

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
WCI COMMUNITIES, INC., et al.,¹) Case No. 08-11643 (KJC)
)
Debtors.) Jointly Administered
) *Re: Docket No. 272*

**ORDER GRANTING THE MOTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS PURSUANT TO 11 U.S.C. §§ 105(a),
1102(b)(3)(A), AND 1103(c) FOR ENTRY OF AN ORDER CLARIFYING
ITS REQUIREMENT TO PROVIDE ACCESS TO INFORMATION
UNDER BANKRUPTCY CODE SECTION 1102(b)(3)(A)**

Upon the Motion of the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3)(A), and 1103(c) for Entry of an Order Clarifying Its Requirement to Provide Access to Information Under Bankruptcy Code Section 1102(b)(3)(A) (the "Information Protocol Motion"), filed by the Official Committee of Unsecured Creditors of WCI Communities, Inc., et al. (the "Committee") on September 5, 2008; and it appearing that the relief requested in the Information Protocol Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest; and the Court having jurisdiction to consider the Information Protocol Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Information Protocol Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice need be provided; and any objections to the Information Protocol Motion having been resolved or overruled; and after due deliberation and sufficient cause appearing therefor, it is **ORDERED, ADJUDGED, and DECREED** as follows:

¹ A list of the Debtors and their tax identification numbers is located on the docket for Case No. 09-11643 (KJC) and <http://chapter11.epiqsystems.com/wcicomunities>.

1. The relief requested in the Information Protocol Motion is granted.

2. Committee Confidential Information. The Committee, its professionals, and its members and their respective agents, representatives, advisors, and counsel shall not be required, absent entry of an order of the Court, to disseminate information to unsecured creditors developed independently or that is or becomes available to the Committee from a source other than the Debtors, which information is non-public in nature, including, but not limited to, any recommendations or reports to the Committee members prepared by its professionals, and/or any information deemed by the Committee's professionals to be of a sensitive and confidential nature (the "Committee Confidential Information").

3. Access To Creditor Information. In satisfaction of the Committee's obligations to provide access to information for unsecured creditors (the "Creditor Information Protocol") in accordance with sections 1102(b)(3)(A) and (B) of title 11 of the United States Code (the "Bankruptcy Code"), the Committee shall, until the earliest to occur of (a) dissolution of the Committee, (b) dismissal or conversion of the Debtors' chapter 11 cases (the "Chapter 11 Cases"), or (c) a further order of the Court:

(a) Establish and maintain an Internet-accessed website (the "Committee Website") to be maintained by and through an information agent to be retained by the Committee (the "Information Agent") that provides, without limitation:

- (i) a link or other form of access to the website maintained by the Debtors' notice, claims, and balloting agent at <http://chapter11.epiqsystems.com/wcicomunities>, which shall include, among other things, the case docket and claims register;
- (ii) highlights of significant events in the Chapter 11 Cases;
- (iii) a calendar with upcoming significant events in the Chapter 11 Cases;
- (iv) a general overview of the chapter 11 process;

- (v) press releases (if any) issued by the Committee or the Debtors;
- (vi) a registration form for creditors to request "real-time" updates regarding the Chapter 11 Cases via electronic mail;
- (vii) a form to submit creditor questions, comments and requests for access to information;
- (viii) responses to questions, comments, and requests for access to information by creditors; provided, that the Committee may privately provide such responses in the exercise of its reasonable discretion, including in light of the nature of the information request and the creditor's agreement to appropriate confidentiality and trading constraints;
- (ix) answers to frequently asked questions;
- (x) links to other relevant websites;
- (xi) the names and contact information for the Debtors' counsel and restructuring advisor(s); and
- (xii) the names and contact information for the Committee's counsel and financial advisor(s);

(b) Distribute updates by and through the Information Agent regarding the Chapter 11 Cases via electronic mail for creditors that have registered for such service on the Committee Website; and

(c) Establish and maintain a telephone number and electronic mail address by and through the Information Agent for creditors to submit questions and comments.

4. Privileged and Confidential Information. Absent entry of an order of this Court to the contrary, the Committee shall not be required to disseminate to any entity (all references to "entity" herein shall be as defined in Bankruptcy Code section 101(15), "Entity");

(a) Confidential Information;² (b) Committee Confidential Information; or (c) Privileged Information.³

² Confidential Information shall mean any information with respect to the Debtors or any of their affiliates, including without limitation, information concerning the Debtors' (or their affiliates') assets, liabilities, business

5. Any information received (formally or informally) by the Committee from any Entity in connection with an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") or in connection with any formal or informal discovery in any contested matter, adversary proceeding, or other litigation shall not be governed by the terms of this Order, but, rather, by any order governing such discovery; provided, however, that any information received (formally or informally) by the Committee shall be governed by the terms of this Order and any confidentiality agreement between the Committee and the Debtors concerning the Chapter 11 Cases.

6. The Debtors shall assist the Committee in identifying any Confidential Information concerning the Debtors that is provided by the Debtors or their agents or professionals, or by any third party, to the Committee, its agents, and professionals.

7. Creditor Information Requests. If a creditor (the "Requesting Creditor") submits a written request, including on the Committee Website or by electronic mail (the "Information Request"), for the Committee to disclose information, the Committee shall (a) as soon as

operations, or projections, which is non-public, confidential, or proprietary in nature, regardless of the form of such information (including any written, oral, electronic, facsimile, or computer-related forms of information), received by any Committee Party from any of the Debtors, the Debtors' affiliates or their Representatives, or from any other source. Confidential Information shall also include any analyses, compilations, abstracts, studies, summaries or other documents, reports, or records prepared by the Debtors, the Debtors' Representatives, or any of the Committee Parties which contain, reflect, or otherwise are generated from any Confidential Information; provided, however, Confidential Information shall not include (a) any information or portions of information that are or become generally available to the public (other than as a result of a disclosure by any Committee Party in violation of this Agreement), (b) any information that was already in the Committee Party's possession (other than confidential information obtained from any of the Debtors or any of its Representatives pursuant to the terms of a confidentiality agreement entered into prior to the petition date, in which case such confidentiality agreement shall govern the use of any such information), (c) any information which is available to any Committee Party on a non-confidential basis from a source other than any Debtor or its Representatives; provided, further, that such source was not known to the receiving Committee Party (after reasonable investigation) to be bound by any confidentiality agreement with, or any other contractual, fiduciary, or other legal obligation of confidentiality to any Debtor or its Representatives, or (d) is independently developed by a Committee Party.

³ Privileged Information is defined to mean any information subject to the attorney-client or some other state, federal, or other jurisdictional privilege law.

practicable, but no more than fifteen (15) business days after receipt of the Information Request, provide (including on the Committee Website) the creditor with a response to the Information Request (the "Response"), as well as provide access to the information requested or the reasons the Information Request cannot be complied with and (b) provide the Debtors with (i) notice of the Information Request within five (5) business days of the Committee's receipt of the Information Request and (ii) a copy of the Response. If the Response is to deny the Information Request because the Committee believes the Information Request implicates Confidential Information, Committee Confidential Information, or Privileged Information that need not be disclosed pursuant to the terms of this Order or otherwise under Bankruptcy Code section 1102(b)(3)(A), or that the Information Request is unduly burdensome, the Requesting Creditor may, after a good faith effort to meet and confer with an authorized representative of the Committee regarding the Information Request and the Response, seek to compel such disclosure for cause pursuant to a motion brought before this Court. Such motion shall be served and the hearing on such motion shall be noticed and scheduled pursuant to the Bankruptcy Rules or any case management order entered in the Chapter 11 Cases. The Committee shall not object to any Requesting Creditor's request to participate in any such hearing by telephone conference. Nothing herein shall be deemed to preclude the Requesting Creditor from requesting (or the Debtors or the Committee objecting to such request) that the Committee provide the Requesting Creditor a log or other index of any information specifically responsive to the Requesting Creditor's request that the Committee deems to be Confidential Information, Committee Confidential Information, or Privileged Information. Furthermore, nothing herein shall be deemed to preclude the Requesting Creditor from requesting that this Court conduct an in camera review of any information specifically responsive to the Requesting Creditor's request that the

Committee claims is Confidential Information, Committee Confidential Information, or Privileged Information.

8. In its Response to an Information Request, the Committee, in consultation with the Debtors, shall consider whether the Requesting Creditor (a) agrees to a confidentiality agreement, substantially in the form attached hereto as Annex A (the "Confidentiality Agreement"), which form of Confidentiality Agreement is hereby approved, and (b) if applicable, agrees to implement trading restrictions with respect to such Confidential Information and/or Committee Confidential Information, and represents that such trading restrictions and any information-screening process comply with applicable securities laws or other laws. Moreover, the following shall apply:

(a) Claims/Equity Security Traders: If the Requesting Creditor is involved in purchasing, selling, or trading claims against or equity interest in the Debtors, the Requesting Creditor must file, and serve upon counsel to the Committee, the Debtors, and the United States Trustee, a document with the Court, confirming that (a) it has established an information screening barrier that will be enforced, (b) that no Confidential Information will be revealed to purchasers, sellers, or claims traders or any persons or entities involved in trading of claims, and (c) listing the name of the person that has been designated as monitor to ensure compliance with the provisions hereof; and

(b) Market Competitors: If the Requesting Creditor is a competitor or prospective competitor of the Debtors, as determined by the Debtors and the Committee, and the information requested by such Requesting Creditor is information that is determined by the Debtors and the Committee to be information that may impair the Debtors' business in any material way, no information will be disclosed unless the Court orders such disclosure after notice and a hearing. The determination that a Requesting Creditor is a competitor or prospective creditor is reviewable by the Court;

provided, however, that if the Committee elects to provide access to Confidential Information and Committee Confidential Information on the basis of such confidentiality and trading restrictions, the Committee shall have no responsibility for the Requesting Creditor's compliance

with, or liability for violation of, applicable securities or other laws. Any disputes with respect to this paragraph shall be resolved as provided in the preceding paragraph, and, to the extent applicable, the next paragraph.

9. Release of Confidential Information or Privileged Information of the Debtors to Third Parties. If the Information Request implicates Confidential Information or Privileged Information of the Debtors (or any other Entity other than the Committee) and the Committee agrees that such request should be satisfied, or if the Committee on its own wishes to disclose such Confidential Information or Privileged Information to unsecured creditors, the Committee may demand (the "Demand") for the benefit of the Debtors' unsecured creditors: (a) if the Confidential Information or Privileged Information is information of the Debtors, by submitting a written request, each captioned as a "Committee Information Demand," to White & Case LLP, counsel for the Debtors, Wachovia Financial Center, 200 South Biscayne Blvd., Suite 4900, Miami, FL 33131, attention: Thomas E Lauria at tlauria@whitecase.com ("Debtors' Counsel"), stating that such information will be disclosed in the manner described in the Demand unless the Debtors object to such Demand on or before fifteen (15) days after the service of such Demand; and, after the lodging of such an objection, the Committee, the Requesting Creditor, or the Debtors may schedule a hearing with this Court pursuant to the Bankruptcy Rules or any case management order entered in the Chapter 11 Cases seeking a ruling with respect to the Demand; and (b) if the Confidential Information is information of another Entity other than the Debtors, by submitting a written request to such Entity and its counsel of record, with a copy to Debtors' Counsel, stating that such information will be disclosed in the manner described in the Demand unless such Entity objects to such Demand on or before fifteen (15) days after the service of such Demand; and, after the lodging of such an objection, the Committee, the Requesting Creditor,

such Entity, or the Debtors may schedule a hearing with the Court pursuant to the Bankruptcy Rules or any case management order entered in the Chapter 11 Cases seeking a ruling with respect to the Demand.

10. Nothing in this Order requires the Committee to provide access to information or solicit comments from any Entity that has not demonstrated to the satisfaction of the Committee, in its sole discretion, or to the Court, that it holds claims of the kind described in Bankruptcy Code section 1102(b)(3).

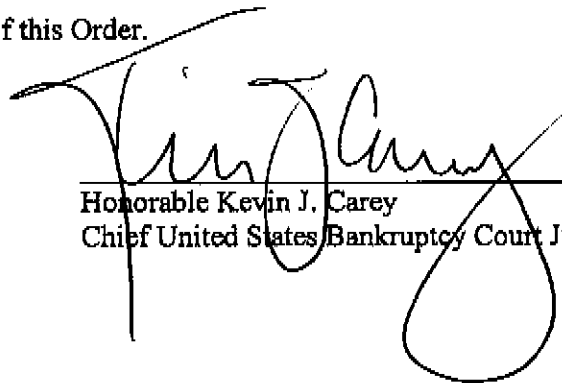
11. Exculpation. None of the Debtors, the Committee, nor any of their respective directors, officers, employees, members, attorneys, consultants, advisors, or agents (each acting in such capacity) (collectively, the "Exculpated Parties"), shall have or incur any liability to any Entity (including the Debtors and their affiliates) for any act taken or omitted to be taken in connection with the preparation, dissemination, or implementation of the Creditor Information Protocol, the Committee Website, or any other information to be provided pursuant to Bankruptcy Code section 1102(b)(3); provided, however, that the foregoing shall not affect the liability of any Exculpated Party protected pursuant to this paragraph 11 that otherwise would result from any such act or omission to the extent that such act or omission is determined in a final non-appealable order to have constituted a breach of fiduciary duty, gross negligence, or willful misconduct, including, without limitation, fraud and criminal misconduct, or the breach of any confidentiality agreement or order. Without limiting the foregoing, the exculpation provided in this paragraph shall be coextensive with any Exculpated Party's qualified immunity under applicable law.

12. This Order shall be effective as of September 5, 2008 (the "Effective Date"); the terms of this Order, however, shall apply to all information governed by this Order, including information in the Committee's possession prior to the Effective Date.

13. This Order shall be binding in all respects upon the Debtors, the Committee, and any successors thereto, and all creditors and parties in interest.

14. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of this Order in all respects and further to hear and determine all matters arising from the construction and implementation of this Order.

Dated: September ²²__, 2008



Honorable Kevin J. Carey
Chief United States Bankruptcy Court Judge

ANNEX A

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality Agreement and Nondisclosure Agreement ("Agreement") is hereby entered into as of _____ by and between the Official Committee of Unsecured Creditors (the "Committee") of WCI Communities, Inc. and its affiliated debtors and debtor-in-possession and _____ ("Creditor").

WITNESSETH

WHEREAS, Creditor has made a Request for Confidential Information and/or Committee Confidential Information pursuant to the Order Granting the Motion of the Official Committee of Unsecured Creditors Pursuant to 11 U.S.C. §§ 105(a), 1102(b)(3)(A), and 1103(c) for Entry of an Order Clarifying Its Requirement to Provide Access to Information Under Bankruptcy Code Section 1102(b)(3)(A) (the "Protocol Order");⁸

WHEREAS, this Agreement is intended to facilitate the delivery of Confidential Information and/or Committee Confidential Information providing such Confidential Information from the Debtors or the Committee to Creditor and to establish Creditor's rights and obligations with respect to such information.

NOW, THEREFORE, in consideration of the foregoing, and as a condition to the Committee providing such Confidential Information and/or Committee Confidential Information to Creditor, the Committee and Creditor hereby agree as follows:

1. With respect to Confidential Information and/or Committee Confidential Information disclosed under this Agreement, the party receiving Confidential Information and/or Committee Confidential Information shall:
 - a. hold the Confidential Information and/or Committee Confidential Information in confidence, exercising a degree of care not less than the care used by receiving party to protect its own proprietary or confidential information that it does not wish to disclose;
 - b. restrict disclosure of the Confidential Information and/or Committee Confidential Information solely to the [CREDITOR], its affiliates, and its and their directors, officers, employees, and/or agent/consultants, with a need to know and not disclose it to any other person;
 - c. advise those persons to whom the Confidential Information and/or Committee Confidential Information is proposed to be disclosed of their obligations with respect to the Confidential Information and/or Committee Confidential Information; and

⁸ All capitalized terms not herein defined shall have the same meaning as ascribed to them in the Protocol Order, a copy of which is attached hereto as Exhibit 1.

- d. use the Confidential Information and/or Committee Confidential Information only in a manner approved in writing by the Committee.

2. The Confidential Information and the Committee Confidential Information shall be deemed the property of the Committee and, upon written request, the Creditor shall return to the Committee, or destroy all Confidential Information and/or Committee Confidential Information received in tangible form or will destroy or erase such Confidential Information and/or Committee Confidential Information if it is recorded on an erasable storage medium, except in each case as required by law, rule, regulation or internal document retention policies for compliance purposes. If Creditor loses or makes an unauthorized disclosure of any Confidential Information and/or Committee Confidential Information, it shall notify the Committee promptly and use reasonable efforts to retrieve the lost or wrongfully disclosed Confidential Information and/or Confidential Committee Information.

3. The Creditor shall have no obligation to preserve the proprietary nature of such Confidential Information and/or Committee Confidential Information that:

- a. was lawfully in Creditor's possession at the time of the disclosure and was obtained free of any obligation to keep it confidential;
- b. is or becomes publicly available other than by a breach of this Agreement;
- c. is developed by or on behalf of such party independent of any Confidential Information and/or Committee Confidential Information;
- d. is received from a third party whose disclosure to the knowledge of the party, after due inquiry, does not violate any confidentiality obligations; or
- e. is disclosed pursuant to the requirement or request of a duly empowered governmental, regulatory or supervisory agency or authority or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation, rule or court order, and prompt notice is given by the recipient to the disclosing party of any such requirement or request (except in connection with any regulatory examination), unless such notice is prohibited by law.

4. This Agreement shall benefit and be binding upon the parties hereto and with each party's written consent their respective successors and assigns.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to choice of law principles and shall be subject to the jurisdiction of the Bankruptcy Court.

6. This Agreement shall become effective as of the date executed by all parties to the Agreement and shall terminate upon the earlier of the closing or dismissal of the Debtors' cases, except as may otherwise be ordered by the Court.

7. The parties acknowledge that in the event of an unauthorized disclosure, the damages incurred by the Debtors or the Committee may be difficult if not impossible to

ascertain, and that the Debtors or the Committee may seek injunctive relief as well as monetary damages against the Creditor for breaches of this Agreement.

8. The Creditor acknowledges that it is aware and will advise its representatives that the United States securities laws restrict persons with material non-public information about a company obtained directly or indirectly from that company from purchasing or selling securities of such company and from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

9. This Agreement constitutes the entire understanding between the parties with respect to the Confidential Information and/or Committee Confidential Information provided hereunder. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and executed on behalf of each party by its duly authorized representative.

10. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile signatures to this Agreement shall be deemed to be binding upon the parties.

11. Each party represents that it has caused this Agreement to be executed on its behalf as of the date written below by a representative empowered to bind that party with respect to the undertakings and obligations contained herein.

Executed and effective this ____ of _____, 2008.