

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Case No. 08-11645 (KJC)  
. .  
WCI COMMUNITIES, INC., et al., .  
. 824 North Market Street  
. Wilmington, Delaware 19801  
Debtors. .  
. August 19, 2008  
. . . . . 4:02 p.m.

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

APPEARANCES:

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**APPEARANCES CONTINUED:**

For Creditor Jay Aikin:

Saraga & Lipsky PA  
By: JOSEPH STERN, ESQ.  
West Palm Beach, FL 33401

1 THE COURT: Good afternoon all.

2 MR. SUTTY: Good afternoon, Your Honor. Eric Suttty  
3 of Bayard on behalf of WCI Communities and its affiliated  
4 debtors. I want to thank Your Honor for accommodating  
5 telephonic appearances at todays hearing. My co-counsel had  
6 some tough time with the weather and getting up here.

7 There are two items on today's agenda. With the  
8 Court's permission, would like to do the second item first.

9 THE COURT: Go head.

10 MR. SUTTY: It's the debtors' emergency motion for an  
11 order approving the debtors entry into a purchase and sale  
12 agreement and modifying the automatic stay to permit recording  
13 of easements thereunder.

14 We filed this motion to approve the purchase and sale  
15 agreement, pursuant to which debtors agreed to convey two  
16 easements to Yankee Gas Service Company, for the purpose of  
17 allowing the gas company to install a natural gas distribution  
18 system and a natural gas gate station on the properties that  
19 the debtors own and are developing in Danbury, Connecticut.

20 Although the name of the agreement is a purchase and  
21 sale agreement, the debtors are not really selling any  
22 property, they're merely giving Yankee Gas easements and access  
23 rights to build a natural gas system that will provide gas  
24 utility to the project.

25 Approving the motion today is in the best interests

1 of the debtors and their estates. It will allow the company to  
2 provide natural gas to its development, fulfill its obligations  
3 to the State of Connecticut, the City of Danbury and the  
4 Woodland Group II, LLC that was the seller of the property to  
5 WCI, complete timely construction in order to satisfy  
6 obligations to presales, home buyers and provide natural gas  
7 and gas pressure to existing homes, preserve its performance  
8 bond on the property, benefit from the cost savings resulting  
9 from the utilities installation of the pipelines, and will  
10 enhance the value of the debtors' estates.

11           The property is known as The Reserve, but it's also  
12 marketed as the Community of Rivington. It is comprised of  
13 three individual neighborhoods, each of which is made up of  
14 single family homes and tower residences. Construction on only  
15 one of the three neighborhoods has been sufficiently completed  
16 to allow residents to move in. The debtors are still offering  
17 preconstruction deals to home buyers in the two other  
18 neighborhoods.

19           The purchase and sale agreement was executed by the  
20 debtors on the petition date itself, August 4th, 2008 and  
21 requires the debtors to record easements to allow Yankee Gas  
22 to, among other things, dig trenches for underground pipelines  
23 and build a natural gas gate station on the debtors' property.  
24 The gas distribution system provide natural gas and pressure to  
25 the residents of the occupied neighborhood as well as certain

1 parts of the other two neighborhoods and to other nearby  
2 communities being developed by other developers.

3           We ask for this relief as an emergency because the  
4 debtors and Yankee Gas informed us that if they do not start  
5 digging the trenches now, the fast approaching winter months  
6 might freeze the land making it difficult, if not impossible,  
7 to complete installing the pipelines before the December 31st  
8 deadline set out in the agreement.

9           The agreement also allows for an extended deadline of  
10 May 2009, triggered in the event of a winter freeze. The  
11 debtors do not want to wait that long as it negatively affects  
12 sales, the construction of the unfinished neighborhoods.

13           This agreement has been negotiated for many months  
14 prior to the petition date and the parties have been ready,  
15 willing and able to complete the natural gas distributions  
16 pipelines.

17           We need emergency relief in order to get Yankee Gas  
18 started on construction and installation of the pipelines  
19 immediately. Yankee Gas has agreed to go forward with the  
20 existing schedule in the purchase agreement. The lenders have  
21 already subordinated their interest to the easement, no party  
22 has objected to the motion and I understand the committee  
23 supports the motion also.

24           We received prepetition consent from Wachovia and  
25 Bank of America subordinate their interests and we've informed

1 the prepetition lenders of this motion, but have not heard back  
2 from them. They have not objected. The U.S. Trustee, I  
3 understand, has no objections either.

4           Because of the critical necessity of commencing  
5 construction and installation of the natural gas system before  
6 the winter months, the fact that all the parties in interest  
7 will benefit from the relief and the debtors believe it is in  
8 the best interest of the estate to approve the purchase  
9 agreement and modify the automatic stay to permit the recording  
10 of easements to allow the construction to begin immediately.  
11 Accordingly, the debtors respectfully request the Court grant  
12 the motion.

13           THE COURT: All right, thank you. Let me ask if  
14 anyone else cares to be heard in connection with this motion?

15           MS. JONES: Good afternoon, Your Honor, Laura Davis  
16 Jones of Pachulski, Stang, Ziehl & Jones, on behalf of the  
17 Official Committee of Unsecured Creditors.

18           Your Honor, as a little bit of background, the  
19 trustee's office did appoint a committee in this case on  
20 Wednesday, August 13. Our committee is made up of five  
21 members, the Bank of New York Mellon, I-Star Financial, AQR  
22 Capital Management, Law Debenture Trust Company of New York and  
23 the Signal Group.

24           Your Honor, that committee, subject to an order of  
25 this Court has selected counsel. Lead counsel is Akin, Gump,

1 Strauss, Howard and Feld, New York and that will be primarily  
2 Daniel Golden and Lisa Beckerman and the committee has asked  
3 our firm to act as Delaware counsel.

4 Your Honor, Mr. Suttty is correct that the committee  
5 has reviewed this matter and we do support the relief  
6 requested.

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

9 (No audible response)

10 THE COURT: All right. I have reviewed the motion  
11 and it seems a fairly complicated set of circumstances, but one  
12 in which the wheels must be set in motion so that things may  
13 follow from that. So, I'm prepared to grant the relief that's  
14 been requested. Do you have a form of order, Mr. Suttty?

15 MR. SUTTY: Yes, I do, if I may approach.

16 THE COURT: You may. Thank you. That order has been  
17 signed. Now, I will say that review of that motion did call to  
18 mind on thing that I'll ask the debtor and the committee and  
19 others to think about.

20 This debtor, as I understand it from the first day  
21 hearings, has 40 ongoing projects. The motion that I just  
22 approved recited that it was the debtors' view that this  
23 transaction was one in the ordinary course of business and  
24 didn't require court approval, but in the abundance of caution,  
25 famous phraseology, often used here, filed the motion. What

1 that triggered in my mind was, because of what must be,  
2 although I have no specific notion presently of the magnitude  
3 of this, of the many ongoing transactions, that probably  
4 without much dispute, fall within the ordinary course of  
5 business.

6 I was thinking to save everybody some trouble, one of  
7 the things the parties might work on is some protocol which  
8 identifies those things which are in the ordinary course of  
9 this debtors' business and which do not require court approval  
10 and those -- well, I guess that's really all you'd have to  
11 identify. I guess you could go beyond that and say for sure  
12 those that do require approval, or maybe there's some notice  
13 provision.

14 You know, I don't know and I've never done it before,  
15 but I've never had a real estate case of this magnitude with so  
16 many ongoing projects. I have Land Source but I don't get the  
17 sense there's quite as much activity there as there is here.  
18 So, I just throw that out for the parties consideration. I  
19 know it's early, I don't feel any particular urgency,  
20 necessarily, to having something done but I ask the parties to  
21 consider it and at some point, you know, in the not too distant  
22 future, to give me their views on it.

23 MR. SUTTY: We will, Your Honor.

24 THE COURT: Okay.

25 MR. SUTTY: That takes us back to agenda item number

1 one, it's the emergency motion for relief form the automatic  
2 stay filed by Jan Aikin. Per order of this Court, the status  
3 conference was set for today.

4 THE COURT: All right, well first --

5 MR. SUTTY: I'm not sure exactly how you would like  
6 to proceed.

7 THE COURT: Well, I'm going to proceed -- I see that,  
8 Mr. Stern, you are on the telephone.

9 MR. STERN: Yes, sir, I am.

10 THE COURT: All right, good afternoon.

11 MR. STERN: Good afternoon, Your Honor.

12 THE COURT: Let me tell you why I set this for a  
13 status hearing. I did receive and review what's styled as the  
14 emergency motion for relief from stay, the emergency being that  
15 there's oral argument set on an appeal.

16 MR. STERN: Correct.

17 THE COURT: Typically, when bankruptcies are filed,  
18 there are often lots of court dates that are coming up and that  
19 are automatically stayed as a result of the filing and that, of  
20 course, is what the bankruptcy code intends. Your emergency  
21 motion did not tell me enough out of the ordinary to tell me  
22 that I should act on this prior to the 30 days time period  
23 within which I'd normally have to have at least a preliminary  
24 hearing on a relief from stay motion under the terms of the  
25 bankruptcy code and by that I mean, the fact that there's a

1 hearing coming up that might be postponed usually isn't enough  
2 to constitute an emergency, but I usually err on the side of  
3 caution to give the movant the opportunity to tell me maybe  
4 something that I missed from what was filed or something that  
5 wasn't in the papers that would cause me to do otherwise. So,  
6 Mr. Stern, the floor is yours.

7           MR. STERN: Well, I'll try to elaborate a little bit,  
8 Your Honor. It is oral argument in the Second District Court  
9 of Appeals down here, we have five districts in Florida. There  
10 is essentially nothing left for opposing counsel and I don't  
11 mean the opposing counsel there by telephone, I mean WCI's  
12 litigation opposing counsel on this matter, there's nothing  
13 left for either of us to do except go to the argument itself.  
14 So, I don't see that there's any prejudice to WCI from letting  
15 the hearing go forward and, thus, the decision on the appeal.

16           If the case is taken off oral argument, I do not know  
17 when it will be set for oral argument again. My presumption is  
18 it will be many months down the road. I just do not know.

19           Opposing counsel has pointed out to me a few minutes  
20 ago, that you had oral argument scheduled within approximately  
21 three or four months of the last brief being filed, so why  
22 should to be any different? Maybe it won't be, I don't know.  
23 It could be a month down the road, could be three months, six  
24 months, I don't know. I don't know what the court's docket is,  
25 I don't know even who the judges are in this case. There's no

1 way to find out anything like that, or to request that it be  
2 set -- I mean, I could probably request that it be set at the  
3 earliest opportunity but there's nothing I can do to further  
4 that request, other than just make it.

5           My client, I feel that from the merits of the appeal,  
6 my client had a very bad decision go against her, that if the  
7 case is not allowed to go forward, as of right now,  
8 technically, she's not a creditor because a court has ruled  
9 she's not entitled to the money, that she's the defaulting  
10 party. Therefore, I think WCI is getting a windfall by  
11 stopping the appeal, because under the eyes of the law, as of  
12 this moment, her deposit is viewed as WCI's asset and we don't  
13 believe that's so.

14           Letting the appeal go forward, furthermore, promotes  
15 judicial uniformity, at least in Florida, because on this  
16 particular issue, in both state and federal courts, cases are  
17 decided both ways on it, at the trial court level. This will  
18 be the first case at the appellate court level to make the  
19 ruling. It will have significant precedential value in  
20 Florida. And the savings clause, which is the issue we're  
21 discussing, or arguing over in the court of appeals, is  
22 something that is in, probably, all of WCI's contracts in  
23 Florida. I'm not sure about that, but I tend to think so  
24 because their contracts for condominiums are pretty much  
25 standard from project to project.

1           And, it's got to be something to be decided because  
2 as I said, the cases are on both sides of this issue and this  
3 will be the first appellate decision on it. It will -- the  
4 court has told me, through email, the court clerk, an email  
5 which I sent a copy to your clerk --

6           THE COURT: I have it.

7           MR. STERN: Okay. Saying they'll wait until noon  
8 tomorrow to decide whether to take the case off of oral  
9 argument.

10           Now, opposing counsel has presented me a very  
11 interesting and very fair proposal, whereby they will not  
12 object to having the case -- I'm not sure exactly how they  
13 phrased it but, in essence, they won't object, I think, to  
14 relief from the stay for the purpose of rescheduling the oral  
15 argument, pending, or contingent on their right to fully brief  
16 the issue, to be heard at a hearing sometime in, I think, late  
17 September. And they may very well decide not to oppose the  
18 appeal going forward at that time.

19           And that is a fair proposal, I understand that. I'm  
20 still left with what to do about my client here, if this  
21 doesn't result in too significant a delay to my client in, you  
22 know, the oral argument, then I don't really have that much of  
23 a problem with it. The problem I do have is, I don't know that  
24 yet and I won't know it, probably, for a couple of weeks.

25           In other words, if you say the motion is either

1 denied or deferred, the court of appeals here is going to take  
2 it off the oral argument for sure, or the oral argument docket  
3 for sure and I guess they'd let me know within a week or two,  
4 when it's rescheduled for and then I'd know. In all  
5 likelihood, I will know by the September hearing, but that's  
6 the dilemma that I face right now, Your Honor, and I don't see  
7 what the prejudice is to WCI in letting oral argument go  
8 forward in this case.

9           Now, is it within your power, can something like this  
10 be done where you allow oral argument to go forward and even  
11 the decision in the court of appeals be rendered but we can't  
12 act on that decision until you've officially granted relief  
13 from the stay?

14           THE COURT: I don't know.

15           MR. STERN: That's just something that I've thought  
16 of as a possible compromise from my end.

17           THE COURT: Well, the short answer is that the  
18 bankruptcy court has broad discretion to determine when or if  
19 to grant relief from the stay and, if so, under what  
20 conditions. But one thing I haven't done is, unless you have  
21 anything else to add, is asked the debtor for its position,  
22 which I'm inclined to do next.

23           MR. STERN: That's fine.

24           THE COURT: Okay. Mr. Suttty.

25           MR. SUTTY: Your Honor, I believe Tom Lauria of White

1 & Case is on the phone and is going to address this aspect of  
2 today's hearing.

3 THE COURT: Mr. Lauria.

4 MR. LAURIA: Good afternoon Your Honor, Tom Lauria  
5 with White & Case appearing for WCI Communities and its  
6 affiliated debtors.

7 Let me first reiterate the thanks to the Court for  
8 permitting telephonic appearance. I understand that this is  
9 less than ideal but it is certainly helpful to us under the  
10 circumstances we're currently under.

11 With respect to the particular motion, Your Honor, I  
12 think our question was, in the first instance, substantially  
13 similar to the one that the Court posed. We did not see any  
14 particular or unique prejudice to the movant that had been set  
15 forth in the papers that would support relief from the stay.  
16 In fact, I mean, counsel's comments that we haven't shown any  
17 prejudice to the debtor of getting the stay lifted kind of  
18 flips the standard upside down. The stay is there for a reason  
19 and, in fact, with respect to this particular matter, the stay  
20 is quite important to the debtor.

21 As the Court may have picked up from counsel's  
22 comments, in fact, this is a big issue for this debtor. We are  
23 currently a party to at least five pending actions that raise  
24 the question of whether or not WCI is exempt under the  
25 Interstate Land Sales Act from having to register with respect

1 to out of state purchasers. This issue, in the aggregate,  
2 could end up involving millions of dollars of deposits, not  
3 just this one deposit and we certainly feel at this point that  
4 we need the benefit of the stay to be able to investigate this  
5 matter, to discuss it with the other stakeholders, including in  
6 particular the newly appointed committee, and to determine what  
7 would be an appropriate fashion to proceed, not only with  
8 respect to this particular matter, but with respect to this  
9 whole family that fall into this heading.

10           And on the other side, we don't believe there's any  
11 prejudice Ms. Aikin. The only thing that's going to occur here  
12 is there would be a delay in the argument of the appeal or the  
13 resolution of the issue, but under the bankruptcy code, I do  
14 think that the plaintiff does have a claim as defined in 101  
15 and would be entitled to file a proof of claim, subject to some  
16 resolution of that unliquidated disputed claim before an  
17 appellate court in Florida and, ultimately, by the Court,  
18 perhaps.

19           But in any event, it would only be a prepetition  
20 unsecured claim. This is a matter that was resolved at the  
21 trial court level. As a consequence we do not hold any  
22 deposit in respect of this particular dispute. There's been no  
23 stay pending appeal or other relief issued that would have  
24 required that, so in the best case, this particular claimant  
25 would acquire prepetition unsecured claim if, in fact, we were

1 required to turn over the deposit.

2           And, given that we are not, you know, into the plan  
3 process at all at this point, there's no particular need to  
4 liquidate the claim on an expedited basis on the plaintiff's  
5 side and on our side we really do need to take advantage of the  
6 breathing spell here to figure out the bigger picture  
7 implications of issues that this particular family of  
8 litigation raises and make sure that we are doing the right  
9 thing for not only the benefit of the larger estate, but also  
10 being sensitive to the interest of consumers that we're dealing  
11 with.

12           So, Your Honor, we would ask that this matter just be  
13 set in the ordinary course, as the Court alluded to.

14           I guess there's one other point I wanted to mention  
15 that we have a little bit of confusion on our end. We learned  
16 only about an hour or so ago that the motion for relief from  
17 stay that was filed here in the bankruptcy court was apparently  
18 also filed in the Second DCA in Florida and an order was  
19 entered, apparently, on the 11th, scheduling some sort of  
20 status conference or other proceeding tomorrow, before the  
21 Second DCA.

22           I certainly view that as a violation of the stay, in  
23 and of itself, and would ask if the Court is inclined to just  
24 schedule this in the ordinary course, that the Court also  
25 direct counsel to withdraw the request or whatever was filed in

1 the Second DCA, putting in motion some procedures before that  
2 court which conceivably could result in that court thinking  
3 that its job is to decide the application of the stay which, of  
4 course, would be a huge problem for the debtor.

5 MR. STERN: Your Honor, if I may speak to that  
6 particular issue?

7 THE COURT: One moment. Just let me ask if the  
8 committee or anyone else wishes to be heard, then I'll get back  
9 to you, Mr. Stern.

10 MR. STERN: Okay, sure.

11 MS. JONES: Your Honor, just briefly, Laura Davis  
12 Jones, Pachulski, Stang, Ziehl & Jones, again.

13 Your Honor, we agree with Mr. Lauria that it makes  
14 sense to set this down in the normal course and deal with it in  
15 the normal course.

16 THE COURT: All right, thank you. Anyone else care  
17 to be heard?

18 (No audible response)

19 THE COURT: All right, Mr. Stern.

20 MR. STERN: Yes. With regard to filing something  
21 with the Court of Appeals down here, number one what I filed  
22 was a notice, not a motion. A motion is a request for a court  
23 order of some kind, I made no such request. I filed a notice  
24 of what was going on in this court so the Court of Appeals  
25 would be apprized of it. The Court of Appeals, through the

1 court clerk, sent an email to myself, and to opposing counsel.  
2 It was not an order, it was just simply an email saying the  
3 court will withhold its decision on whether to take the case  
4 off the oral argument docket until noon tomorrow. I did not --  
5 I do not see how that violates the automatic stay and I  
6 consulted with three bankruptcy counsel before doing so. I  
7 just notified the court of what was going on, I did not request  
8 any relief, whatsoever, period.

9 THE COURT: All right. Does debtors' counsel, Mr.  
10 Lauria, do you have a copy of that email?

11 MR. LAURIA: I do not. In fact, we learned what we  
12 learned by looking at the court's docket this afternoon and  
13 discovering that, in fact, the motion had been filed and that  
14 some order had been entered. We don't even have a copy of the  
15 order, but that an order, the docket reflects an order having  
16 been entered on August 11th.

17 THE COURT: All right. Mr. Stern, let me just, as a  
18 basic federal bankruptcy practice, in any event, you need to  
19 copy others. You can't send a communication to the court  
20 without copying debtors' counsel as well. Now, I see there are  
21 cc's on your letter to me, I'm sorry, to Carmen Stratford, my  
22 judicial assistant --

23 MR. STERN: Right.

24 THE COURT: -- but you need to copy parties in the  
25 bankruptcy as well and it's a multiple constituency proceeding,

1 usually and there's a way of finding out who should get copies  
2 of what, but I just tell you that for future reference.

3 MR. STERN: I understand and I appreciate that, Your  
4 Honor. I did carbon -- well, I think I carboned Elaine James  
5 who is opposing counsel on the appeal. But she would have  
6 gotten a copy of it anyway.

7 THE COURT: The letter reflects -- yes, the letter  
8 reflects that you did.

9 MR. STERN: Okay.

10 THE COURT: All right. And you wanted to make a  
11 further response, Mr. Stern? Hello? Did we lose him?

12 TELEPHONE OPERATOR: Yes, Mr. Stern disconnected.

13 THE COURT: All right. Yes, operator, can we get  
14 him back?

15 TELEPHONE OPERATOR: Yes, hold on. Mr. Stern is  
16 back.

17 MR. STERN: Hello?

18 THE COURT: Mr. Stern, this is Judge Carey.

19 MR. STERN: Hi. You can blame that on Hurricane Fay.  
20 We just had a power outage.

21 THE COURT: Well, I'm glad you're back. Did you wish  
22 to make a further response?

23 MR. STERN: I think I said that I carboned Elaine  
24 James and in the future I certainly will, Your Honor. I hadn't  
25 regarded this email as a filing to be -- that I was submitting

1 to the Court, I just wanted it there as something to show that  
2 -- well, to show exactly what it says. That the court of  
3 appeals is waiting for your decision. I'm not using it to  
4 bolster my argument in anyway, or at least the substance of my  
5 argument, but in any case, I apologize for any confusion that  
6 may have resulted, it was certainly unintentional, and I will  
7 certainly carbon everybody in the future.

8 THE COURT: Yes. The point is that any information  
9 that comes to me, except under limited circumstances, should be  
10 shared with others. What I learn, I like to learn on the  
11 record in the courtroom, and not otherwise. Again, except  
12 under very little limited circumstances which the bankruptcy  
13 code and the rules provide.

14 Okay. Anything else Mr. Stern?

15 MR. STERN: Just really two points very briefly. This  
16 is a matter of important public policy to be decided in a  
17 matter of state law, in the state court, and the courts do  
18 allow for a balancing test. Opposing counsel had mentioned  
19 that this somehow got turned around by them having to bear the  
20 burden of showing why it didn't prejudice them but courts do  
21 employ a balancing test as to the potential hardships to the  
22 debtor versus the creditor and I think to have such a balancing  
23 test you have to look at, or the creditor has to -- the debtor,  
24 I'm sorry, as to some degree show why they wouldn't be, or they  
25 would be prejudiced or they wouldn't. So, there you have it.

1 THE COURT: All right. Well I --

2 MS. JAMES: Your Honor --

3 THE COURT: Pardon?

4 MS. JAMES: Your Honor, excuse me this is Elaine  
5 James, I am appellate counsel to WCI in the Aikin matter, about  
6 which the Court and Mr. Stern have been conversing. Just to  
7 follow up on the comment that Mr. Laurie made that, perhaps,  
8 the Court should instruct Mr. Stern to withdraw the documents  
9 he filed before the Second District Court of Appeals in  
10 Florida, I am reading, and without ascribing any ill motive to  
11 Mr. Stern, I am reading from a notice of order authorizing WCI  
12 to return deposits which Mr. Stern filed in the Second District  
13 Court of Appeals on August 8th.

14 That notice says "oral argument on Aikin's appeal may  
15 go forward as scheduled on August 27, 2008" and with all due  
16 respect, Your Honor, I do believe it would be appropriate for  
17 documents such as that to be withdrawn from the Second District  
18 should the Court at this point that it will not lift the stay.

19 THE COURT: Well, let me, without having those papers  
20 in front of me, I'm reluctant to enter a specific order, except  
21 that I will say the following. I'm not prepared today to act  
22 on the motion, which means the automatic stay remains in place  
23 with respect to this litigation, including the appeal and any  
24 act that the movant here, or her counsel, would take in  
25 violation of the stay, would be done at their respective peril

1 and I hope that after having heard that from me, there will be  
2 no further issue with other activity in the court, except I  
3 don't view giving the Court a notice of the bankruptcy filing,  
4 if that's all that's been given, as a stay violation. But I  
5 intend to enter no order today, therefore, the stay is in place  
6 and, therefore, the oral argument is stayed by operation of the  
7 automatic stay, Section 362 of the bankruptcy code.

8           Now, Mr. -- and I'm not acting today because there's  
9 nothing that I've heard which tells me that either there's an  
10 emergency within the meaning of what the bankruptcy code and  
11 applicable decisional law would consider an emergency but I  
12 will do this. I see that your motion was filed on August 5th,  
13 the bankruptcy code entitles you to at least a preliminary  
14 hearing on your motion within 30 days from the date of filing.  
15 There is a hearing set in this case, an omnibus hearing, for  
16 ten o'clock on Wednesday, August 27th, and if you would like I  
17 will instruct the debtor to add this matter to the agenda of  
18 that hearing.

19           Now, I guess I'd also have to ask that any responses  
20 to the motion be filed no later than four o'clock on Friday, of  
21 this week. I know that's a shortened time frame, but that's  
22 how we're working at this point. I don't know what notice of  
23 this motion was given, so I don't know if I could say  
24 legitimately that the response times under the local rules were  
25 appropriately triggered. I don't know whether responses have

1 been filed, if they haven't been --

2 MR. SUTTY: Your Honor, I would point out that the  
3 service list attached to the emergency motion did not serve any  
4 counsel for the debtors.

5 THE COURT: Okay. In any event, I will schedule, at  
6 least for preliminary hearing on the 27th but I will tell you,  
7 Mr. Stern, unless I hear something differently than what I  
8 heard today, it is highly unlikely that at this stage I will  
9 grant relief from the stay, however, to the extent that there  
10 is agreement among you and the debtor and, of course, this will  
11 involve the committee, along the lines of what you said had  
12 been suggested, that's probably something I would be inclined  
13 to approve, and that is by no means to be considered by you my  
14 twisting your arm to enter into such an agreement. That's not  
15 my sentiment at all.

16 But, as I said, I consider it, unless I hear  
17 something new at the hearing, on the 27th of this month, it's  
18 unlikely that I will grant the relief that you've requested.  
19 If you'd prefer, instead, to have it listed for the 27th or for  
20 the time in September, whatever the date is, of the omnibus  
21 hearing, you're free to agree with the debtor as you wish. But  
22 I leave that to you to discuss outside of my presence. Let me  
23 ask, do you have any questions?

24 MR. STERN: I just want to be sure. Can I at least  
25 notify the Court of Appeals by noon tomorrow of your denial of

1 the motion, at least at this time?

2 THE COURT: Well, I haven't denied the motion, I  
3 haven't acted on the motion.

4 MR. STERN: Well, pardon me, you're ruling that the  
5 stay still remains in place and that the oral argument will not  
6 go forward as of now.

7 THE COURT: Well, let's put it this way. I can't  
8 control what another court does, but I can tell you it's my  
9 view that the argument is stayed by virtue of Section 362 of  
10 the bankruptcy code.

11 MR. STERN: And I think the Court of Appeals would  
12 agree. But do you consider that a violation of the stay to  
13 just simply let them know that?

14 THE COURT: I don't think so and I don't anyone would  
15 disagree, anyone that's on the hearing, in the courtroom or on  
16 the phone would disagree with you, but if somebody does, they  
17 should speak up now.

18 MR. LAURIA: Your Honor, Tom Lauria, we don't  
19 disagree with that. I will point out one thing that might be  
20 helpful here as this proceeding continues. I note that Mr.  
21 Stern has not retained local Delaware counsel to help with just  
22 complying with the basic bankruptcy procedures, et cetera, and  
23 I think, you know, maybe some of the confusion here regarding  
24 what's been done could have been alleviated, but you know what  
25 has already been done, we can't undo, but on a go forward basis

1 I think it would be very helpful if local counsel would be  
2 retained as I think is required by, in fact, the local rules.

3 THE COURT: There are local rules which require such  
4 an arrangement.

5 MR. STERN: I can -- I'm sure I can obtain local  
6 counsel by the 27th and we can go forward with that. You said  
7 what time on the 27th, Your Honor?

8 THE COURT: Ten o'clock.

9 MR. STERN: Okay. And it goes through the same  
10 procedure to appear telephonically, right?

11 THE COURT: Yes.

12 MR. STERN: Okay.

13 THE COURT: And you may appear telephonically if you  
14 like.

15 MR. STERN: All right. I am unaware, unfamiliar with  
16 your procedure on this particular order. Do I draft it up, do  
17 you draft it up? Does opposing counsel -- I'm not sure.

18 THE COURT: Well, you mean to get it listed for  
19 hearing?

20 MR. STERN: Well, what you've just ruled.

21 THE COURT: I haven't made a ruling. You filed a  
22 motion, I'm not acting on the motion.

23 MR. STERN: Okay. It's just set for hearing on the  
24 27th, or later if opposing counsel and I can agree.

25 THE COURT: Yes.

1 MR. STERN: Okay. While I have opposing counsel on  
2 the phone can I -- Craig could I have your phone number please,  
3 and we'll talk, either today or tomorrow?

4 MR. LAURIA: I'm sorry, to interrupt Your Honor.  
5 213-620-7704.

6 MR. STERN; Okay. I'll probably give you a call in  
7 the morning and see what we can work out.

8 THE COURT: All right. Thank you.

9 MR. STERN: All right, Your Honor, thank you.

10 THE COURT: You're welcome. Is there anything  
11 further for today?

12 MR. SUTTY: Nothing further for today. Thank you for  
13 your time.

14 THE COURT: All right, thank you, counsel, that  
15 concludes this hearing. Court is adjourned.

16 MR. STERN: Thank you, Your Honor.

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**CERTIFICATION**

I, ELAINE HOWELL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of my ability.

/s/ Elaine Howell

Date: August 26, 2008

ELAINE HOWELL

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