

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 27, 2008  
10:00 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. Be seated please.

2 THE COURT: Good morning all.

3 MR. SCHLERF: Good morning, Your Honor, Jeffery  
4 Schlerf for the Debtors. Your Honor, we submitted an amended  
5 agenda yesterday afternoon. I hope you have received that.

6 THE COURT: I did.

7 MR. SCHLERF: Good. We still have 12 matters on the  
8 agenda. I think things will go pretty quickly this morning, it  
9 should be a consensual hearing. Just starting off, Your Honor,  
10 the first matter is a continued matter by agreement of the  
11 parties and the next three, we submitted CNOs and Your Honor  
12 has already entered orders. So, that leaves us with agenda  
13 item #5. I'd like to turn the podium over the Mr. Lauria.

14 THE COURT: All right.

15 MR. SCHLERF: Thank you.

16 MR. LAURIA: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. LAURIA: Tom Lauria with White & Case, we  
19 represent the Debtors. We have, I think, a total of six orders  
20 that we will be submitting and asking that The Court enter  
21 today. If I may approach, I have clean and black line copies  
22 of each, in order, as per the agenda --

23 THE COURT: Sure.

24 MR. LAURIA: -- that we can walk through.

25 THE COURT: Thank you.

1           MR. LAURIA: The first matter that I would like to  
2 take up, I guess, is item 5 in the agenda, which is the final  
3 hearing on our Motion for Cash Management. We received no  
4 objections to that order becoming final, and the -- just to  
5 clarify, the U.S. Trustee's right to object going forward with  
6 respect to 345 issues has been preserved, as set forth in the  
7 original order, and so there is no further relief required with  
8 respect to that matter.

9           THE COURT: Very well.

10          MR. LAURIA: The next item is item 6 on the Court's  
11 agenda. That is our Adequate Assurance Motion with respect to  
12 our utilities. We have submitted to the Court a revised order  
13 as well as a black line that identifies all of the changes made  
14 from the prior order. What the Court will note is that we  
15 have, in compliance with the interim order, paid 107 utilities  
16 a grand total of \$398,751.83 in deposits, that -- there's a  
17 slight modification, by the way, to the population of utilities  
18 we're talking about. Between the time that we filed the motion  
19 and today we discovered that 16 of the utilities have no  
20 relationship with the Debtors, but rather are only utilities to  
21 non-Debtor entities. So, we've removed them from the adequate  
22 assurance list.

23          THE COURT: All right.

24          MR. LAURIA: We received two objections. An informal  
25 objection from Florida Power & Light, and a formal objection

1 filed on behalf of Public Service & Electric Company -- and Gas  
2 Company, sorry, Long Island Power, and Key Span. We have  
3 reached a resolution of these two matters. We have vetted our  
4 resolution with the Creditor's Committee, who has signed off  
5 and rather than try to set forth the terms of these deals in  
6 the order, where these are utilities that got more favorable  
7 treatment than the others in our hope of avoiding getting  
8 things stirred up, we have agreed that we would simply read the  
9 arrangements with these utilities into the record. And so with  
10 that I will do so.

11 THE COURT: All right.

12 MR. LAURIA: As to FPL, we have agreed as follows.  
13 Prior to the petition date, FPL secured the Debtor's pre-  
14 petition utility payment obligation with a surety bond in the  
15 amount of \$871,844. This related to approximately 1100 FPL  
16 accounts. FPL has asserted that the unpaid utility service  
17 charges incurred by the Debtor prior to the petition date are  
18 in the aggregate amount of approximate \$345,000. In full and  
19 complete satisfaction of the pre-petition amount FPL shall be  
20 entitled to immediately offset against the bond the amount of  
21 the pre-petition claim, so that there will be no pre-petition  
22 payable to FPL.

23 As part of the adequate assurance granted to FPL under  
24 Section 366 FPL shall be entitled to retain, and the Debtors  
25 agree to maintain the approximate amount of \$526,703, which

1 would be the remaining amount of the bond to secure, in part,  
2 charges as allowed under FPL's tariffs for the Debtor's post  
3 petition utility service. The Debtors agree that if during the  
4 pendency of the Chapter 11 cases the remaining amount is  
5 cancelled, voided or is otherwise deemed invalid and  
6 unenforceable, or notices provided that the remaining amount is  
7 going to be cancelled, voided or otherwise deemed invalid or  
8 unenforceable, the Debtor shall immediately and no later than  
9 10 business days after receiving such notice provide FPL with  
10 replacement security consistent with the tariffs and rules and  
11 regulations that are applicable to FPL and its customers in the  
12 form of a surety bond, letter of credit or cash deposit in the  
13 amount of \$526,703.

14 In addition to the remaining amount, the Debtors shall  
15 immediately provide FPL with a cash deposit in the amount of  
16 \$161,107 so that FPL holds as post petition security the  
17 remaining amount under the surety bond of \$526,703 or a  
18 replacement, if necessary of that amount, and the cash deposit  
19 which provides a total post petition security of \$688,810,  
20 which the parties agree shall constitute adequate assurance of  
21 payment for purposes of Section 366 of the Bankruptcy Code.  
22 Incidentally, Your Honor, this is equal to two months average  
23 billings from FPL for utility services.

24 The Debtor shall pay FPL for post petition service in the  
25 ordinary course and charges by FPL for post petition electric

1 service to the Debtor shall constitute an administrative  
2 expense in accordance with Sections 503(b)(1)(a) and 507(a)(1)  
3 of the Bankruptcy Code. Post petition services provided by FPL  
4 to the Debtor shall be in accordance with the applicable  
5 regulations, and the applicable regulations again are the State  
6 Tariffs and Rules that regulate FPL and its relationship with  
7 its customers.

8         The agreement shall govern the rights of the parties under  
9 Section 366 of the Bankruptcy Code and neither the Interim  
10 Utility Order nor the Final Order shall apply to FPL, and the  
11 agreement shall be effective until the earliest of confirmation  
12 of a plan, the conversion of the case to another chapter in the  
13 Bankruptcy Code. I haven't really thought about anything other  
14 than possibly 7, but -- or the dismissal of the case or the  
15 termination of services by the Debtors or FPL.

16         With respect to Public Service Gas -- Electric & Gas  
17 Company, Long Island Power Authority and Key Span, we have  
18 reached the following agreement, which thankfully is a good bit  
19 shorter than the FPL agreement.

20         The Debtor shall immediately provide Public Service  
21 Electric & Gas Company, Long Island Power, and Key Span with  
22 cash deposits in the respective amounts of \$37,745; \$2,540 and  
23 zero dollars with the parties being deemed to be adequately  
24 assured of payment for purposes of Section 366 of the  
25 Bankruptcy Code as a consequence of those payments being made.

1 If the Debtors no longer required service and an account or any  
2 accounts, the Debtor shall contact the applicable utility and  
3 request that service be terminated to the applicable account or  
4 accounts. After a post petition account has been closed and  
5 all post petition bills have been paid in full for that  
6 account, the applicable utilities shall promptly refund the  
7 deposit attributable to that closed account to the Debtors.

8 So, with those issues having been read into the record we  
9 would ask that the Court enter the proposed Final Order with  
10 respect to the Utility Motion. As I previously mentioned we've  
11 submitted a black line reflecting all the changes. The changes  
12 principally reflect simply the fact that the prior order had  
13 been entered, that we've complied with it, and we made some  
14 changes regarding noticing issues and the like to accommodate  
15 the Creditor's Committee.

16 THE COURT: I've reviewed the black line and don't  
17 have any questions, but let me ask whether anyone else cares to  
18 be heard in connection with this matter.

19 ALL: (No verbal response).

20 THE COURT: I hear no response.

21 (Pause in proceedings)

22 THE COURT: That order has been signed.

23 MR. LAURIA: Thank you, Your Honor. The next matter  
24 is our motion with respect to our insurance and surety bond  
25 programs. As part of the first day relief the Court will

1 recall that we sought and obtained an order which among other  
2 things prevents insurance and surety companies from giving  
3 notice of termination or modifying insurance policies or surety  
4 bonds without first obtaining relief from the automatic stay.

5       The stay provision in that order which was interim only,  
6 expires today at 5 o'clock p.m. Only Safe Co. and Ace have  
7 notified the Debtors that they would have an objection to the  
8 stay provision of the order. That has been registered to us  
9 informally, no formal objections were filed. We have reached  
10 agreement with both Safe Co. and Ace that a hearing on the stay  
11 provision should be continued to September 10<sup>th</sup>, and that the  
12 stay provision should be extended until 5 o'clock p.m. on that  
13 date.

14       The parties have further agreed that if Safe Co. or Ace  
15 wish to object to the stay provision they will file written  
16 objections by 4 p.m. on September 5 and that the Debtors may  
17 reply to any objection they receive by 4 p.m. on September 8<sup>th</sup>.

18       The parties have agreed on a Form of Order extending the  
19 stay provision and setting forth the hearing date, and  
20 objection and reply deadlines, and that is the order before the  
21 Court, which is not a black line because this is a new order.

22               THE COURT: Understood. Does anyone else care to be  
23 heard in connection with this matter?

24               MS. BECKERMAN: Your Honor, Lisa Beckerman from Akin  
25 Gump on behalf of the Creditors Committee.

1           My understanding was that we weren't going to alter the  
2 order, but it was just going to be made clear on the record  
3 that we would also have the right to file a reply if we felt it  
4 was appropriate at that same time.

5           MR. LAURIA: That's certainly acceptable to the  
6 Debtors.

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

9           ALL: (No verbal response).

10          THE COURT: I hear no further response. That order  
11 has been signed.

12          MR. LAURIA: Thank you, Your Honor. The next matter  
13 is item 8 on the agenda. That is our order -- well, the Motion  
14 for Order Authorizing the Debtors to deliver title free and  
15 clear and establishing procedures for the resolution of payment  
16 of certain lien claims. As part of the first day relief the  
17 Court entered the Home Sale Order which permits us to in effect  
18 proceed with closings pursuant to procedures set forth in the  
19 order.

20          The order provided that any construction lien claim  
21 affected by the lien procedures may file an objection to such  
22 procedures. Only one objection was filed, that was filed by --  
23 interesting by the Signal Group, who curiously enough is a  
24 member of the Unsecured Creditors Committee, but who claims to  
25 be protected by liens in their objection. Their objection was

1 a limited one and basically asked for clarification that the  
2 order not be construed as preventing lien Claimants from taking  
3 whatever action they need to perfect their liens as permitted  
4 by Section 362(b)(3) of the Bankruptcy Code, and if it did  
5 prevent that then Signal indicated that it would object.  
6 Signal also asserted that the intent of the provision of the  
7 order prohibiting the sale of property free and clear unless  
8 the value exceeds the aggregate amount of construction lien  
9 claims against the property is not clear. To the extent it  
10 seeks to eliminate a lien Signal may have or allow the Debtor  
11 to sell property for an amount insufficient to cover the liens,  
12 Signal objects. And finally Signal objected on the grounds  
13 that to the extent the lien procedures require a lien Claimant  
14 to provide more documentation than required under State Law to  
15 establish a valid lien, Signal also objected.

16 We have vetted this objection with the Committee and  
17 reached a resolution that I've been asked to read into the  
18 record and that resolution is as follows. "Nothing in the  
19 order affects or is intended to affect the Claimant's rights  
20 under 362(b)(3) of the Bankruptcy Code. Nothing in the order  
21 is intended to alter the rights of Creditors under Bankruptcy  
22 Law and applicable State Law with respect to the creation,  
23 perfection and attachment of liens on property, and in fact,  
24 the rights of Creditors are expressly preserved notwithstanding  
25 a sale free and clear, such that if a Bankruptcy Law and State

1 Law permit a Creditor's lien to be perfected and attached to  
2 the property after that property has been sold to a third  
3 party, then such Creditor's lien would attach to the proceeds  
4 of the sale under the order. Third, as set forth in the order,  
5 the Debtors may not sell property free and clear of liens if  
6 the purchase price of the property is not sufficient to satisfy  
7 the aggregate face amount of all construction liens on such  
8 property to be sold. And finally, nothing in the order affects  
9 or is intended to affect the amount of proof required to  
10 support a construction lien claim under applicable Bankruptcy  
11 Law or applicable State Law.

12 THE COURT: Is it the party's intention to embody  
13 this supplement amendment clarification, however you want to  
14 characterize it, in a further written order or stipulation of  
15 some kind? It seems to me that because of the number of  
16 Claimants that this might affect it might be better to have  
17 something easily located on the record -- in the docket, I  
18 mean.

19 MR. LAURIA: Your Honor, we have no problem with  
20 that. Although I will tell you that the company's view is that  
21 this is nothing more than a clarification of the existing order  
22 and so we don't really think new words are required. It was  
23 really a comfort matter that we make these comments into the  
24 record for Signal. If the Court would prefer we can certainly  
25 prepare something and submit it that would reflect these

1 specific points.

2           My colleague reminds me of the fact that the title  
3 companies have been persnickety, I guess, as the Court might  
4 expect and have in fact been closing transactions with the  
5 existing order, and so we do have some concern from a business  
6 perspective in amending the order or submitting further  
7 documents into the record on this particular point.

8           MS. BECKERMAN: Your Honor, maybe this is a way of  
9 dealing with the concern that Your Honor raises without  
10 requiring Mr. Lauria to do a further stipulated order or  
11 otherwise. Obviously we're going to be setting up and  
12 maintaining a website for the Creditors as is required under  
13 the law. One of the things that we could obviously make  
14 available to people is the terms of what Mr. Lauria just read  
15 into the record, so if there's any questions it would be clear  
16 that in addition to the link to the order, there would be this  
17 further clarification that would be publicly available on the  
18 internet.

19           And I do share Mr. Averch's concern a little bit about  
20 altering the order because unfortunately this is -- we've been  
21 lucky in this case that the title companies have really been  
22 closing houses and we've been able to not have much disruption  
23 in the business with respect to that. So, I do share his  
24 concern about being a little leery about altering the order.  
25 Would that be satisfactory to Your Honor?

1           THE COURT: That would be fine with me. Does anyone  
2 have a contrary view or does anyone else wish to be heard in  
3 connection with this matter?

4           MS. EVANS: Good morning, Your Honor. Amy Evans from  
5 Cross & Simon on behalf of the Signal Group and that is what we  
6 agreed to. And the concern was -- that I heard from Debtors  
7 and the reason we agreed to read the statement was because of  
8 the title insurance issues. I've understood in the past,  
9 perhaps the Court has like so ordered the transcript, at least  
10 with respect to this the Court might want to do that, and then  
11 the Creditors Committee can make anything available as  
12 suggested.

13           THE COURT: All right.

14           MS. EVANS: Thank you, Your Honor.

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

16           ALL: (No verbal response).

17           THE COURT: All right. Then it is so ordered.

18           MR. LAURIA: Thank you, Your Honor. The next matter  
19 is under Tab 9, that is our motion for use of cash collateral  
20 and to provide adequate protection. We have submitted an  
21 agreed stipulation to the Court that extends the Debtor's right  
22 to use cash collateral until September 11<sup>th</sup> and sets the final  
23 hearing down for September 10<sup>th</sup> at our next Omnibus. In the  
24 intervening period between submission of that order and today  
25 we have reached an agreement with our existing Lenders for them

1 to provide us with D-I-P financing, and in fact, we filed the  
2 motion asking for final approval of our proposed D-I-P  
3 financing which has been set for September 23<sup>rd</sup>. Following up  
4 on that agreement, we and the Lenders have now agreed that our  
5 use of cash collateral would expire on September 24<sup>th</sup> and that  
6 the final hearing would be on September 23<sup>rd</sup> in parallel with  
7 the hearing on D-I-P financing. So, we would ask that the  
8 Court not sign and enter the first version that we actually  
9 submitted under notice, but the version that we have submitted  
10 to the Court today.

11 THE COURT: I don't -- was a copy of the earlier  
12 submission delivered to Chambers?

13 MS. BECKERMAN: It was filed, Your Honor.

14 THE COURT: But not delivered to Chambers.

15 MR. SCHLERF: It was delivered with the hearing  
16 notebook, Your Honor, but not before, when we actually filed  
17 the notice.

18 THE COURT: Okay. I don't think I've signed it. I  
19 guess this is just one -- I'm trying to figure out -- does  
20 anyone else care to be heard in connection with this matter?

21 MR. LAURIA: One thing I should mention on the  
22 record, an objection was received from Aurelius Capital  
23 Management with respect to the use of cash collateral, and we  
24 have agreed with Aurelius that their objection will be carried  
25 to the final hearing, and that they are reserving all of their

1 rights to object to the adequate protection liens and claims  
2 granted to our pre-petition secured Lenders against entities  
3 that the secured Lenders do not have pre-petition liens or  
4 claims against, and a reservation of rights with respect to  
5 post petition inter-company claims that such entities may have  
6 against Debtors that are borrowers of the Senior Lenders, and  
7 on the basis of that reservation and acknowledgment Aurelius  
8 has agreed to carry their objection to the final hearing.

9 THE COURT: All right. Thank you. Let me ask does  
10 anyone care to be heard in connection with cash collateral?

11 ALL: (No verbal response).

12 THE COURT: I hear no response. All right. The  
13 Consent Order has been signed.

14 MR. LAURIA: Thank you, Your Honor. One just update,  
15 as of close of business yesterday, the Debtor I'm told had  
16 approximately \$67 million in cash on hand, which compares to  
17 the numbers in our budget. We were assuming that we would be  
18 at \$30 million at the end of last week and \$21 million at the  
19 end of this week. So, to this point we have managed to be  
20 substantially ahead of budget on a cash basis. This is a  
21 consequence both of our ability to actually, as Counsel for the  
22 Creditors Committee mentioned, successfully close transactions  
23 on a regular basis since we've been in bankruptcy, and we've  
24 been as stingy as possible with our expenditures.

25 You know, by way of example, you know, we have an

1 authorization to spend up to \$5 million in the satisfaction of  
2 pre-petition claims for vendors, and to date we've spent  
3 174,000 on that amount, and we're hopeful that expenditures  
4 like that in respect to pre-petition amounts will start to tail  
5 off, so we're hopeful we'll -- we are and will stay well ahead  
6 of budget on those types of matters.

7 THE COURT: So, the conservative projections really  
8 were conservative.

9 MR. LAURIA: Yes.

10 THE COURT: See it can happen.

11 (Laughter)

12 MS. BECKERMAN: It's kind of scary when it doesn't  
13 work out that way, Your Honor, though.

14 MR. LAURIA: Your Honor, the next item is Tab 10,  
15 that is the application to retain Lazard Freres as Financial  
16 Advisor to the Debtors. With respect to that motion the U.S.  
17 Trustee raised several concerns, in particular the U.S. Trustee  
18 asked that Lazard track its time in half hour increments. The  
19 U.S. Trustee asked that it retain its right to object to the  
20 reasonableness of Lazard's fees under Section 330, and the U.S.  
21 Trustee asked that if Lazard seeks fees contemplated by Section  
22 2 of its engagement letter with respect to certain finance --  
23 re-financing then Lazard must file a fee application with the  
24 Court for approval of such fees.

25 In addition to the U.S. Trustee's comments, the Creditors

1 Committee also had one comment which was that they ask that to  
2 the extent that the \$5.5 million aggregate fee cap set forth in  
3 the agreement be reflected in the order. We have resolved all  
4 four of these points with revisions as reflected in the black  
5 line order that we submitted to the Court. We have received no  
6 other objections and so we would ask that the order as revised  
7 by entered.

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

10 ALL: (No verbal response).

11 THE COURT: I hear no response. I've reviewed the  
12 black line, don't have any questions. That order has been  
13 signed.

14 MR. LAURIA: Thank You. Next we go to Tab 11, this  
15 is our Ordinary Course Professional Motion. With respect to  
16 that motion the U.S. Trustee raised a concern regarding the per  
17 ordinary course professional cap and requested that each  
18 professional's fees be capped based on its average monthly  
19 fees, as stated in Exhibit A of the motion. The Creditors  
20 Committee also raised a concern regarding caps and requested a  
21 case cap for each ordinary course professional, such that each  
22 would be required to file fee applications if they exceeded the  
23 case cap. We have resolved the issues raised by both U.S.  
24 Trustee and the Committee and have made changes to the proposed  
25 order that reflect and adopt our resolutions.

1           In particular, Your Honor, the order has been modified to  
2 provide that instead of a \$75,000 monthly cap per ordinary  
3 course professional across the board, each ordinary course  
4 professional will in essence have a monthly cap based on each  
5 professional's average monthly fees as stated in the exhibit to  
6 the order, which is slightly modified from the version we  
7 originally submitted to the Court. And the way the mechanism  
8 works is if over any rolling three-month period an ordinary  
9 course professional exceeds three times its average monthly  
10 fees, as stated in Exhibit A, then that professional shall be  
11 required to file a fee application with the Court for approval  
12 of the excess.

13           No other objections were filed and so with that we would  
14 ask that the Court enter the order as revised. I think there's  
15 one point that the U.S. Trustee has asked that we make, which  
16 is that with respect to Protiviti, the U.S. Trustee is  
17 reserving on the issue of whether or not it should be retained  
18 as a 327(a) counsel -- or advisor rather, and it will simply  
19 reserve for when Protiviti files their OCP affidavit to raise  
20 that issue if needed.

21           THE COURT: All right. Does any one else care to be  
22 heard?

23           MR. KLAUDER: Good morning, Your Honor, David Klauder  
24 for the United States Trustee. I just wanted to reiterate what  
25 Mr. Lauria just said with regard to Protiviti. I think the

1 order provides anyway that once they file a affidavit we would  
2 have 20 days to object on that basis, whether we believe they  
3 are an OCP or some other basis as set out in the affidavit.  
4 So, we just want to reserve our rights with regard to Protiviti  
5 specifically.

6 THE COURT: All right. Mr. Klauder, what happy  
7 breeze blows you into Courtroom #5? Haven't seen you in a  
8 while. Are you just visiting or here to stay?

9 MR. KLAUDER: Just for today, but I could be down  
10 here a lot more.

11 THE COURT: All right.

12 MR. KLAUDER: Vacations and a busy schedule at the  
13 office has got me down here, but it's good to see you, Judge.

14 THE COURT: Good to see you.

15 MR. RILEY: Good Morning, Your Honor, Richard Riley  
16 from Duane Morris. Duane Morris is being retained as an  
17 ordinary course professional under this order and we absolutely  
18 have no objection to being retained. I just wanted to make a  
19 clarification on the record. We're listed as doing deposit  
20 disputes for the Debtor, and I talked to the Debtor's  
21 principals and that listing is because that's probably what  
22 we're going to be doing mainly going forward. But there are  
23 some other matters we do for the Debtor and we've done them  
24 pre-petition that of course we'll continue to do post petition  
25 to finish them up and things like that.

1 I had talked to Jane Leamy at the U.S. Trustee's Office  
2 about the issue and she had advised me that we should just  
3 describe it in the affidavit. The affidavit has a description  
4 of what services we did perform and will perform for the  
5 Debtor, and then if the U.S. Trustee has any objections to  
6 that, that's how -- they can raise it then. But -- and I  
7 clarified that with the Debtor's principals too.

8 THE COURT: All right. Thank you. Does anyone else  
9 care to be heard?

10 ALL: (No verbal response).

11 THE COURT: All right. I hear no further response.

12 MR. LAURIA: Your Honor, one point I think I should  
13 also mention, there are -- there is at least one firm that  
14 we're retaining under the Ordinary Course Procedures. I  
15 believe it's the last firm on the revised Exhibit A, that we  
16 may not have the right amount and so we may need to come back  
17 to correct the amount. But we need to have some discussions  
18 with that firm to confirm that there may or may not be an  
19 issue, and of course we would vet that with the Committee and  
20 the U.S. Trustee before proposing a change.

21 THE COURT: All right. Well, if that's the only  
22 change to the order and the parties are in agreement you can  
23 submit an amended order under certification.

24 MR. LAURIA: Right. Thank you.

25 THE COURT: If I have questions I'll get back to you.

1 All right. That order has been signed.

2 MR. LAURIA: Thank you, Your Honor. Your Honor, that  
3 brings us to the last matter on today's agenda, which is the  
4 motion for authority to retain Citric & Company as  
5 Communications Consultants. The U.S. Trustee raised a concern,  
6 particularly addressing the pre-petition retainer as non-  
7 refundable. Citric has agreed to resolve that concern by  
8 striking the word non-refundable from the reference in the  
9 engagement letter to the retainer. No other objections were  
10 received, so with that change, which is reflected in the order,  
11 we would ask that the order be entered.

12 THE COURT: I was unable to find in the affidavits of  
13 Mr. Citric a statement that the firm is disinterested, and  
14 since this was a 327(a) and 328 application I thought that that  
15 would be appropriate. Now, if I missed it, you're welcome to  
16 point it out to me. Otherwise I'd ask that an amended or  
17 supplemental affidavit be submitted under certification and  
18 once that's done I will be happy to act on the order.

19 MR. LAURIA: Your Honor, I actually don't have the  
20 affidavit here, but assuming that the omission is as stated, we  
21 will submit as requested by the Court an amended affidavit.

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

24 ALL: (No verbal response).

25 THE COURT: I hear no response. All right. Is there

1 anything further for today?

2 MS. BECKERMAN: Your Honor, I just have on thing I  
3 wanted to mention on the record today. Again, Lisa Beckerman  
4 on behalf of the Creditors Committee.

5 Your Honor, there are a number of the First Day Orders  
6 that were entered that we've obviously been working very  
7 cooperatively with the Debtor to work on a separate stipulation  
8 address and reporting concerns and we've been working very  
9 cooperatively with them. There may be one of the First Day  
10 Motions, particularly the Cash Management Motion for some of  
11 the reasons that were addressed in Aurelius' objection, as well  
12 as some other ones we've raised with the company that we may  
13 need to file a reconsideration motion on the 5<sup>th</sup>, not because  
14 we're not working very cooperatively with the Debtor to try to  
15 resolve it, but because it does deal with joint ventures and  
16 other issues that we may just not have all the information  
17 that's required by then.

18 So we may have to file a place holder type of statement,  
19 but since we wouldn't be in front of you until the 10<sup>th</sup> I didn't  
20 want you to be surprised if you actually saw something that was  
21 filed by us with respect to that. I think we're going to be  
22 able to work out all of our other issues with respect to the  
23 First Day motions and orders. The company has been very  
24 cooperative with working with us. So, I just wanted to make  
25 sure that I said that on the record.

1 THE COURT: All right. Thank you. Anything further  
2 for today?

3 MR. LAURIA: No, Your Honor.

4 THE COURT: Thank you that will conclude this  
5 hearing. Court will stand in recess.

6 (Court adjourned)

7

8 CERTIFICATION  
9 I certify that the foregoing is a correct transcript from the  
10 electronic sound recording of the proceedings in the above-  
11 entitled matter.  
12

13 *Lewis Parham*

9/3/08

14 \_\_\_\_\_  
15 Signature of Transcriber

\_\_\_\_\_  
Date