 5(b), as in boy. Once again, the

1 United States Trustee requested that invoices of the pre-
2 petition agents professionals be submitted to the UST as well
3 as to any statutory committee. As part of our adequate
4 protection package, the Debtors have agreed to pay reasonable
5 fees and expenses of the pre-petition agents, in accordance
6 with the arrangements that existed immediately prior to the
7 petition date itself.

8 Finally, Your Honor, on page 18, right above paragraph 14,
9 it is actually the end of 13, which is our Event of Default
10 section. This is the language I eluded to a couple minutes ago
11 with respect to the Debtors having an obligation to inform the
12 Trustee, the committee, as well as the pre-petition agents,
13 upon them becoming aware of the occurrence of a default.

14 Those are the changes, Your Honor. One other request that
15 came from the United States Trustee, and I believe each of the
16 bank agents has consented to this, to the extent the bank
17 agents send us a Notice of Default, the UST requested that that
18 Notice of Default also be sent to the Creditor's Committee and
19 the UST itself. So once again, if you have any questions, I'd
20 be happy to answer them.

21 THE COURT: All right, so there'll be a further
22 revision to include that in the order?

23 MR. QUSBA: We were hoping we could just do that on
24 the record and that would be sufficient. It's a 30-day period.
25 We'd certainly pick it up in a final order --

1 THE COURT: Final order.

2 MR. QUSBA: -- on cash collateral or hopefully D-I-P
3 financing.

4 THE COURT: All right, that's fine with me. Does
5 anyone else -- well, let me ask this. Is the Debtor offering
6 the Goldstein Affidavit in support of the Cash Collateral
7 Motion?

8 MR. QUSBA: Yes, Your Honor.

9 THE COURT: Is there any objection to taking that into
10 evidence? I hear no response. It'll be admitted. Anything
11 further in support of the Cash Collateral Motion?

12 MR. QUSBA: No, Your Honor.

13 THE COURT: All right, does anyone else care to be
14 heard in connection with the request to use cash collateral?

15 MR. DEMBROW: Yes, Your Honor.

16 THE COURT: Come forward.

17 MR. DEMBROW: Good afternoon, Your Honor, Adam
18 Dembrow, Cadwalader, Wickersham & Taft, on behalf of certain
19 holders of the 4% contingent convertible senior subordinated
20 bonds due 2023 that were issued by Debtor WCI Communities, Inc.
21 Your Honor, as an initial matter, I am not admitted to this
22 Court. I am admitted in New York, and if it's acceptable to
23 the Court, I would like to be heard today.

24 THE COURT: All right. Is it your intention to submit
25 a -- or have submitted on your behalf a Motion for Admission

1 Pro Hac Vice?

2 MR. DEMBROW: I can do that as soon as possible, Your
3 Honor.

4 THE COURT: I will require it, but meanwhile, welcome,
5 and you may proceed.

6 MR. DEMBROW: Thank you, Your Honor. Your Honor, we
7 have just a -- what I think is a pretty straight-forward
8 objection to one portion of the relief sought in this motion.
9 Pursuant to this motion, the pre-petition secured lenders get,
10 as part of their adequate protection package, a lien on all of
11 the -- on the assets of all 127 of the Debtors that have filed
12 petitions yesterday. However, not all 127 Debtors are either
13 borrowers or guarantors under the three pre-petition credit
14 facilities, whereas on the other hand, we believe that
15 substantially all the Debtors are guarantors of the unsecured
16 bonds. And accordingly, the pre-petition secured lenders
17 should not get, as part of their adequate protection, liens on
18 the assets of all Debtors, but rather should only get liens on
19 the assets of those Debtors that are, in fact, either borrowers
20 or guarantors under those three pre-petition credit facilities.
21 And so while we reserve all our rights to raise any and all
22 other objections to the relief that will be requested by the
23 final order, for purposes of the interim relief that is sought
24 by the Debtors, to the extent Your Honor is inclined to grant
25 that, we would request that the interim order be modified to

1 indicate that the pre-petition secured lenders' lien will only
2 be on the assets of those Debtors that are borrowers or
3 guarantors under the pre-petition credit facilities. Thank
4 you.

5 THE COURT: Thank you. Does anyone else care to be
6 heard?

7 MR. MONACO: Good afternoon, Your Honor. Frank Monaco
8 of Womble Carlyle for Wachovia. Your Honor, I'd like to
9 introduce and move the Admission Pro Hac Vice of my co-counsel,
10 Timothy Graulich and Hugh McCullough from the Davis Polk firm.
11 We will follow up with written submissions. They are admitted
12 in good standing in the State -- Bar of the State of New York,
13 and he -- Mr. Graulich would like to address the Court on this
14 issue.

15 THE COURT: Very well.

16 MR. GRAULICH: Good afternoon, Your Honor. Again,
17 Timothy Graulich of Davis, Polk & Wardwell. As a preliminary
18 matter, I would just concur with everything the Debtors have
19 presented with respect to the negotiations of this stipulation
20 for cash collateral, and also, though, to specifically address
21 the last concerns about whether or not the liens granted here
22 are excessive for cash collateral. I just want to note two
23 things. First is is that the order is very clear that the
24 liens are only to the extent of the diminution of the pre-
25 petition collateral, and in particular, in this particular

1 case, some of the pre-petition collateral is of the nature that
2 is not -- it is designed to reduce over time. For example, I
3 think you've heard the Debtors refer to some of these tower
4 units, and the tower facility actually is not a revolver, it's
5 like a construction loan at this point such that the sale of
6 these tower facilities necessarily reduces the collateral
7 package for the pre-petition lenders. And so the entire case
8 is effectively being financed, at this point, by the
9 consumption on a consensual basis of the pre-petition lenders'
10 cash collateral. So as a first point, that the lien is only
11 for the diminution in value, and secondly, as I think we've
12 also heard this morning, it is not the Debtor's intention to
13 restrict the use of the proceeds of the pre-petition lenders'
14 collateral, to simply the pre-petition borrowers or guarantors.
15 We've heard that there are monies that are, in fact, going out
16 to even non-Debtors. And so as part of a adequate protection
17 stipulation, when the pre-petition lenders are not even aware,
18 necessarily, of where the money is going other than what's
19 provided for in the budget, I think it would be appropriate for
20 anybody who is going to be using proceeds of the Debtors -- of
21 the pre-petition lenders' cash collateral, that it's fair for
22 there to be a lien to the extent of diminution of that
23 collateral.

24 THE COURT: And what's the magnitude of the use? To
25 what extent will cash collateral be used between now and August

1 27?

2 MR. GRAULICH: I might look to -- the version of the
3 order I brought up did not have the budget attached to it.

4 MR. QUSBA: Your Honor, hopefully your version, not
5 the blackline but the clean, has Annex 1, which will have a
6 budget. For our final hearing, which I hope will be scheduled
7 for August 27th, there's -- it shows a net receipts
8 disbursements line item of \$11.4 million for the week ending
9 August 29, 2008, Your Honor.

10 THE COURT: Thank you. All right, anything further?

11 MR. GRAULICH: That's all, Your Honor, thank you.

12 THE COURT: All right. Does anyone else care to be
13 heard in connection with this motion?

14 MR. CASARINO: Good afternoon, Your Honor. Marc
15 Casarino of White & Williams, LLP, here on behalf of Bank of
16 America as agent for the revolving credit facility. I have in
17 the courtroom with me, Your Honor, Robert Albergotti and
18 Stephen Pezanosky of the Haynes & Boone firm. We have filed
19 motions for their Admission Pro Hac Vice this morning. I
20 understand that Your Honor most likely has not seen them, but
21 if Your Honor will permit, I'd like to cede the podium to Mr.
22 Albergotti to address this matter with the Court.

23 THE COURT: Very well.

24 MR. CASARINO: Thank you.

25 MR. ALBERGOTTI: Good afternoon, Your Honor, Robert

1 Albergotti of Haynes & Boone for Bank of America. We're
2 appearing today in our capacity as a lender under the revolving
3 credit facility. I would only like to point out that the
4 interim cash collateral stipulation is something that was
5 negotiated very closely between and among the three pre-
6 petition secured lenders and the Debtor, and that it is a
7 complete package and that the consent which our client, Bank of
8 America, has given to the use of cash collateral is based upon
9 the approval of the cash collateral stipulation in its
10 entirety. We do concur with the comments by the tower lenders,
11 by Wachovia's counsel, that the grant of the post-petition lien
12 in the additional assets is only to the extent of a failure of
13 adequate protection, and we think that's clearly appropriate in
14 these circumstances. Thank you, Your Honor.

15 THE COURT: Well, let me ask this. Has anyone done a
16 valuation or made at least some preliminary assessment, of the
17 value of assets which would, but for this order, have been
18 unencumbered?

19 MR. ALBERGOTTI: Not to my knowledge, Your Honor. I
20 believe that substantially all of the Debtor's assets are
21 encumbered, certainly of the Debtors in this case, but I
22 believe substantially all their assets are encumbered by the
23 lien securing the senior debt.

24 THE COURT: All right, thank you. Does anyone else
25 care to be heard?

1 MR. SOLOW: Yes, Your Honor, Sheldon Solow on behalf
2 of Key Bank. Your Honor, I have engaged local counsel, but
3 they have not yet filed our Motion Pro Hac Vice. I expect it
4 to be on file within 24 to 48 hours, and I would appreciate the
5 opportunity to be heard today.

6 THE COURT: I will hear you. Okay.

7 MR. SOLOW: Thank you, Your Honor. We represent the
8 third of the large lender groups. We were involved in the
9 negotiations. We concur with the statements that this was all
10 part of a package, and given the exigencies of the
11 circumstances, we can revisit at the end of the time the issue
12 as to whether or not the assets ought to be pledged for other
13 matters. As a result, we're supporting this motion. I would
14 make one other point, mindful of Your Honor's statement that no
15 one here is ever shy. When one of the issues that was hotly
16 contested, I might add, over the weekend, was the issue of the
17 cap on professional expenses, and my clients have asked me to
18 spread of record the statement that in negotiating the cap on
19 the professional fees, there was a representation made to us
20 that the pre-petition -- that the counsel for the Debtor had
21 not received any pre-petition retainer, which is one of the
22 reasons we agreed to a cap of this extent. Given the fact that
23 we have not yet seen retention motions, we simply wanted to say
24 that we're relying on that when we see those motions, we expect
25 them to be entirely consistent. And I only spread it of record

1 because I was requested to do so. Thank you, Your Honor.

2 THE COURT: Thank you. Does anyone else care to be
3 heard in connection with the request for use of cash
4 collateral? All right, I hear no further response. Does the
5 Debtor have a response to the objection?

6 MR. LAURIA: Yes, Your Honor, I simply wanted to say
7 that I know of no prohibition against one affiliated Debtor
8 granting adequate protection to support the direct use of cash
9 collateral by another Debtor. And I can tell you that, from
10 the Debtor's perspective, the advantages to the estate of
11 having consensual use of cash collateral with our lenders and
12 starting this case off in a consensual fashion and not one
13 where we are asking for non-consensual use of cash collateral
14 is of substantial, substantial value to the estate, and we
15 believe it sends a message, hopefully to our lenders, but to
16 everybody else that we're doing business with and who's
17 watching closely the events today that we're hopefully starting
18 this case on the right foot instead of the wrong foot. And
19 given what we believe is substantial value from and, quite
20 frankly, life blood of the business to be able to use our cash
21 collateral and the value of doing it consensually, you know, in
22 the exercise of our business judgment, we think that the
23 agreement that was reached was a good one. And in it there's
24 no legal prohibition to, again, one Debtor helping another
25 Debtor get use of cash collateral. I think the only proper

1 objection would be a challenge to the Debtor's business
2 judgment. I believe that the record more than adequately
3 supports a Court determination that the Debtor's have acted in
4 a reasonable fashion in deciding to enter into this cash
5 collateral agreement.

6 THE COURT: Well, doesn't the objection technically
7 raise the issue of whether -- well, in part anyway, apart from
8 what the lenders would agree to or not as a condition of giving
9 their consent to use of cash collateral, isn't the question, in
10 part, whether the -- what is -- what previously wasn't the
11 lender's collateral necessary to adequately protect their
12 interests? Obviously they've made the judgment that it is.
13 It's rare, in fact I can't remember a time when anyone came
14 prepared to talk about value on the first day. But I have had
15 such issues, in fact, in my last real estate developer case
16 recently filed, LandSource, a value on the final hearing. But
17 it seems to me that given the nature of the business, with due
18 respect to the Debtor's hopes and aspirations, it seems to me
19 that you'd have to -- you could only argue that aside from the
20 take-downs on the tower closings, nobody's coming to me, or
21 hasn't recently, and argued that the value of any real estate
22 is increasing. Now, I suppose it's possible that somewhere it
23 is. But mostly the information I get, not just from the
24 papers, but mostly from what I hear here, tells me that
25 arguably the numbers are still moving. So that it seems to me

1 that it's appropriate, certainly at the interim hearing stage,
2 to approve the giving of additional collateral, to the extent
3 there is diminution under these circumstances, reserving, of
4 course, for final hearing any objection that might be made or
5 renewed with respect to whether additional collateral is
6 appropriate under these circumstances. So I'm prepared to
7 overrule the objection, at least for purposes of interim
8 relief, and grant the relief the Debtor has requested. But,
9 that having been said, let me ask this. There is some
10 indication in the papers, and I think there's been some
11 discussion about, you know, further financing. What is the
12 Debtor anticipating in the way of timing and hearing on such a
13 motion?

14 MR. LAURIA: Thank you, Your Honor, for bringing that
15 up, because it's, I think, an important next step here. We
16 have been, I think it's fair to say, deep in discussions with
17 our existing lenders regarding Debtor-in-Possession financing.
18 Based on the ability to use cash collateral on an interim basis
19 through to the end of the month at the very least, with a
20 potential 1-week extension, our anticipation and expectation is
21 that assuming we get to a definitive agreement, we would file a
22 motion, hopefully within the next day or two, that we would
23 only seek to have heard at a final hearing, we would not
24 require an interim approval, and it was our hope and
25 contemplation that we would put that on what I guess is now

1 becoming somewhat of an omnibus setting on the 27th, so that we
2 could have a final approval of Debtor-in-Possession financing
3 at that time.

4 THE COURT: Well, if you do get it in within the next
5 day or two, at least in terms of what the rules require, you
6 would be in a position to tee it up for final hearing. Okay,
7 well that answers the only question I had. This is one of the
8 rare instances in which I had more comments about motions other
9 than the financing motions. This was a fairly, I thought,
10 modest arrangement by the lenders here, and that's not meant to
11 be an invitation to ratchet anything up, but part of the reason
12 why I'm willing to approve the relief that's been requested.
13 Okay, is there a final Form of Order? Is there a Form of Order
14 for me to sign?

15 MR. LAURIA: Your Honor, I think it was --

16 THE COURT: Well, I have a blackline --

17 MR. LAURIA: -- submitted. Was there not a clean --

18 THE COURT: No, I just have the blackline.

19 MR. LAURIA: -- clipped to it?

20 THE COURT: Well, let's put -- I did get a clean
21 order, I'm sorry. I had assumed there were further changes,
22 but if you're telling me there are not, I'll just fill in the
23 dates on this one.

24 MR. LAURIA: They've already been incorporated.

25 THE COURT: Okay. All right, I'm filling in, in

1 paragraph 17, "August 20," and in paragraph 18, "August 27 at
2 10 o'clock in the morning." I don't -- were there any other
3 blanks in that order? I don't think there were.

4 MR. LAURIA: No, Your Honor.

5 MR. PENNINGTON: Your Honor, the first page, today's
6 date.

7 THE COURT: I don't see that. It's just on the
8 signature page, I think.

9 MR. LAURIA: He does that sometimes.

10 THE COURT: All right. That order has been signed.
11 How about if I strike out the words "Exhibit A" on the
12 original.

13 MR. LAURIA: Thank you.

14 THE COURT: All right. I understand things are moving
15 quickly. All right, I don't think we have to go back to
16 anything that we previously addressed, so let me ask, is there
17 anything further for today?

18 MR. LAURIA: Your Honor, the only thing I wanted to
19 mention, we had not filed any of the professional retention
20 papers. We -- it's our intention to file them immediately on
21 getting back to local counsel's office, and we were hoping that
22 we could set that all with the same objection and hearing
23 schedule as the Court has done with these other matters; so
24 that objections would be due on the 20th, and any objections
25 would be set for hearing on the 27th.

1 THE COURT: Let me ask the U.S. Trustee if she has a
2 position about that.

3 MS. LEAMY: Thank you, Your Honor. As long as they're
4 filed in accordance with the notice requirements of the local
5 rules, that's fine. I mean, today's the 4th, and I don't -- as
6 long as they're filed today or, you know --

7 THE COURT: Today's the 5th, I think.

8 MS. LEAMY: Right, I think that's -- I'm sorry. I
9 think that's fine.

10 THE COURT: All right.

11 MS. LEAMY: But if they're looking to file them later
12 than that, no, I think that would be a problem.

13 THE COURT: Okay, then that's fine with me.

14 MR. LAURIA: Great. Your Honor, subject to anything
15 further that the Court has for us, we thank you for everything
16 you've done for us already.

17 THE COURT: Well, I -- you're welcome. I do have one
18 parting question, and that is one that I know is sometimes
19 difficult to answer this early on, but has the Debtor yet had a
20 chance to develop at least its own view of where it is going
21 from here?

22 MR. LAURIA: Some people have different thoughts about
23 where we're going from here. Your Honor, we -- as I think I
24 mentioned early on today, our view right now is that we need to
25 move swiftly to a plan, that things aren't getting better, and

1 that a prolonged stay in Chapter 11 will, in addition to the
2 usual problems of expenses of administration, et cetera, carry
3 with it no appreciable upside. So our intention is to try to
4 move very swiftly, once we get things stabilized here, into a
5 plan process. In that regard, we think that the threshold item
6 is figuring out how to de-lever materially the balance sheet
7 and get down to a level of debt that this business can
8 reasonably support over what may now be a prolonged period of
9 downtime in the real estate cycle. So I think we're going to
10 be looking for a cash infusion that would be used to pay down
11 all, if not substantially all, of the existing bank debt, with
12 then an appropriate equitization treatment, in all likelihood,
13 of the bond debt. And whether or not that is a substantial,
14 partial, or full recovery will be left to -- a lot of wood that
15 has to get chopped between here and there, and whether or not
16 there's any value beyond that is anyone's guess at this point.

17 THE COURT: Understood, but I thank you. All right,
18 that concludes this hearing. Court is adjourned.

19 (Court adjourned)

20

21

CERTIFICATION

22 I certify that the foregoing is a correct transcript from the
23 electronic sound recording of the proceedings in the above-
24 entitled matter.

25

26 *Lewis Parham*

8/13/08

27

28 _____
Signature of Transcriber

Date