

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

. :
IN RE: :
WCI Communities, Inc., : Chapter 11
et al. :
Debtors. : Case No. 08-11643(KJC)
. :

Wilmington, Delaware
December 17, 2008
11:00 A.M.

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

APPEARANCES:

For the Debtor: Jeffrey Schlerf, Esq.
Bayard, PA
222 Delaware Avenue, Suite 900
Wilmington, DE 19899
(302)-655-5000

Craig Averich, Esq.
Matthew Brown, Esq.
White & Case, LLP
Wachovia Financial Center
200 South Biscayne Blvd, Suite 4900
Miami, FL 33131-2352
(305)-371-2700

For Legend Yacht:
& Beach Club Robert Calica, Esq.
Rosenberg Calica & Birney
100 Garden City Plaza, #408
Garden City, NY 11530
(516)-747-7400

Laurie Schenker Polleck, Esq.
Jaspan, Schlesinger, Hoffman, LLP
913 N. Market Street
Wilmington, DE 19801
(302) 351-8000

1 For Besnik and Elida: Erin Brignola, Esq.
Pasaj Cooper Levenson
2 30 Fox Hunt Drive
3 Bear, DE 19701
(302)-838-2600

4 For the Committee: Lisa Beckerman, Esq.
Akin Grump Strauss Hauer & Feld, LLP
5 590 Madison Avenue
6 New York, NY 10022-2524
(212)-872-8012

7 Kathleen Makowski, Esq.
8 Pachulski, Stang, Ziehl & Jones
9 919 N. Market Street
Wilmington, DE 19899
(302) 778-6417

10 Marc Casarino, Esq.
11 White and Williams
12 824 N. Market Street, Suite 902
Wilmington, DE 19899
(302) 654-0424

13 VIA TELEPHONE:

14 For Richard W. Beach,: Daniel L. Saxe, Esq.
15 III and Patricia A. Saady & Saxe, P.A.
Beach 205 Crystal Grove Boulevard
Lutz, FL 33548
16 (813) 909-8855

17 For Aurelius: Wei Wang, Esq.
Aurelius Capital

18 For Jan Aikin Joseph Stern, Esq.
19 Saraga & Lipshy, P.A.
20 201 N. E. First Avenue
Delray Beach, FL 33444
(561) 330-0660

21 For Wilmington Trust: Matthew J. Micheli, Esq.
22 Kaye Scholer, LLP
23 3 First National Plaza
70 West Madison Street, Suite 4100
24 Chicago, IL 60602
(312) 583-2300

25

1 For Bank of America: Robert D. Albergotti
2 Haynes & Boone, LLP
3 2323 Victory Avenue, Suite 700
4 Dallas, TX 75219
5 (214) 651-5613

6 Audio Operator: Al Lugano

7 Transcribing Firm: Perfect Pages Transcription, Inc.
8 22 Washington Avenue
9 Edgewater Park, NJ 08010
10 (609) 877-4254

11 Proceedings recorded by electronic sound recording;
12 transcript produced by transcription service.

- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 THE COURT: Good morning.

2 MR. SCHLERF: Good morning, Your Honor. Jeffrey
3 Schlerf for the Debtors. Your Honor, we did not amend the
4 agenda just because there was really one slight change, and
5 that was the Emergency Motion number 8. The response deadline
6 was yesterday, the day after we filed the agenda, and I'm
7 pleased to report that there were not any responses or
8 objections to that Motion.

9 Item number 1, Your Honor, by consent, we'd like to
10 continue that matter. And items 2 and 3, C&Os were filed and
11 then since then Your Honor has entered orders. So with that,
12 Your Honor, I'd like to turn the podium over to Craig Averch at
13 --

14 THE COURT: All right. Let's proceed.

15 MR. SCHLERF: Turn the podium over to Craig Averch.
16 Your Honor, he's going to describe to the Court that we
17 actually have a resolution with one of the Lift Stay Motions,
18 and that's number 7 with the Beaches. Thank you.

19 THE COURT: Okay.

20 MR. AVERCH: Good morning, Your Honor. Craig Averch
21 with White & Case on behalf of the Debtors.

22 There are four Lift Stay Motions set today, Your Honor.
23 Three of the Lift Stay Motions were filed during the initial
24 two months of the case. The Aiken Motion was denied without
25 prejudice. The Legend Yacht case was agreed to be continued

1 for consideration today and Aiken, of course, is going to be
2 reconsidered today.

3 The Beach's Motion for Relief from Stay was also filed
4 during the initial stages of the case and then we have a fourth
5 Lift Stay Motion on the Court's docket that deals with a
6 postpetition lawsuit filed by a creditor.

7 There are certainly some common facts with respect to all
8 the Motions for Relief from the stay that relate generally to
9 the Chapter 11 proceedings. For example, a bar date has now
10 been set by the Court for February 2, 2009.

11 The Debtors have prepared a preliminary business plan, as
12 this Court was informed earlier this month. They're meeting
13 with key constituencies regarding the business plan and vetting
14 that business plan with key constituencies. Last week, the
15 Debtors filed a Motion for an alternative dispute resolution
16 procedure. That Motion is set for a hearing before Your Honor
17 on January 20th of next year. We are working with the
18 Creditors' Committee to refine that Motion to encourage and
19 facilitate the consensual liquidation of claims.

20 The Debtors have reviewed all four Lift Stay Motions.
21 Based on the particular facts presented by those Lift Stay
22 Motions together with the consideration of the Chapter 11 cases
23 and with respect to the Beaches, which is item 7 on the agenda,
24 the Debtors have entered into a stipulation granting the
25 Beaches relief from the automatic stay pursuant to the terms

1 and conditions of that stipulation. The Creditors' Committee
2 has agreed to that stipulation. As Your Honor is aware, we
3 argued that Motion before. There are unique facts with respect
4 to that Motion. The Beaches won in the trial court. There was
5 a supersedeas bond posted. The judgement is accruing interest
6 at 11 percent per annum.

7 And finally, Your Honor, there's a unique issue in the
8 Beaches, whether or not the Debtors waived the statute of
9 limitations. That's the only appellate issue. We don't
10 believe that issue is going to rise in any other context in
11 these administratively consolidated cases. And based on all of
12 those reasons, we have stipulated -- entered into a stipulation
13 with counsel for the Beaches to allow that to go forward and
14 the Creditors' Committee has agreed to that. I have that
15 stipulation to present to the Court. May I approach?

16 THE COURT: You may.

17 (Counsel approached.)

18 THE COURT: Thank you.

19 MR. AVERICH: Your Honor, the remaining three Motions
20 for Relief from the stay are all contested. I mean, I turn
21 over the podium to the Movants first for the Aikens. The
22 Movants, of course, have the burden of proof and burden of
23 persuasion to convince Your Honor that the stay should be
24 lifted for cause to allow the litigation to continue. Since
25 it's their Motions and they've been set for today, with that I

1 will cede the podium to counsel for the Aikens unless the Court
2 has any questions regarding the stipulation with the Beaches.

3 THE COURT: Well, I see the stipulation, don't have
4 any questions about it. There is no Order with it.

5 MR. Averich: Your Honor, I apologize. We will send
6 an order approving the stipulation after today's hearing.

7 THE COURT: All right. And let me ask if anyone else
8 cares to be heard in connection with the Beach Motion and
9 resolution. I hear no response. I am prepared to approve that
10 stipulation.

11 MR. AVERICH: Thank you, Your Honor.

12 THE COURT: On submission of the appropriate order.

13 MR. AVERICH: Now, I'll turn it over to Ms. Aiken's
14 counsel.

15 THE COURT: All right. Thank you.

16 MR. HEINMAN: Good morning, Your Honor. Henry
17 Heinman for Jan Aiken, who the Court may recall that Joseph
18 Stearn, who is on the phone, is the counsel in Florida who has
19 filed the Motion and has argued this matter before the Court.
20 He has been admitted pro hoc and I know that he's on the phone.
21 At least Court Call said he was. So I assume Mr. Stearn will
22 --

23 MR. STEARN: I'm here.

24 MR. HEINMAN: -- carry the ball.

25 THE COURT: All right.

1 MR. STEARN: Your Honor, my argument is essentially
2 the same that it was last time, which was about three months
3 ago. I'll say this much with regard to new material: All that
4 I see in their plan for dealing -- with WCI's plan for dealing
5 with these lawsuits is essentially alternative dispute
6 resolution or arbitration and mediation, neither of which I
7 believe is suitable for a case that's ready for oral argument
8 on appeal.

9 The appeal -- both of those methods will cost far more
10 than going forward with the appeal. That's number one. Well,
11 that's number two. Number one, it really isn't appropriate.
12 Number two, it's more expensive. And number three, this is a
13 matter that's much more important than which should be decided
14 at arbitration or mediation because this case involves a
15 precedent-setting issue in Florida. I believe I mentioned that
16 to you last time.

17 Our client is elderly and wants her day in court. She
18 should be entitled to it. We don't see that WCI is going to
19 suffer any prejudice from letting this case go forward. They
20 could incur attorneys' fees for the hearing but those should be
21 minimal. They'll certainly be less than going through
22 arbitration or mediation. In any case, that's not really a
23 legal basis to constitute prejudice.

24 This is a meritorious appeal. It's going to be hard to
25 argue that without getting too much into the facts of the case,

1 which I know you don't want me to do, but I'll say what I said
2 before, that this is a precedent-setting issue in Florida.
3 There's not any case on point. There's one or two cases
4 related and there are some federal cases from Florida directly
5 dealing with this issue but they're not binding in Florida
6 courts and this case should be heard, and it does involve a
7 matter of important public policy because, as I stated to you
8 last time, when developers start development, I filed a Motion
9 to submit an amicus brief for the very reason I just said, that
10 it is a precedent-setting issue that could affect hundreds, if
11 not thousands, of developers in Florida.

12 I really don't see that there's any good reason for not
13 allowing the appeal to go forward. Furthermore, if we lose the
14 appeal, that's one less creditor for WCI to worry about. So we
15 believe that our case is just as strong now as it was before.
16 You gave them 'til now to come up with a plan for dealing with
17 the prepetition lawsuits and their plan, I don't think,
18 adequately addresses a case such as ours and, furthermore, this
19 case is substantially similar from a civil procedure standpoint
20 as the Beach case.

21 So if they were going to agree to the Motion for Relief
22 from Stay on that, what would be their objection to this one?
23 There's not going to be any significant difference in cost or
24 time and effort that should be expended, as would have been
25 expended on the Beach case.

1 THE COURT: Thank you.

2 MR. AVERICH: Your Honor, again, Craig Averich on
3 behalf of the Debtor. I think Mr. Stearn assists in my
4 argument and the reasons why the Debtors want this action to
5 continue to be stayed.

6 First of all, it's different from the Beaches. The Aikens
7 lost in the trial court. There was no stay pending appeal.
8 The security deposit was forfeited. There's no supersedeas
9 bond. There's no independent deposit that Ms. Aiken can get.
10 If Aiken wins on the appeal and it's reversed and rendered, Ms.
11 Aiken would have a general unsecured claim that could not be
12 paid outside of a plan of reorganization.

13 I think the biggest point Mr. Stearn makes is the reason
14 we want the stay in place, that this is an issue that may arise
15 more than once before this Court. It's whether the ILSA, the
16 Interstate Land Sales Full Disclosure Act, applies to WCI
17 contracts.

18 I have a book. I've looked at seven decisions, six of
19 them from the district courts in Southern District of Florida.
20 There's also a state court decision from Florida, June 23,
21 2008. The issue could also arise in other jurisdictions. You
22 have different counties in Florida. You have different states.
23 All of them could raise whether or not the Interstate Land
24 Sales Full Disclosure Act provides a remedy, if you will, for
25 purchasers from WCI to get their deposit back. If on February

1 2nd we have, you know, a thousand of these rescission claims,
2 where parties are seeking to get their deposits back, it's
3 important for WCI to have a uniform result. WCI hasn't lost
4 any of these decisions.

5 THE COURT: Well, let me ask what you propose with
6 respect to this and others.

7 MR. AVERICH: Well --

8 THE COURT: It sounds like Aiken is just the first.

9 MR. AVERICH: Aiken is not the -- we have others
10 pending, not before the Florida Court of Appeals in that
11 particular county, but there were others since pending and
12 we've certainly received other rescission claims based on this
13 particular issue from other purchasers.

14 So our proposal is to see what happens on February 2nd,
15 determine the universe of claims that raises this issue.
16 First, see if there's a way to settle and resolve the issue
17 that's uniform with respect to all of these claimants by a
18 consensual basis.

19 If we're unable to resolve it consensually in the ADR
20 process -- I do agree with Mr. Stearn that arbitration would
21 serve no purpose in this case if it's set for oral argument. I
22 don't think we would take it that far but we have an offer, an
23 acceptance procedure and a mediation procedure, and our ADR
24 procedure could be designed to bring all of the claimants that
25 have that particular issue into one forum to see if we can get

1 a global settlement. And in the meantime, we could also try to
2 settle with each individual claimant. If we're unable to do
3 that, I think the appropriate course of action would be for
4 this Court to determine the issue so it's a uniform result, so
5 all similarly situated creditors will receive the same claim
6 and the same treatment in this bankruptcy case.

7 THE COURT: Well, let me ask you this: Since federal
8 courts under existing decisional law cannot sit as appellate
9 courts for state court decisions that have been rendered, how
10 do you fit that -- how do you reconcile that principle with the
11 notion of this Court deciding the issue in this and other
12 cases?

13 MR. AVERICH: We're not asking the Court to sit as an
14 appellate court on these particular claims or on this
15 particular claim. Ms. Aiken would have to file a proof of
16 claim. It is an unliquidated disputed claim. This Court can
17 look at the record and determine the legal issues relating to
18 that claim for all creditors that are similarly situated, not
19 as an appellate court. But remember, the Aikens lost in the
20 trial court and the appeal hasn't been decided.

21 THE COURT: But however -- assuming this matter at
22 some point might be properly before me, at least with respect
23 to Aiken, and I don't know where all the others stand with
24 similar issues, but at least with respect to Aiken, at bottom,
25 aren't I determining whether the trial court here was right or

1 wrong?

2 MR. AVERICH: No, Your Honor, because I think you're
3 ultimately going to have to decide the issue for all similarly
4 situated creditors and you're going to want to come out with a
5 uniform result that will treat all creditors the same.

6 I do think that Ms. Aiken, since she would be a general
7 unsecured creditor at best, does not get an advantage by
8 setting their case for oral argument and getting it liquidated.
9 It may be, Your Honor, that -- and, again, we're not asking for
10 a permanent injunction to prevent the Aikens from going
11 forward.

12 We would simply request this Court to continue the stay
13 with respect to the Aikens until the February 24th omnibus
14 hearing docket, and then on February 2nd, we will have all the
15 proofs of claim and we'll be able to determine, A, whether it's
16 appropriate to have any or all of these claims included in an
17 ADR procedure and have the ADR procedure at least taken through
18 the mediation stage.

19 And I would point out to the Court, although it's still
20 going to be subject to comment and refinement, mediator fees
21 are going to be paid by the Estate. We've tried to do this in
22 a fair way but at least by February 24th, we would have the
23 uniform -- excuse me -- we would have the universe of claims
24 that are seeking to assert the Interstate Land Sales Full
25 Disclosure Act as a reason to rescind their contracts and get

1 their deposits back. And if there's only a half a dozen of
2 those claims, I don't -- I think there will be significantly
3 more, but if there's only a few of those claims, maybe at that
4 time, it's appropriate to allow Ms. Aiken relief from the stay
5 to go liquidate her claim and by one appellate court in one
6 district of Florida.

7 Your Honor, these are arising in all of the districts in
8 Florida. As I said, I've got seven decisions, six by district
9 judges that I've been reading but these are going to arise in
10 Maryland, they're going to arise in New Jersey, they're going
11 to arise in New York, and the WCI contracts are the WCI
12 contracts.

13 If it turns out that Ms. Aiken is the only one with this
14 particular argument after February 2nd, which I don't believe
15 that's the case, or there's only a few of them and, you know, I
16 agree with Mr. Stearn that we're not going to force Ms. Aiken
17 at their stage of the case to go to an arbitration under an ADR
18 procedure but I do think that maybe Ms. Aiken would benefit
19 from a consensual offer and acceptance process and a mediator
20 that's paid for by the Estate.

21 But that said, we would know better on February 24th what
22 the universe of the claims are and Ms. Aiken is not going to be
23 prejudiced by a couple months of allowing the stay to remain in
24 place so the Debtors and the Creditors' Committee can review
25 the universe of plans that are having the same issue. And this

1 is not the Beaches where it's an issue that we don't expect
2 will be raised by any other party.

3 THE COURT: Mr. Averich, you can correct me if I'm
4 wrong, and Mr. Stearn is free to do the same, but I recall that
5 part of our discussion at the earlier hearing about the
6 particular circumstances of this Movant, during that
7 discussion, I remember saying to you, or if it wasn't you,
8 maybe it was --

9 MR. AVERICH: Mr. Laurat (*ph*).

10 THE COURT: Mr. Laurat, I'm not sure, that there
11 might be a couple things that you might consider. One of them
12 was after suggesting basically what apparently the Debtor has
13 now reduced to a Motion, I said you could always choose to
14 start that earlier with this particular Movant, and I take it
15 you've chosen not to do that.

16 MR. AVERICH: Your Honor, that's not correct. I
17 mean, the Debtor has not made an affirmative choice to exclude
18 Ms. Aiken. Frankly, the amount of the claim and the issues
19 that were pressing on the Debtor with respect to getting
20 schedules, I mean, one of the reasons for the breathing space,
21 of course, Your Honor, is to get your schedules done.

22 There's been one -- there's been more important things
23 than liquidating general unsecured claim. There's been no
24 affirmative decision to exclude Ms. Aiken or to prevent the
25 Debtors from commencing offer and acceptance process other than

1 the fact that the Debtors didn't see the urgency in doing that
2 at this point because liquidating the claim doesn't get Ms.
3 Aiken any money.

4 THE COURT: And the second thing I commented on in
5 the way of a visceral reaction was that it may be that a case
6 postured like this having been decided below and ready for
7 argument on appeal might not be the best of candidates for, you
8 know, an ADR process. Not that mediation necessarily is ever a
9 bad thing but exactly how many other cases presenting the ILSA
10 issue in this posture are there?

11 MR. AVERICH: When you say "this posture," Your
12 Honor, meaning that oral argument was set in one particular
13 county? Because there were a number of cases listed on our 170
14 cases that were -- that are on our schedules, prepetition
15 litigation that do involve the ILSA issue.

16 THE COURT: How many have been appealed?

17 MR. AVERICH: This is the only one that I'm aware of
18 that's currently pending on appeal and, again, Your Honor, it's
19 one district in Florida.

20 THE COURT: Well, I thought I made it pretty clear
21 that the Debtor should have a much better -- be better prepared
22 to make specific recommendations today with respect to handling
23 the matters generally.

24 I also suggested, I thought, that you might want to
25 consider handling this matter separately. And I'm not

1 criticizing the Debtor but neither of those things has come to
2 pass and, frankly, when I balance, you know, the circumstances
3 of each party here, consider the minimal imposition on the
4 Estate in having to argue this appeal, and with that, I overlay
5 my concern about if I'm ever asked to make a decision on this
6 issue, really at least with respect to this matter, am I being
7 asked in essence to sit as an appellate court for what a state
8 court decided? And I think after consideration of all those
9 issues, I am inclined to grant relief, to permit argument to go
10 forward for a decision to be rendered, and then depending on
11 how it turns out, the claimant to be otherwise left to its
12 bankruptcy remedies.

13 You know, I tried to broadcast as well as I could where I
14 was going to be about this time and there's nothing in this
15 record that convinces me I should force this Movant to wait any
16 longer, even if I accept as true in terms of factually all the
17 arguments that you make.

18 So for those reasons, I am inclined to grant the relief.
19 I'll ask counsel to confer and submit a form of order that so
20 provides.

21 MR. AVERICH: Thank you, Your Honor.

22 MR. STEARN: Thank you. Your Honor, question for
23 you. May I have your permission to contact the Court of
24 Appeals to reset this for oral argument today?

25 THE COURT: Wait and -- no.

1 MR. STEARN: Pardon me. Contact them today to reset
2 it for oral argument at their next docket --

3 THE COURT: Wait 'til I --

4 MR. STEARN: Which will probably be a couple months
5 from now.

6 THE COURT: Mr. Stearn, wait 'til I sign an order.

7 MR. STEARN: Okay. Very well.

8 THE COURT: Thank you.

9 MR. STEARN: Okay. Thank you, Your Honor.

10 MR. HEINMAN: Thank you, Your Honor. May I be
11 excused?

12 THE COURT: You may.

13 MR. HEINMAN: Thank you.

14 MR. AVERICH: Your Honor, the next matter on the
15 agenda is the Legend Yacht Motion for relief from the stay, and
16 I'll cede the podium to counsel for Legend Yacht.

17 THE COURT: Okay.

18 MR. CALICA: Good morning, Your Honor. My name is
19 Robert Calica and my firm represents the Movant. Your Honor is
20 certainly well versed in the discretionary factors that govern
21 when and under what circumstances Your Honor should grant
22 relief from the stay.

23 On this motion record, Your Honor, we submit that
24 virtually every one of the factors that was enumerated by the
25 Second Circuit in Sonix (ph) that has been adopted by this

1 Court in Rexine (*ph*) and I think one of Your Honor's decisions,
2 militates in favor of the stay.

3 This is scarcely a garden variety homeowner claim. This
4 is an arbitration that ensues from a matter that was already
5 settled with the Debtor prepetition repudiated to settlement.
6 There was a claim by 47 homeowners to replace all of the
7 roadways in the entire marina and the Debtor agreed to do so,
8 agreed to replace the entire two-mile roadway system, a marina
9 in Long Island Sound. Debtors owed numbers close to \$2
10 million. They never laid a square foot of asphalt. They never
11 replaced a single dock, laid a stone on the marina barricade.
12 They did nothing they agreed to do. The repudiated it.

13 The other discretionary factor, Your Honor, is that when
14 arbitration was filed under a settlement agreement with an
15 arbitration clause, insisted upon not only by us but by the
16 Debtor, they then repudiated almost meretriciously the
17 arbitration clause. They sought a stay when there was no
18 ground for a stay.

19 THE COURT: Okay. Look, I read the papers. No need
20 to drag me through the history.

21 MR. CALICA: Okay. I'm sorry, Your Honor.

22 The arbitration is substantially advanced. The Movant's
23 case is complete. It's going to have to be decided somewhere.
24 The incremental cost to the Estate is certainly substantially
25 less to complete this arbitration process to the point of award

1 than to allow it to go afresh through an ADR proceeding. Some
2 counsel is going to have to familiarize themselves with this
3 record.

4 Your Honor, I can represent that the Debtors' case in the
5 arbitration is two to three days at most. Their experts were
6 already retained. Their witnesses were ready to testify when
7 the bankruptcy filing resulted in a stay.

8 The prejudice to the Movants is substantial. The
9 prejudice to the Estate is minimal. They're going to have to
10 resolve this in some forum. Certainly, the specialized
11 knowledge of an engineer arbitrator who was selected by the
12 parties is well versed, has heard five days of testimony. The
13 claimant's arbitration case completed, ready to hear the
14 remainder in an expeditious and efficient forum certainly
15 militates in favor of lifting it.

16 I understand that the Debtor is saying we should wait
17 until the bar claim date comes and goes but the answer is that
18 is really not incremental harm. The amount of the claim is
19 going to have to be liquidated in some fashion and, frankly,
20 it's in the Estate's interest as well as the Movant's to have
21 that done in the most expeditious and efficient forum possible,
22 and the only forum is to allow the engineer arbitrator to
23 complete the manner he has been deliberating on after five days
24 of testimony and render a decision so at least the amount of
25 the bankruptcy claim is known. That is the elements of it,

1 Your Honor, unless the Court has any other questions.

2 THE COURT: I do not.

3 MR. CALICA: Thank you, Judge.

4 MR. AVERICH: Your Honor, Craig Averich on behalf of
5 the Debtors. With all due respect to my learned colleague,
6 counsel for Legend Yacht, I don't know that he can represent
7 what the Debtor needs to do to prepare its case. The Debtors
8 do not currently have counsel that's prepared to go to this
9 arbitration. The law firm of Morrison Cohen has withdrawn, is
10 not employed in this case, will not be going forward.

11 I think the more important thing that I want to bring to
12 Your Honor's attention is a claim against the Debtors. There
13 is 126 Debtors. This claim was against Spectrum Glen Cove
14 Corp., one of the Debtors. And if I may approach, I'd like to
15 give the Court the file schedules for Spectrum Glen Cove Corp.

16 THE COURT: All right. Have you provided a copy to
17 opposing counsel?

18 MR. AVERICH: Yes, Your Honor. I did prior --

19 THE COURT: All right. Thank you. Mr. Averich, I
20 have a question that I think is a threshold question for this
21 Court unrelated to the particular status of the arbitration and
22 I'll express it and I'll give you and your opposing counsel the
23 chance to tell me if I'm off base or not. But if this is a
24 dispute which falls within the subject of the arbitration
25 clause, it seems to me under Mince (ph), Third Circuit law

1 decision, that the only question before me is when I allow it
2 to go to arbitration, not if. Am I wrong about that?

3 MR. AVERICH: Your Honor, actually we're not here to
4 argue whether it should go to arbitration or not. I think the
5 important thing to argue about here -- and we're not arguing
6 about Hayes (ph) or Mince or whether they're entitled to go to
7 arbitration.

8 Let me back up. To answer your question, I think if the
9 claim is so important and affects a reorganization of the
10 Debtor and the impact is so significant, that this Court does
11 have the discretion not to let it go to arbitration because you
12 have multiple parties.

13 THE COURT: Well, let me just respond to that right
14 now. I was the bankruptcy judge in Mince who got overturned by
15 the Circuit. So you're going to have to work really hard to
16 convince me --

17 MR. AVERICH: Well, the good --

18 THE COURT: -- that that position that you've just
19 articulated is correct because it's a hard sell.

20 MR. AVERICH: The good news is, Your Honor, I'm not
21 here to argue that position. The Debtors' position is
22 relatively simple in this particular case.

23 Spectrum Glen Cove Corp., we filed our schedules on
24 November 1st after the Lift Stay Motion was filed, after our
25 opposition was filed. Spectrum Glen Cove Corp. has no assets

1 that we're aware of on the schedules. The only creditor of
2 Spectrum Glen Cove Corp. is Legend Yacht. The arbitration will
3 cost several hundred thousand dollars to get counsel up to
4 speed and to try it. Whether it's three days, five days, seven
5 days, whatever the time frame is, there's expert witnesses,
6 there's testimony, there's preparation and it's going to cost
7 other debtors to pay to defend this arbitration.

8 The Committee and the Debtors need time to determine
9 whether Spectrum Glen Cove Corp. should even be included in the
10 business plan or whether, you know, that case should be
11 dismissed or liquidated or whether there's any possibility of
12 recovery for the single creditor in this case.

13 After the February 2nd bar date, we'll know whether there
14 are any other creditors of Spectrum Glen Cove Corp. Right now,
15 based on our books and records and the suits that are filed,
16 it's just Legend Yacht.

17 What we're asking for is to give the Debtors and the
18 Creditors' Committee an opportunity to determine whether or not
19 we should invest several hundred thousand dollars in defending
20 this claim or let it go and let the case go and what we should
21 do with that case before we spend several hundred thousand
22 dollars defending the claim. That's it in a nutshell.

23 And, obviously, the Court has made my argument easier.
24 We're not seeking to say they can't arbitrate. We're saying we
25 want time, the automatic stay to figure out what we're going to

1 do with Spectrum Glen Cove Corp.

2 It's not a guarantor of the bond debt. It's not a
3 borrower under the prepetition bank facilities and it has no
4 assets. Stock was acquired when WCI acquired Spectrum. I just
5 -- I'm not sure -- efficiency and utility of making a decision
6 to defend this, hire counsel, whether it's White & Case or WCI
7 hires another counsel to spend those kinds of fees if it's a no
8 asset case or whether it should be consolidated. These are all
9 fundamental reorganization decisions that go into the plan
10 process and the business plan process.

11 THE COURT: Thank you.

12 MR. CALICA: Your Honor, may I?

13 THE COURT: Let me hear from the Committee and then
14 I'll get back to you. Let me hear from the Committee.

15 MR. CALICA: Oh, I apologize.

16 MS. BECKERMAN: That's okay. Thank you. Lisa
17 Beckerman on behalf of the Creditors' Committee. Your Honor,
18 obviously we adjoined in the Debtors' opposition to the Motion
19 and I would just point out that I do think that at this point,
20 we wouldn't want to be putting this Estate in a situation where
21 it would be rendered administratively insolvent, which I think
22 if we did decide to have one of the other Debtors, like WCI
23 Communities, Inc., fund this litigation and have to go forward
24 on it, that's what we would be officially -- effectively doing
25 here for certain. And I think at this point, given that we've

1 just gotten the business plan ourselves, just gotten the
2 schedules about a month ago and, frankly, just completed our
3 initial review of the schedules from the Committee's side for
4 the professionals, that it isn't at this point appropriate to
5 allow the stay to be lifted which would require some other
6 debtor, most likely the parent company, WCI Communities, Inc.,
7 to spend money hiring counsel to defend this claim when we
8 haven't made decisions about how to proceed. And we don't know
9 if there are other creditors of this entity and won't 'til
10 after February 2nd.

11 It just doesn't seem an appropriate decision to, you know,
12 effectively render the Estate at this point administratively
13 insolvent. So we would ask that the stay be continued for some
14 period of time to allow ourselves and the Debtors to make
15 appropriate decisions.

16 It might be that the appropriate decision is to just
17 stipulate to the claim if we're going to be dismissing the case
18 or if we're going to be converting it or something else, Your
19 Honor, but we're just obviously not there at this point, and to
20 spend money on a litigation where there's no assets to recover
21 doesn't seem to make sense from the perspective of the entire
22 unsecured creditor body.

23 THE COURT: Thank you.

24 MR. CALICA: Your Honor, I apologize by way of
25 omission because we cited in the Third Circuit only the Hayes

1 against Merrill Lynch case and others under the Federal
2 Arbitration Act regarding the overriding policy of enforcing
3 arbitration agreements. Your Honor is absolutely correct that
4 the Court should, under federal FAA principles, uphold the
5 arbitration clause.

6 I want to make one fact-specific argument. I understand
7 that the Debtor and the Creditors' Committee are dealing with a
8 wealth of claims and it's hard to individuate them but it
9 scarcely justifies the very careless treatment of the record.

10 This arbitration clause causes each party to have four
11 hours to prove or disprove any claim and an engineer decides it
12 within 30 days. The claimant's case is over. There are only
13 three claims. The suggestion that whether it's White & Case or
14 litigation counsel is re-engaged is going to spend hundreds of
15 thousands of dollars in completing an arbitration where the
16 experts are already retained and they're allowed only 12 hours
17 of hearing to reach a 30-day decision, it's just not a
18 responsible representation of the impact on the Debtor.

19 THE COURT: Well, all I've heard today are arguments
20 of counsel. There is no evidence supporting either party's
21 view of how long it would take or what's left.

22 Now, what's been offered into evidence are the schedules
23 of this particular Debtor defendant. Do you dispute whether
24 this company has any assets?

25 MR. CALICA: No, I don't, Your Honor. I just

1 received the schedule this morning. It appears that my client
2 is the only creditor known at the moment.

3 THE COURT: Right. And that the Debtor, at least as
4 far as everybody knows so far, Spectrum Glen Cove Corp., has no
5 assets.

6 MR. CALICA: Correct, Your Honor.

7 THE COURT: Okay. Then, I guess my question to you
8 is, what would be the point in permitting arbitration to go
9 forward at this point?

10 MR. CALICA: Your Honor, we were attempting to
11 liquidate the claim. The Motion was made in September when the
12 schedules hadn't been filed.

13 There is a factor, Your Honor. It goes outside of the
14 scope of the proceedings before Your Honor. To the extent that
15 there may be claims against nondebtor parties, they may
16 possibly, under New York law, be preclusively determined if
17 there is an order or judgment fixing the Movant's claim against
18 Spectrum Glen Cove Corp. In other words, to the extent that
19 nondebtor parties may be liable to those obligations and
20 they're of the theories they may be in privity for collateral
21 estoppel purposes, then only an order of judgment of a court of
22 competent jurisdiction would fix that amount.

23 THE COURT: All right. But, you know, what
24 definitiveness to those possibilities can you give me at this
25 point? I don't remember that you argued that in the papers.

1 MR. CALICA: We didn't, Your Honor, because we relied
2 upon the customary Sonix and Maxine -- Rexine factors as to why
3 it should be lifted in the Federal Arbitration Act Policy. I
4 only saw the schedule this morning. I had no knowledge of what
5 the financial condition of the particular Debtor Spectrum Glen
6 Cove Corp. was until a half hour ago.

7 THE COURT: Okay. I wasn't criticizing, counsel.
8 This is the first time I've learned of it, too. All right.
9 Thank you.

10 MR. CALICA: Your Honor, I would ask -- there is a
11 possibility that the Estate will make a decision not to
12 challenge it after the bar claim date but I think the decision
13 should in part be made because the Debtor is going to have the
14 responsibility of defending the claim. I would ask that Your
15 Honor entertain the idea of lifting the stay but postponing the
16 commencement of the arbitration until a time sufficiently after
17 the bar date so that the Debtor can make a meaningful decision
18 that in allowing or challenging the claim, that it's going to
19 have to defend it --

20 THE COURT: Well --

21 MR. CALICA: -- and not leave it in limbo, Your
22 Honor.

23 THE COURT: I will say that's the best suggestion
24 you've made all day but what I'm more inclined to do is to,
25 under the circumstances, deny the Motion without prejudice for

1 it to be renewed.

2 So it will still leave in your hands the timing about when
3 you wish to raise the issue again and force the Debtor's hand,
4 and it sounds like in another couple of months you'll have a
5 stronger argument, that it's time for them to make up your mind
6 so that your client, for whatever purposes, can liquidate its
7 claim and move forward against others if the law permits that.

8 So if counsel would confer and submit a form of order that
9 provides that resolution, I'll sign it.

10 MR. CALICA: Thank you, Your Honor. I'll confer with
11 Mr. Averich and I assume, Your Honor, it's unnecessary for me
12 to wait and do that today. I can do that after the
13 proceedings.

14 THE COURT: Certainly.

15 MR. CALICA: And will submit it on notice, Your
16 Honor.

17 THE COURT: Certainly. And if you'd like to be
18 excused at this point, you're welcome to.

19 MR. CALICA: Thank you very much.

20 THE COURT: But you're also welcome to stay and watch
21 the exciting conclusion of today's hearing, whatever that might
22 be.

23 MR. CALICA: I appreciate it. Thank you so much,
24 Your Honor.

25 THE COURT: You're welcome.

1 MR. AVERICH: Your Honor, that would bring us to item
2 7 on the agenda which is the -- I hope I'm pronouncing it
3 correctly -- Pasaj Motion for Relief from Stay.

4 MS. BRIGNOLA: Good morning, Your Honor. Erin
5 Brignola representing Mr. and Mrs. Pasaj.

6 THE COURT: Good morning. It's so nice to see you in
7 court finally.

8 MS. BRIGNOLA: Thank you.

9 THE COURT: At least in business court.

10 MS. BRIGNOLA: With regards to our Motion, Your
11 Honor, you referred several times today to the requirements to
12 have relief from the stay; however, in this case, the facts are
13 a little different than what we've been hearing.

14 This is a personal injury case. It was filed
15 postpetition. There was a technical violation of the stay and
16 as soon as the Movant realized that the bankruptcy was filed,
17 they did go to the state court and say, you know, it has to be
18 stayed, and the state court did determine that there would have
19 to be an application to lift the stay. That was determined by
20 the state court that it had to be done by November 15th, which
21 we did.

22 Normally -- I have read the papers with regards to the
23 case and the stages and the early stages of this case and I
24 don't think that they would have requested the relief so early
25 in the game if they had a choice but they didn't have a choice,

1 so we are here.

2 The ADR process, which has been proposed to handle these
3 types of claims, I think has been proposed to handle, in their
4 words, the Debtors' home building business, and it may also be
5 utilized to resolve any other claims, and therefore, with that
6 being said, I believe that this claim falls outside of that and
7 it should not be subject to the ADR process.

8 The state court -- there are other state court defendants
9 for which we are seeking recovery. The Movant is asking to not
10 make a claim against WCI and we will not file a proof of claim
11 as long as we can go after any insurance proceeds that are
12 available.

13 If we are successful in getting the stay lifted, it would
14 be, I believe, Old Republic's counsel who would have an
15 interest in defending this matter. It wouldn't be a cost to
16 WCI. And, again, it's another reason why there wouldn't need
17 to be an expense on behalf of WCI to an ADR process.

18 There is prejudice to this Movant as he is severely
19 injured. He fell down an elevator shaft, four floors. He
20 broke his back in six places. He had knee surgery, ankle
21 surgery. He has a rod in his femur and he broke his hip and
22 all 24 of his teeth. He cannot work. He is the sole support
23 for his family. He has limited English, and to put his case on
24 hold, I don't understand really for the reason, because we're
25 not asking anything of WCI.

1 If there is a deductible, we are waiving any right to that
2 deductible. We just want to get to the insurance claim and to
3 have the insurance policy defended by the insurance attorneys.

4 THE COURT: All right. Thank you.

5 MR. AVERICH: With all due respect to counsel, we
6 provided the insurance to the state court counsel. It's a
7 million dollar deductible. WCI would be fronting those defense
8 costs for the first million dollars.

9 Your Honor, this is a postpetition lawsuit for a
10 prepetition claim. We cannot have postpetition suits filed to
11 collect prepetition claims, whether they're going to be limited
12 to insurance or not. It's not appropriate. I wasn't familiar
13 that this Court issued the Mince decision. I am familiar with
14 this Court's decision in Student Finance Corp. that is well
15 settled in this Circuit, that any act postpetition by a
16 creditor that violates the automatic stay under 362 is void.

17 Your Honor, we cannot have the activity of somebody filing
18 a lawsuit, we file a suggestion of bankruptcy and they wait
19 around for the state court and say, "Well, what should the
20 state court do?" The case should have been dismissed. The
21 appropriate procedure is to file a proof of claim submitting to
22 the jurisdiction of this Court. If the Court can't liquidate
23 the personal injury claim, that doesn't mean they're not
24 eligible for the ADR process. In fact, the ADR process is a
25 good way and probably one of the best ways to resolve personal

1 injury claims.

2 THE COURT: I don't disagree with that proposition
3 necessarily, but I'm assuming one of the things that counsel
4 for the Movant here is arguing that the arbitrator probably
5 ought not to be an engineer. It's someone else with a
6 different kind of background.

7 MS. BECKERMAN: Your Honor, when Mr. Averich is done,
8 I'll be addressing that because we've had some discussions
9 about that.

10 MR. AVERICH: We're going to have categories of
11 mediators and arbitrators to deal with different claims and
12 we're going to work with the Committee to have a proposed list.
13 And, again, the Estate is fronting the expense of a mediator.

14 Your Honor mentioned evidence. There's no evidence before
15 this Court that Old Republic is going to respond to first
16 dollars. I don't have to respond to something where there's
17 not evidence.

18 And frankly, in practice, a bankruptcy practice, can you
19 imagine consumer debtors get sued postpetition for prepetition
20 claims and then come into the court and say, oh well, we blew
21 it, Your Honor, but we'd now like relief from the automatic
22 stay?

23 The suit needs to be dismissed. If they want to come back
24 and file a proof of claim and then ask for a Motion for Relief
25 from the stay saying it's a personal injury case, this court

1 doesn't have jurisdiction, maybe that's appropriate, but you
2 can't have a lawsuit filed six weeks against WCI, not one of
3 the debtors whose name is not recognizable, but against WCI.
4 Six weeks into the case, wait for us to file suggestion of
5 bankruptcy, not respond to that at all and then respond to a
6 state court order.

7 Frankly, Your Honor, we were inclined to do discovery to
8 determine whether they had knowledge of the bankruptcy case but
9 determine that the case -- after we provided the insurance
10 coverage to prepetition counsel, they would recognize that the
11 case should be dismissed.

12 As far as the plaintiffs' other remedies, it's clear from
13 the suit that's attached he has other defendants in this suit
14 that are not debtors, like his employer, like the contractor.
15 There are other defendants in this suit other than WCI that
16 happen to be the owner of the building and they have remedies.

17 You cannot allow a postpetition lawsuit to be filed and
18 then have creditors coming in and asking for relief from the
19 stay after the fact.

20 I'm sure my colleague in her practice wouldn't want that
21 happening with her consumer debtors or any debtors, and we
22 certainly can't have that practice occurring in this case with
23 all our prepetition creditors, personal injury or not, filing
24 suits and then coming in and asking for stay relief.

25 The Motion should be denied and the case should be

1 dismissed and if they want to file a suit against WCI, they
2 should come to this Court first before doing so.

3 THE COURT: Thank you.

4 MS. BECKERMAN: Lisa Beckerman from Akin Gump on
5 behalf of the Creditors' Committee. Your Honor, I guess I am a
6 little bit less indignant than Mr. Averich, although I share
7 his concerns about having an avalanche of similarly situated
8 people taking advantage of the process.

9 I'm going to focus on why I think if Your Honor doesn't
10 decide just to deny the Motion, it should at least, you know,
11 postpone it or deny it temporarily for some period of time,
12 etcetera, because I do honestly agree with Mr. Averich that
13 from my past experience of ADR, personal injury cases are often
14 the best cases to be in an ADR process and they often get
15 resolved much more efficiently even with multiple parties
16 involved.

17 While Mr. Averich and I have a lot of discussions going on
18 about the ADR process, the procedures that the company has
19 filed do allow for other parties to be involved such as some of
20 the other potential defendants, etcetera. And we don't know,
21 unfortunately, until we have our bar date, how many other
22 similarly situated personal injury claimants we have in regions
23 but one of the things that we have been talking about, Mr.
24 Averich and I, is having appropriate list of mediators and
25 parties that could be involved in those discussions, including

1 people who have expertise of personal injury.

2 And since our firm and Mr. Averich's firm, although not
3 Mr. Averich himself, you know, have offices in the locations
4 where some of these issues are in the region, and we're very
5 familiar with people who are mediators and we want to do that
6 in an efficient way, we've been discussing having people have
7 specialized expertise, such as people who are good mediators
8 for personal injury disputes versus people who are mediators
9 for a construction defect process, and those are not the same.
10 And I agree with Your Honor.

11 So, Your Honor, if you're not inclined to just deny the
12 Motion solely based on the fact of the postpetition nature of
13 the lawsuit being filed, I would at least ask you to deny the
14 Motion and provide that the person cannot move forward with any
15 kind of litigation through the state court process until we've
16 had an opportunity to have the ADR decided and had an
17 opportunity to get the schedules filed and had an opportunity
18 to figure out what is the most efficient way, because we may
19 have a number of other people -- I hope not -- who had, but you
20 don't know, Your Honor, who had construction site injury. That
21 is not an uncommon thing in the home building industry where
22 you have lots of subcontractors and contractors involved.

23 This is a very large project up the road from me in New
24 Jersey, Your Honor, where -- unfortunately, where the party was
25 injured and we really do need to deal with these claims in an

1 efficient manner. And I don't think allowing the state court
2 litigation to go forward is the efficient manner.

3 So I would ask that Your Honor deny the Motion either on
4 the grounds of the postpetition nature of the filing, or if
5 not, on the basis that at this point it's just premature and
6 not appropriate to move forward outside of the claims and the
7 ADR process at this point.

8 THE COURT: All right. Thank you. Mr. Brignola,
9 I'll give you the last word.

10 MS. BRIGNOLA: Thank you, Your Honor.

11 The state court did say that the action was continuing
12 against the other defendants. So the record will have to be
13 clear as to what is going to happen. The 170 cases that were
14 listed as Exhibit A, I just wanted to know whether counsel had
15 any idea whether any of those were personal injury in nature or
16 whether they were all the home building cases.

17 THE COURT: You may respond if you'd like.

18 MR. CALICA: Your Honor, sitting here now, I can't
19 tell how many of the prepetition lawsuits involve personal
20 injury suits. I do agree with counsel for the Committee that
21 personal injury claims are common in construction projects.

22 MS. BRIGNOLA: Therefore, then, Your Honor, I would
23 assume that there aren't that many because they would jump out.
24 So I believe that Your Honor did grant the relief from stay in
25 the Freeman (ph) case and I believe that our facts are more

1 similar to that in that their lives were on hold and they
2 needed a resolution of the matter and temporarily a setback in
3 that this be postponed would be maybe an acceptable term until
4 maybe after the bar date but after that I think that these
5 people need to move on with their lives and so they need some
6 kind of resolution.

7 THE COURT: All right. Thank you.

8 MS. BRIGNOLA: Thank you, Your Honor.

9 THE COURT: As a matter of process, again, there is
10 no evidentiary record here, although there appears to be no
11 dispute that the complaint was filed postpetition. Frankly,
12 I'm inclined not just to deny the Motion but to include in the
13 order a declaration that the filing of the complaint, at least
14 as to any debtor entity, is null and void under Third Circuit
15 law. I think Maritime Electric is probably the best authority
16 for that but there's a lot of it in Third Circuit decisional
17 law.

18 You know, this is a postpetition filing. There's no fact
19 here that tells me that -- what the motivation of the counsel
20 or plaintiff was here and whether there was any knowledge of
21 the bankruptcy filing when the complaint was filed. So except
22 for declaring the filing as to the debtor entity null and void,
23 I'm not inclined to go any further than that.

24 Should, at some future hearing, other circumstances
25 develop and someone would press the position, I'll consider it

1 then. And that's not an invitation necessarily. But what
2 happens in addition -- in connection with either the claims
3 process or any proposed ADR process, I won't say. I'll
4 consider the Debtor's Motion when it comes but I think the
5 Committee has articulated a principal position that this is
6 exactly the type of claim that typically, at least in my
7 experience, fares best in those structured procedures.

8 So I hope if the present Motion doesn't contain something
9 which would cover that, hopefully before the hearing, it can be
10 modified in consultation with the Committee and with Ms.
11 Brignola to see that that type of claim is clearly provided
12 for. Are there any questions? All right. I'll ask counsel to
13 confer and submit an appropriate form of order.

14 MR. AVERICH: Thank you, Your Honor.

15 MR. BROWN: Good morning, Your Honor. Matthew Brown
16 on behalf of the Debtors. I believe we only had one matter
17 left today on the agenda, Your Honor, item number 8. And the
18 Debtors would like to thank the Court for hearing this matter
19 on short notice. We understand that requesting matters to be
20 heard on short notice should not be taken lightly and we
21 appreciate the Court's understanding.

22 With that said, Your Honor, I'm happy to report, as Mr.
23 Schlerf did as well at the outset of the hearing, that we did
24 not receive any objections to the Gulf Harbor turnover Motion.
25 We did, however, receive a late comment from the club to the

1 proposed order and if you'd like, I cannot approach with a
2 black lined copy.

3 THE COURT: All right. Thank you.

4 MR. BROWN: As you'll see, Your Honor, the requested
5 change was with respect to the 363(m) language in the order.

6 MS. BECKERMAN: The Committee has no objection to
7 that.

8 MR. BROWN: And unless the Court has any questions,
9 the Debtors would request that the revised order be entered.

10 THE COURT: Well, let me ask for the record if anyone
11 else cares to be heard in connection with this Motion.

12 (No verbal response.)

13 THE COURT: I hear no further response. The only
14 other thing I'll comment on is I normally would require some
15 record to be made either by proffer or declaration or live
16 testimony in support of a good faith finding but I have
17 reviewed the papers and under the circumstances, limited to
18 this particular situation, I won't require that. It appears to
19 me that the relief is well founded and will benefit the Estate
20 for the reasons that are alleged in the papers. So I'm
21 prepared to grant the relief --

22 MR. BROWN: Thank you, Your Honor.

23 THE COURT: -- that's been requested. That order has
24 been signed.

25 MR. BROWN: Thank you, Your Honor. I believe that

1 concludes the agenda for today.

2 THE COURT: All right. Thank you. That concludes
3 this hearing. The Court will stand in recess.

4 (Court adjourned at 12:04 p.m.)

5 CERTIFICATE

6 I certify that the foregoing is a correct transcript
7 from the electronic sound recording of the proceedings in the
8 above-entitled matter.

9

10 S/April J. Foga
11 April J. Foga, CET, CCR, CRCR

December 24, 2008

12

13

14

15

16

17

18

19

20

21

22

23

24

25

UNITED STATES BANKRUPTCY COURT
District of Delaware

In Re:

WCI Communities, Inc.
24301 Walden Center Drive
Bonita Springs, FL 34134

Chapter: 11

EIN: 59-2857021

Florida Design Communities, Inc.
Watermark Communities, Inc.

Case No.: 08-11643-KJC

***NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND
REDACTION***

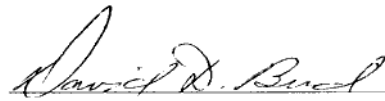
A transcript of the proceeding held on 12/17/08 was filed on 12/29/08 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 1/20/09 .

If a request for redaction is filed, the redacted transcript is due 1/29/09 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 3/30/09 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (name, address/contact information) or you may view the document at the clerk's office public terminal.



Clerk of Court

Date: 12/29/08

(ntc)

Notice Recipients

District/Off: 0311-1
Case: 08-11643-KJC

User: Theresa
Form ID: ntc

Date Created: 12/29/2008
Total: 9

Recipients of Notice of Electronic Filing:

ust United States Trustee USTPREGION03.WL.ECF@USDOJ.GOV

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	WCI Communities, Inc.	24301 Walden Center Drive	Bonita Springs, FL 34134
aty	Eric Michael Suttty	Bayard, P.A. 222 Delaware Avenue	Suite 900, P.O. Box 25130 Wilmington, DE 19899
aty	Eric Michael Suttty	Bayard, P.A. 222 Delaware Avenue	Suite 900, P.O. Box 25130 Wilmington, DE 19899
aty	Eric Michael Suttty	Fox Rothschild LLP	Citizens Bank Center, Suite 1300 919 North Market Street P.O. Box 2323 Wilmington, De 19899-2323
aty	Jeffrey M. Schlerf	Bayard, P.A. 222 Delaware Avenue	Suite 900 Wilmington, DE 19801
aty	Justin K. Edelson	Polsinelli Shalton Flanigan Suelthaus PC	222 Delaware Avenue Suite 1101 Wilmington, DE 19801
aty	Mary E. Augustine	Ciardi Ciardi & Astin, P.C.	919 N. Market Street Suite 700 Wilmington, DE 19801
aty	Mary E. Augustine	Ciardi, Ciardi & Astin, P.C.	919 N. Market St. Suite 700 Wilmington, DE 19801

TOTAL: 8