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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE: LANDAMERICA FINANCIAL GROUP, INC.
08-35994

Complete transcript of the above matter when
heard on November 26, 2008, before the Honorable Kevin R.
Huennekens, Judge.

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THE CLERK: In the matter of LandAmerica Financial Group, Incorporated.

THE COURT: Good afternoon, Mr. Maddock. I understand we had some technical difficulties, and I apologize to everybody for having to wait this afternoon.

MR. MADDOCK: No problem at all. Good afternoon, Your Honor. John Maddock, with McGuire, Woods on behalf of the debtors LandAmerica Financial Group, Inc. And LandAmerica 1031 Exchange Services, Inc, which is a subsidiary of LandAmerica Financial Group.

At the outset, Your Honor, we would like to thank you for your time this morning in scheduling this hearing on somewhat short notice; and also your indulgence in the extra time provided this morning.

At this time, Your Honor, I would like to introduce our co-counsel with the law firm Willkie, Farr and Gallagher. At counsel table with me, to my immediate left, is Paul Shalhoub from the New York office, a partner with Willkie, Farr. At my far left at counsel table is Rachel Strickland, with the New York office. And lastly Jordanna Linder is here as well, again, from the New York office.

Your Honor, we filed a proposed agenda, and

1 I also realize the Court has its own agenda. We will
2 certainly follow whichever the Court prefers.

3 THE COURT: Why don't we use your agenda, the one
4 that you filed.

5 MR. MADDOCK: With your permission, I would like
6 to jump to Item No. 2, which is the pro hac vice motion.
7 We would move for the admission of co-counsel at Willkie
8 Farr. The motion includes, request admission for Mr.
9 Shalhoub, Ms. Strickland and Ms. Linder, and also Jamie
10 Ketten, who is associated with the Willkie Farr New York
11 office. They are all admitted to the New York bar and
12 in good standing. We ask for their admission.

13 THE COURT: That motion is granted.

14 MR. MADDOCK: Thank you, Your Honor. Your Honor,
15 at this time I would like to turn over the podium to Ms.
16 Strickland.

17 MS. STRICKLAND: Good morning, Your Honor. Again
18 for the record, Rachel Strickland with Willkie Farr and
19 Gallagher on behalf of LandAmerica, the debtors. I
20 would like to start by introducing the two executives
21 from the company who are with us today, Mr. William
22 Evans, who is the chief financial officer of
23 Landamerica, as well as Michelle Bloc, who is their
24 general counsel.

25 We filed two petitions. One for

1 LandAmerica Financial Group, Inc, which is the holding
2 company parent, and LandAmerica 1031 Exchange Services,
3 Inc, which as Mr. Maddock said, is a fully owned
4 subsidiary.

5 Overall, just to start with our
6 over-reaching goals, this is, as an enterprising
7 credibly, an incredibly large functioning going concern
8 with approximately 2.5 billion dollars in revenue, and
9 that represents a lot of people and thousands of jobs;
10 and our goal is to see if we
11 can preserve that, as well as having equitable
12 distribution to creditors.

13 LandAmerica Financial Group or LSG --

14 THE COURT: Who is in conference?

15 VOICES THROUGH TELEPHONE: Alan Martin and Eric
16 Sekee. Jess Austin.

17 MS. STRICKLAND: LandAmerica Financial Group or
18 LSG, as we call it, is a parent wholesale. It's
19 subsidiaries are in the business of selling products and
20 providing services regarding residential and commercial
21 real estate transactions. The largest element of this
22 by far relates to LandAmerica's title insurance
23 underwriting business, which is the third largest such
24 business in the United States. The first is First
25 American, the second is Fidelity, which we will talk

1 more about this morning. And the third is LandAmerica.

2 The two principal subsidiaries of
3 LandAmerica Financial Group, Inc. that underwrite the
4 title policies are Commonwealth Land Title Insurance
5 Company and Lawyers Title Insurance Corporation, which
6 are both incorporated in Nebraska and regulated by the
7 Nebraska Department of Insurance. In addition,
8 LandAmerica has underwriters in New Jersey and
9 California. And that underwriting business collectively
10 represents approximately ninety percent of LandAmerica's
11 revenue. The capital structure at the wholesale, which
12 is LSG, they have a revolving credit facility of
13 100 million dollars, that is subject to a discussion we
14 will have later about captioning unsecured. That's
15 SunTrust as an agent.

16 They have two series of Senior Unsecured
17 Notes, with Prudential. In the amount of approximately
18 150 million dollars. They also have convertible notes
19 with a face amount of 225 million dollars. All of this
20 unsecured with no guarantees and no other obligors other
21 than the parent company.

22 Other than underwriting businesses,
23 LandAmerica also has complimentary businesses that are
24 not regulated by Departments of Insurance. They provide
25 things like appraisal, valuation, assessment and other

1 services necessary to effectuate real estate
2 transactions. One of the non-insurance regulated
3 subsidiaries, and the other debtor that filed today, is
4 a qualified intermediary under Section 1031 of the
5 Internal Revenue Code. That business had operations
6 that were shut down first thing it started its business
7 this week. Prior to the shut down, that business was to
8 facilitate like kind exchanges pursuant to exchange
9 agreements with customers, whereby customers were able
10 to defer, under the tax code, a portion or all of the
11 sale of gains from the sale of property. And the way
12 that mechanic works was that generally the 1031
13 exchanges would be structured so that the Exchange
14 Services Company, or LES, which is how we refer to it,
15 would contract with its customers to acquire the
16 proceeds of its sale of property. Until the time when
17 that customer identifies another piece of property it
18 wanted to buy, LES acquired the proceeds and had sole
19 right, title, and control of those proceeds. In between
20 the sale of the first piece of property and the
21 designation, if you will, of the purchase of the second
22 piece of property there were proceeds that LES maintains
23 and has control over. In order for the safe harbor,
24 that is the 1031 section of the Internal Revenue Code
25 LES both by contract and by law has control and title to

1 that money.

2 With that background of what the LES
3 business does, and the events leading to these cases.
4 Obviously under both macro economic level, this is the
5 business type in real estate. The residential mortgage,
6 market, terms of origination, has declined from a 2.7
7 trillion dollar industry in '06 to a 1.8 trillion dollar
8 industry in '07. Housing value has plummeted nationwide
9 and this has reduced the company's revenue over by 40
10 percent in that time period from '06 to the third
11 quarter of '08.

12 So they have that issue in the big picture.
13 With respect to LES and why that specific subsidiary is
14 also a significant issue is because the monies, while in
15 the possession and title of LES are permitted to be
16 invested. And as I'm sure Your Honor can predict, given
17 what is going on in the nation and in the world right
18 now, a large portion of that money was invested in
19 auction rate securities. Which at the time they were
20 purchased were rated A, and were backed by government
21 backed student loans, and were sought to be incredibly
22 secure. They are still secure in the sense that they
23 have collateral that has values that support them; they
24 are, in another sense, insecure in the sense that they
25 are very eliquid if not completely eliquid. Because the

1 schedule or time cycle of the 1031 Exchange has to occur
2 within 180 days, there are lots of folks, who are
3 customers of the 1031 Exchange Company, who allowed LES
4 to acquire contractually their proceeds who now are
5 going to closing for the purchase of property and want
6 the other part of that contract to come back and want
7 their funds back. And those funds, some of which are
8 maintained in cash, and bank accounts of LES today,
9 which we are not asking to move or disrupt and some of
10 which are tied up in auction rate securities, which, if
11 forced to liquidate them today, they might not be
12 possible at all, and needs to the extent possible would
13 that with a dramatic discount to the point where those
14 contractual obligations are under water at this point.

15 LandAmerica Financial Group, Inc, the
16 parent company's concern about its subsidiary issues has
17 been doing a lot of things to try and both deal with the
18 overall macro economic issues of what are we going to do
19 with a business that has declining revenues in light of
20 things outside of our control as well as the fact that
21 in the short term cycle, there are customers, who are
22 customers of the underwriting business and this is not a
23 bricks and mortar enterprise; this is something where
24 the relationship of the customer and the relationship
25 with your key people who sell to your customers is,

1 pardon my colloquialism, is the whole enchilada. If you
2 don't have those people, and you don't have those trust
3 relationships, you don't have a business that is worth
4 anything here.

5 So, LSG, the parent, has been doing a
6 number of things to try and stabilize this situation to
7 avoid where we are today. Starting in September, the
8 Board started actively pursuing all strategic
9 alternatives. They retained Chase Morgan, as the
10 banker, they retained Watts election firm as their main
11 counsel, they formed a special committee as a Board of
12 Directors so we can deal with this issue. They reached
13 out through their adviser *** Management to financial
14 parties that might be interested, certainly to any
15 strategic party that might be interested. They knocked
16 on the doors of private equity. And after discussions
17 and chasing down a lot of different parties, large
18 utilities and all the rest, they ended up in substantial
19 and significant discussion with the number two player in
20 underwriting, Fidelity National Financial.

21 In November, they signed a merger agreement
22 with Fidelity, which was going to effectuate the two
23 goals that we stated at the outset, it was going to
24 preserve the enterprise, because there was going to be a
25 merger of the entire business. It was going to be at

1 the parent company level with LSG, and then it was
2 automatically going to provide a liquidity plan for the
3 1031, because it was going to be a valuable transaction.
4 There was, pursuant to the terms of that agreement, a
5 due diligence out, which enabled Fidelity to terminate
6 the contract by its term which was this past Friday.
7 And Fidelity exercised its fiduciary out.

8 At the same time that all of this is going
9 on, these entities are regulated, the underwriter, by
10 the Nebraska Department of Insurance, with a parallel
11 system in California and New Jersey. Since the primary
12 underwriting business is in Nebraska, and those two
13 subsidiaries I mentioned, as well were also focused.
14 There has been an ongoing dialogue with Nebraska, who is
15 concerned starting in the third quarter of '08, that the
16 filing of these two entities indicated a reduction in
17 the statutory surplus which caused Nebraska, Nebraska to
18 conclude that these entities were in a *** the statute
19 in Nebraska, a hazardous financial condition. As a
20 result of that, Nebraska, also aware in the loop on
21 discussions going on with Fidelity, and of course being
22 a public company the merger was publicly announced, was
23 in a constant dialogue as to the powers that Nebraska
24 has from the range of going in from having
25 administrative supervision, meaning the least invasive

1 approach that Nebraska could take, all the way to
2 getting an order for rehabilitation, and effectively
3 putting this business into run off.

4 And Nebraska worked very well with
5 management. Everyone kept their powder dry to see how
6 it was going to work out, but we knew that if Fidelity
7 exercised its termination rights on Friday, Nebraska was
8 going to take action. That did happen on Monday.
9 Nebraska informed LandAmerica that it was going to seek
10 an order from a court in Lancaster County, Nebraska, for
11 rehabilitation, and there is a hearing at 2:30 today in
12 order to obtain an order of rehabilitation.

13 At the same time, the company did not give
14 up. They continued to pursue discussions with Fidelity
15 and any other party that would be entrusted in either
16 using capital or acquiring assets; and a new deal, which
17 was done, as you can imagine, all day and all night
18 since Friday, has been structured and last night was
19 signed. And that is for Fidelity to acquire the stock
20 in the two regulated subsidiaries, effectively acquire
21 the stock of the underwriting businesses, which are
22 wholly owned subsidiaries of LSG, the debtor, one of
23 debtors filed today.

24 The sale and the ability to effectuate that
25 sale, is not only the best hope; it's probably the only

1 hope. All the doors have been knocked on. This is not
2 a good market for getting liquidity. There aren't
3 bridge loans out there in great supply, and other
4 players in this state from the largest to the fourth
5 best six in this business either don't have interest or
6 don't have access to liquidity, they don't have
7 themselves the financial wherewithal to move fast enough
8 to keep the relationship and the trust in place so that
9 by the time the deal got done it was actually worth
10 anything.

11 Fidelity, having been in here and being the
12 party that was going to be the subject of this merger,
13 they have done all their home work. They have the
14 financial wherewithal. It would be an absolute home
15 run. And the sale agreement for the stock of the
16 underwriting considered that I mentioned was signed up
17 last night, and just to give you a general sense of what
18 that deal is, although we are certainly not asking for
19 approval of that today, they are going to purchase the
20 shares of the underwriting company. The shares would be
21 free and clear, obviously, of any encumbrances. And the
22 consideration for that would be 298 million dollars,
23 which would go to LSG in cash. They would also assume
24 approximately 150 million dollars in inter-company
25 obligation that are owed by the parent LSG and its

1 non-debtor subsidiary, other than obviously the
2 underwriting subsidiaries themselves. They are also
3 going to assume approximately 45 million dollars in
4 deferred compensation liabilities, and some other
5 employee related liabilities. And then a number of
6 contracts and licenses and leases and so forth. One
7 hundred percent of the employees relating to the
8 LandAmerica enterprise are at Lawyers Title, which is
9 the regulated underwriting subsidiary, which is a wholly
10 owned stock. LSG does not, from its W2 technical
11 protected, neither any other entity in the enterprise
12 employ anyone. So when we talk about the ten thousand
13 some odd employees at issue here, this is right in the
14 heart of that transaction. LSG does have a pension
15 plan. One of the requirements for this was that some
16 proceeds of sale be allocated and applied to deal with
17 any underfunding that may be determined. As of the last
18 public report, the pension was funded or pretty close.
19 It wasn't dried up dramatically under water. Actually
20 actuarial values change every day in this market; that,
21 I'm certain, that is a piece of this deal. There is
22 also, when you get Transition Services Agreement,
23 because any enterprise where they operate as a whole,
24 there are things where there are disconnects between
25 assets and liabilities and services that go back and

1 forth. There is no condition into this agreement that
2 says if X percent of revenue goes away, we have a walk
3 away. There is no closing condition that says if, you
4 know, these number of title policies aren't written, we
5 get to terminate. This deal, as it fully states, as a
6 deal of this type, can be obviously subject to
7 Bankruptcy Court approval. Obviously it's also subject
8 to HSR, and so there are, that we also obviously join
9 with Nebraska, because Nebraska has a lot of say in this
10 as well. Nebraska negotiated hand in hand in the last
11 couple of weeks. Nebraska is very familiar with all of
12 the terms and thus far has indicated that it likes this
13 transaction and realizes that this is a good outcome for
14 policy holders in Nebraska, and is in favor of it.

15 Because this is the ultimate melting ice
16 cube, one of the things we will talk about when we
17 actually go through the agenda, is we are going to ask
18 Your Honor to approve the sale, and we are hoping to
19 have an expedited time frame, because there are so many
20 moving pieces that are such incredibly fragile dynamics,
21 in order to approve this, we are hoping to be back
22 before Your Honor on or before December 11th, sometime
23 that we can work with Your Honor's schedule to seek
24 approval of this sale.

25 This has been marketed extensively, and we

1 don't believe that there is anyone else out there. This
2 is not a stalking horse, no formal auction, because
3 those protections we feel are effectively moot because
4 there is no one else that could come in on this time
5 frame and could effectuate a similar transaction.

6 Then there is the relief and of the relief
7 that we are seeking today, there are obviously a number
8 of administrative matters, and then there are really
9 only two types of substantive relief that we are
10 seeking. One relief is cash management bank account,
11 and handled separately for the 1031 than it is for the
12 rest, for the LSG entities, and the enterprise that
13 SunTrust cash management represent, and then we have an
14 employee related motion, as well as just a scheduling
15 aspect of asking Your Honor to be expedited relief on
16 this sale.

17 If Your Honor wants me to go by the agenda
18 and go through the more administrative type motions, one
19 by one, I can do it; if you want me to go in order and
20 talk about the bigger picture substantive if you prefer,
21 however Your Honor wishes to proceed.

22 THE COURT: You can proceed in the manner in which
23 you feel most comfortable. Fine with me. I would like
24 to take them up one at a time in case there is anybody
25 who has an objection and wants to speak to them as

1 opposed to taking them up cumulatively.

2 MS. STRICKLAND: Certainly. Would you like a
3 presentation on everything, or when it comes to joint
4 administration, do you want to let me know if you want
5 to hear from me or not.

6 THE COURT: You can just go through. Some of them
7 will be very quick and others will take some time. I
8 have read all of your papers.

9 MS. STRICKLAND: Okay. So it would make sense to
10 go in order then. The first is the expedited hearing
11 motion under Section 105. I don't know whether Your
12 Honor wants to hear anything --

13 THE COURT: That motion is granted.

14 MS. STRICKLAND: Thank you, Your Honor. The
15 second is the pro hac vice motion. The third is the
16 joint administration motion. There are certain elements
17 of this that because they are, there is very different
18 relief, for example, cash management for the 1031 than
19 for that, that substantively we will be seeking
20 different things, but over whelmingly we want it to be
21 joint administered.

22 THE COURT: Does any party oppose the joint
23 administration of these estates?

24 MR. AUSTIN: Your Honor, this is Jess Austin, I'm
25 counsel to SunTrust Bank. I'm from the law firm of

1 Paul, Hastings, Janofsky & Walker. We don't oppose a
2 joint administration of the estate; but I certainly want
3 it to be very clear that it is joint administration
4 only, not any concept of actual consolidation of these
5 cases for substantive purposes. Other than making that
6 comment on the record, we don't oppose joint
7 administration at this time.

8 MS. STRICKLAND: That is all we are seeking is
9 pure administration.

10 THE COURT: That is what I understood you were
11 seeking, just administratively, consolidating for joint
12 administration purposes.

13 MR. AUSTIN: We appreciate, Your Honor. I think
14 that counsel for the debtors would probably acknowledge
15 that a lot of us have been moving in real time relative
16 to reviewing the papers this morning, besides the Court
17 has had the ability of looking at them and certainly
18 having more than some of us who are representing other
19 creditors' interest in the case have had to do at this
20 time.

21 MS. STRICKLAND: That is a very fair
22 representation. Since we haven't slept in about
23 seventy-two hours in drafting them, it would be hard for
24 anyone else to have read them. With that in mind, I
25 will certainly endeavor to point out anything where

1 parties in interest might wish to be heard, to the
2 extent that they themselves haven't had an opportunity
3 to look.

4 The next is cash management. I'm sorry,
5 case management which is effectively is, you know, just
6 for monthly omnibus hearings; no electronic service. I
7 don't know if Your Honor wishes me to elaborate.

8 THE COURT: No. I'm familiar with the proposed
9 order. Have you, do you have proposed omnibus dates
10 that you want to impose at this time?

11 MS. STRICKLAND: Well, if we are going to have the
12 sale hearing on December 11th, that might be a good
13 first start, to the extent that you are available.

14 MR. AUSTIN: At that point I just have to -- We
15 might want to hold that date we have to get a sale
16 motion through. I think we, on behalf of SunTrust, we
17 raise the point that that's fairly quick. We haven't
18 even had a chance to read the actual proposed purchase
19 agreement and try to understand what they may ask for at
20 least relative to bid procedures and general things on
21 that order.

22 THE COURT: Is that Mr. Austin speaking again?

23 MR. AUSTIN: Yes, it is, Your Honor. I apologize.
24 Jess Austin, for the record.

25 THE COURT: All right. Again, when speaking, if

1 you would identify yourself at the beginning so we have
2 a clear record of who is speaking.

3 MR. AUSTIN: I will did so. Thank you.

4 THE COURT: I think that that is a good
5 suggestion. Let's wait until the end of these hearings
6 today. We will set the omnibus hearing date at that
7 point, because we will all have a better idea of what we
8 are dealing with.

9 MS. STRICKLAND: Certainly, Your Honor.

10 THE COURT: As far as the administrative procedure
11 goes that you outlined in there, I have reviewed those,
12 and they are fine as far as the Court is concerned.
13 It's granted.

14 MS. STRICKLAND: The next relates to preparing a
15 list of creditors in lieu of the mailing matrix. We
16 will be submitting retention papers from another ***
17 that claim to be joint.

18 THE COURT: That motion will be granted.

19 MS. STRICKLAND: Now I believe we are to the thick
20 of things. The next two motions relate to cash
21 management, and if I can just give an overview as to the
22 differences between them.

23 For the easier of the two, which is LES,
24 which is the 1031 Exchange Company, we have the
25 predicament that we have, which is we have cash, which

1 is property of LES. We certainly take the position that
2 that is property of LES. Some may certainly differ with
3 that. And we have the auction rate security. The
4 purpose of this is to do it in a methodic court
5 supervised way, where we don't prefer anyone, we don't
6 move it, we don't give it to anyone; that includes both
7 the cash and the securities. We just want to leave it
8 exactly where it is and not touch it until such time as
9 we figure out how it gets distributed in an equitable
10 manner. And there will obviously be the preliminary
11 question of is it property of the estate? That said,
12 that cash management motion and performance of those
13 orders relate to, we would like permission to use the
14 existing bank account that the money is in. Leave them
15 exactly where they are without closing accounts, opening
16 accounts and putting them in the name of the debtor in
17 possession. That is not, we want permission to touch
18 it, move it, distribute it, et cetera. That we want to
19 stay the status quo. That's effectively that motion.

20 The LSG parent is a much more complicated
21 situation. And for that, I think it would be helpful to
22 look at the schematic of the cash management. And I
23 certainly apologize to those on the phone, but I will do
24 my best to also narrate along. If any approach, and it
25 is up to Your Honor.

1 THE COURT: The one that is attached to your
2 papers is a little too difficult to read.

3 MS. STRICKLAND: And this is in color, which
4 always makes things at least more inviting. Anyone here
5 wants one, I will hand them out.

6 NOTE: Several pages are handed to people in the
7 courtroom.

8 MS. STRICKLAND: So, like a lot of centralized
9 cash management systems, we have one system effectively
10 for the entire enterprise. And the name of the entity
11 that maintains an account has little to no bearing on
12 which entity cash is in it, and which entity
13 disbursements are made from it. All of that is done not
14 based on this is my bank account, that is his or her
15 bank account, this is the cousin's bank account, but by
16 a cost entered coding method, where all transactions
17 both in and out of the system are linked with a code.
18 Sometimes that code corresponds to a legal entity.
19 Sometimes it's a subset of a legal entity. But every
20 single dollar in and out is tracked, both inter-company
21 and external, and certain expenses are allocated,
22 obviously, so to the extent that any expense represents
23 something that covers more than one legal entity, there
24 will be multiple cost intercodes and an allegation
25 associated with it.

1 On the left-hand side of this chart is
2 green, and green is incoming money. The incoming money,
3 as we said at the outset, ninety percent of the revenue
4 of this enterprise relates to the underwriting business.
5 So while the money is coming in here, and the vast
6 majority of it is non-debtor. The only debtors we have
7 here are holding companies and the 1031 Exchange, which
8 is not within the system. All of the accounts, with
9 exception of some of them, you will note that the legal
10 entity on the right hand side of the list of the
11 accounts says LSG. LSG is the parent entity, so its
12 name and tax ID number is on the account; but if you
13 look at what this represents, it represents revenue of
14 underwriters. This is the money of the business that we
15 are seeking to sell from Fidelity. Our bank account,
16 for the most part, are maintained at lenders within our
17 revolving credit facility syndicate. Those lenders, but
18 for certain circumstances, are unsecured by the
19 document. However, as we all recognize, when there is
20 cash in somebody's bank account, they have the right to
21 argue that they have a possessory lien on the cash in
22 that account, and to preserve their right, we understand
23 that there has been a freeze placed on the funds of
24 LandAmerica, or more appropriately, the funds that
25 belong to the underwriters that are maintained within

1 these accounts.

2 This is the most immediate fluid situation.
3 It's literally unfolding in the matter of the last
4 couple of hours. So we don't have a neat and package
5 solution. We haven't had the opportunity to completely
6 work out with the lender how it is we propose to do it.
7 What I would propose is that we make a proposal, parties
8 have an opportunity to be heard, and we see where we
9 are.

10 So the green is incoming money into these
11 deposit accounts. Money comes in Monday through Friday
12 into those deposit accounts. It's not maintained there.
13 From there it is swept into concentration accounts. The
14 company has a couple of concentration accounts. The one
15 that is going to be primarily the focus of this, because
16 it's the only one that has an issue, is the big red one
17 in the middle, because that's the SunTrust Bank. And
18 SunTrust is our agent under our credit facility. From
19 there our money is maintained, and that's the big bank
20 for the whole enterprise. And money goes out from there
21 into blue as needed to fund specific disbursement
22 accounts. And you may be able to see, although it's
23 hard with a color copy, the majority of those accounts
24 are also maintained by the LSG debtor and its tax ID
25 number; but the cash in and out of that system is

1 largely not LSG and holding company don't ***.

2 As of the opening bell this morning, our
3 understanding and these are real ball park numbers, that
4 we are not seeking to bind anyone to, and we ourselves
5 are not even sure of the exact numbers; but just to give
6 a fact. That in the green account of money that comes
7 in every single day from our field, from the field, we
8 think there is, call it, three to four million dollars
9 sitting there that were the lenders to assert a
10 possessory lien. That possessory lien, that's how much
11 would be wrapped up there. In the red account, in the
12 middle, we think we have got about the same amount.
13 Another three-and-a-half. So collectively between the
14 two of them we are dealing with seven million dollars.

15 In the blue side of the house, we have,
16 these are zero balance accounts that are only funded to
17 just send money out the door. But, as luck would have
18 it, today is payroll day, and in that account you know
19 that as of yesterday, give or take 22 -- 23 million
20 dollars, which represents the money of the unregulated
21 subsidiary employees sitting in trust in that account,
22 and Bank of America, another entity that is in our
23 lending syndicate, was there. We believe that not all
24 of that money is there as of the time the petition was
25 filed, because depending on who you represent, either

1 lucky or not lucky, it's funded largely by direct
2 deposit which went out already. So we are not sure
3 exactly how much is in there, but it's somewhere between
4 five million dollars and to twenty-three million dollars
5 that is in the system.

6 We understand, and would not ask Your Honor
7 to come in and run rough shod over banks and curtail
8 rights. Certainly not a no notice which we would be
9 doing if we asked. What our proposal is, and we have
10 had a little bit of an opportunity to talk to some but
11 not all of the lenders, and to be honest I'm not even
12 sure that all of the relevant lenders that are involved
13 are on the phone. Do we have anyone representing Bank
14 of America on the phone?

15 MR. MARTIN: Yes. You have Alan Martin, with
16 Sheppard Mullin, outside counsel for Bank of America,
17 and Eric Sekee an outside counsel for Bank of America.

18 MS. STRICKLAND: Just so they can hear us while we
19 talk about them. Our proposal is that we take a
20 snapshot of where we are when, at opening bell today.
21 And that we say whatever the number is, maybe 3.5, maybe
22 5, whatever it is in these lender accounts, and we
23 preserve everybody's rights; that's the bench mark. And
24 we are not going to concede that they are secured. We
25 are not going to concede that they are not secured;

1 whatever rights they have, they have. Whatever defenses
2 we have, we have. But that's the cash that is actually
3 sitting there. On top of it, there are all sorts of
4 checks and books. And because LSG, the parent entity,
5 is the payor, and the bank administers the cash
6 management system, these are all going to be on LSG
7 checks. If one hundred percent of those checks get
8 bounced, we have a major problem in preserving the value
9 of the underwriter, and because ninety percent of the
10 revenue comes from the underwriters, probably ninety
11 percent of the disbursements also relates to the
12 underwriters, if not more. So the preservation of that
13 business and thus the preservation of the value of the
14 LSG estate is absolutely critical that the banks not
15 just say I don't know what that is. I don't know which
16 debtor it is, or whose money it is. Boy, I'm bouncing
17 it. Instead, we certainly understand that they have a
18 predicament of their own; what we would propose is that
19 the bank hold all of the checks and that on a daily
20 basis we, with them, deal with a daily report, and we
21 review the checks that are being presented on any given
22 day, and we separate them into three categories. The
23 first category is that's a check that is written on the
24 account of a non-debtor. And to the extent we have cash
25 in the system, other than the bench mark where we are as

1 of the closing bell, because one of the things we are
2 going to ask for is to be able to continue to use the
3 system without enhancing the argument that every new
4 dollar that comes in is also subject to a possessory.
5 So for non-debtor checks, which happen for
6 administrative convenience purposes to be written on the
7 account of LSG, we would like those, when we say yes,
8 this relates to Lawyers Title, please clear the check,
9 we would like that to be cleared.

10 Where it is a debtor or LSG check, that
11 will fall into two categories. Category one is that
12 prepetition that we are not able to pay. And Category
13 two is it's pre-petition, but it's the subject of an
14 order of Your Honor, and at that point we would ask for
15 authority for that check also to be honored. We may
16 have to object to things that we issued, but for the
17 most part to avoid a wholesale bouncing of every single
18 thing we have got out of the system, which could be
19 thousands and thousands and thousands of checks, and
20 these are not the checks to the landlord. These are
21 checks to policy holders on account of claims, which, as
22 you can imagine, to be a significant disruption not just
23 to this enterprise but to a lot of folks out there as
24 well.

25 So I think it is, and I will certainly let

1 counsel for the lenders be heard as to all of this, I
2 think it is a different situation for the plain old
3 concentration account and the plain old deposit account.
4 That is money, that is money of, certainly is money that
5 was put in by non-debtors but a fitting analogy account
6 and we understand the position they are going to take.
7 We will take a contrary position. Whatever those
8 amounts are we can sort it out at a time when people
9 have had sleep, notice, and Your Honor has had an
10 opportunity to fully review what I assume will be papers
11 on both sides.

12 The payroll account we think is different.
13 One hundred percent of the employees, with no exception
14 that I'm aware of, are at Lawyers Title. Every single
15 W2 is a domestic operation is at Lawyers Title, a
16 non-debtor underwriter. All of the wages that are being
17 paid are those employees' payroll. That money, we
18 believe, is not property of the estate, and that money
19 has been spent, having already gone out in direct
20 deposit we think should go out the door. That
21 contemplates subject to whatever Bank of America has to
22 say about that. But that's different from the let's
23 take a snapshot. That's the bench mark. And from here
24 on out any new dollar that comes into the system in
25 excess of that, we would have the ability to use and

1 funnel through the system without the single hope of it
2 getting trapped. Now, because this is an entity that
3 does not, but for these possessory lien assertions has a
4 lot of encumbered, has a lot of secured debt. This is
5 an enterprise that has a fair amount of unencumbered
6 assets. Obviously, we have no intention of offering up
7 anybody to assets that are being offered to Fidelity as
8 part of the sale. So the stock and its subsidiaries
9 that are the underwriters is not in play. Because
10 that's the end game, how we pull this rabbit out of the
11 hat.

12 What is, however, not part of that
13 transaction, and there are valuable assets, there are
14 stock in other subsidiaries, including Centennial Bank
15 *** overlay and things of that nature, but there are
16 other subsidiaries that are not part of the Fidelity
17 transaction that are not regulated by State Department
18 of Insurance that we are estimating are worth over one
19 hundred million dollars. So to the extent we get to the
20 point where we are talking about adequate protection and
21 replacement liens, we have the ability to negotiate and
22 to deal with that if there is, if it is demonstrated and
23 Your Honor holds that in fact if it's your position that
24 is created this morning by virtue of possession. And
25 obviously we suggest that any replacement lien be

1 limited to the diminution of value of whatever
2 collateral they have, and we get there if the cash that
3 they are holding in that snapshot we want to use for
4 operation.

5 So that's where we are. That was a lot.
6 So I think I will let other folks be heard on that
7 particular proposal, unless Your Honor has questions.

8 THE COURT: Does any party wish to be heard in
9 connection with the proposal made by counsel this
10 morning?

11 MR. AUSTIN: Yes. Yes, Your Honor. Again this is
12 Jess Austin on behalf of SunTrust bank.

13 THE COURT: All right. Thank you, Mr. Austin.
14 Please proceed.

15 MR. AUSTIN: All right. Thank you, Your Honor.
16 To further clarify, Your Honor, I noted that we
17 represent SunTrust Bank. SunTrust Bank is the agent
18 bank on what was a 150 million dollar revolving credit
19 facility to LandAmerica Financial Group, Incorporated,
20 obviously one of the debtors. That facility, as a
21 result of today's bankruptcy, at the bankruptcy filing
22 had a, the commitment under that facility has been
23 automatically refused. There was an unused 50 million
24 dollars on that facility, has been reduced to 100
25 million dollars. So our client, relative to the loan

1 document, have a claim, unsecured claim against the
2 senior wholesale, if you will, of approximately
3 100 million dollars. SunTrust, as Ms. Strickland noted,
4 is one of the many depository banks, million account,
5 for the, for the LandAmerica Group. The proposal that
6 Ms. Strickland presented is, at least on its face,
7 attractive. I think the place where we have an issue is
8 figuring out exactly what may well be, how much may be
9 in the account. And while I appreciate Ms. Strickland's
10 concept, as she put it, I believe the quote was that LSG
11 had foreclosed administrative convenience purposes,
12 close quote, then the collecting bank for all of the
13 various subsidiary entities, including the underwriters,
14 unfortunately as we understand it, as relates to the LSG
15 and those underwriters, the extent those underwriters
16 have deposited dollars in an account, where the only tax
17 ID on those accounts is LSG, I think that it may well
18 create a serious question whether, and to what extent,
19 that cash is now property of the debtor's estate and
20 those underwriters are no different than my client's
21 interest relative to being unsecured creditors of this
22 debtor. I understand, also, that the extent that there
23 is impairment of those underwriters' ability to access
24 whatever cash they have been paying in right now may
25 well have an impact on the value. Unfortunately, coming

1 into this case with only no more than three hours
2 notice, presents a, just now asked for us to say just
3 open up these bank accounts and let the cash flow as it
4 has and we will give you a lien, whatever it may be, is
5 somewhat taking things on, certainly on faith.

6 We recognize we also do not want to impair
7 the value of the regulated business and in any way
8 reduce what the value of what anyone else may offer.

9 But I raise this as an issue that to point out that it's
10 not quite as simple as, and I don't mean to belittle Ms.
11 Strickland's presentation, but it's not quite as simple
12 as, well, we just happened to put the money in the LSG
13 account, because that was convenient for us. It's
14 really our money.

15 With respect to the concept of, I frankly
16 do not have the authorization from my client to accede
17 to her proposal, her request. We need to be in a
18 position to analyze these accounts, figure out is it
19 only 6 million dollars, or 7, or do you include all of
20 the dollars that are flowing that may be there, that
21 they would allocate, they assert, is cash that goes to
22 the underwriters.

23 MS. STRICKLAND: If I could --

24 MR. AUSTIN: I frankly don't know, given the fact
25 that we were notified obviously this morning. We put a

1 lock down on the account, relative to the operational
2 process, and are trying to sort all of that stuff out at
3 this time.

4 MS. STRICKLAND: If I can just make one
5 clarification. I don't mean to interrupt you. Just to
6 clear it up. This snapshot that I'm talking about, I am
7 not suggesting that today we figure out what that is
8 allocable to LSG is in your bank. If you have in your
9 bank 6 million dollars in the aggregate, and we are
10 going to take the position that, well, that 6 million
11 dollars, some of it is the underwriters, some of it is
12 LSG's, some of it is my cousin Louie's, let's figure it
13 out and figure out where the reduction anywhere you go.
14 That is not the analysis in terms of Step One. I do
15 believe that nothing is as simple as a lawyer standing
16 up and saying it's so. That snapshot we are saying is
17 how much cash, period, is in your bank account? That is
18 the LSG's account with a tax ID number that is at
19 SunTrust. What is the balance of it right now. Not
20 whose money is it, because I think we clearly cannot do
21 that today. What we are talking about is, okay, we
22 figured out that number which I'm hoping can be
23 determined in the same way that anyone can go on line
24 and figure out what their balance is in their own
25 personal checking account. But today that's 6 million

1 dollars; but tomorrow new money comes in, we are not
2 looking to have a 6.2 or 6.3. I'm not suggesting --

3 MR. AUSTIN: I'm not suggesting that, either, Your
4 Honor. We are asserting whatever the amount is today,
5 the defendant's money that is coming in tomorrow we
6 recognize that that may well be, is not property that
7 would be subject to our possessory cut off right.
8 Whatever our possessory cut off right is, it's frozen in
9 time as to what it exists today. We recognize that.

10 With respect to the second part of the
11 puzzle, and I do appreciate the clarification from Ms.
12 Strickland, I simply don't know of our client's ability
13 to be able to do a daily report, pull a daily report and
14 have conference with the debtor to determine what checks
15 get paid, and what do not otherwise get paid. I cannot
16 speak to that. I would have to go back and check with
17 them whether that is even, how feasible that is, given
18 the amount of money that has run through this company
19 and these accounts, and the number of accounts as I
20 understand it to be out there. That one I just have to
21 advise the Court that we just simply don't know whether
22 or not that is feasible. We have to get back to the
23 Court and to Ms. Strickland on that point.

24 With respect to the payroll, the payroll
25 account, I believe are not with SunTrust. I believe

1 they are with Bank of America. And I know its counsel
2 is on the line as to whether it has anything to speak to
3 that or not.

4 I guess I end up, Your Honor, by saying we
5 would like to work with the debtor. I think the problem
6 we are going to have is very, as much as a logistical
7 issue as anything today, given the fact that it is now
8 early afternoon on the day before Thanksgiving, and our
9 ability to work through this process may simply be
10 problematic, given the time that the debtor didn't
11 necessarily have the time, given the time where we are.

12 MS. STRICKLAND: My family certainly wishes for
13 other timing, but the good thing about Thanksgiving is
14 that everything is going to be closed. And also the
15 other positive is that LSG is, as a business, closed on
16 Friday; so it does buy us some time.

17 MR. AUSTIN: Then I would, the question that I
18 have is that from that standpoint is this something new?
19 With that representation that we could use Friday to
20 work through this at least as relates to the collection,
21 based on this person's account, putting aside the issue
22 associated with payroll account.

23 MS. STRICKLAND: Your Honor, I don't mean to have
24 a dialogue, I know it is not appropriate under usual
25 situations, but what we would propose so as to make sure

1 that at least the issue that would grow, is that the
2 snapshot has to be today, because this is the day that
3 is open for business and there is going to continue to
4 be things that are presented, even though Friday is the
5 day that maybe they are not accepting new policies and
6 there is still business as usual; but I think the
7 elements that we can't wait for, at least that we would
8 propose that we not wait for, let's take a picture, how
9 much money is it in the aggregate, and also we would ask
10 Your Honor that there be an order both that that picture
11 is the picture that we all have to work out and
12 negotiate and deal with. But that any new dollar that
13 comes in after that picture, has the ability to move
14 through the system, regardless of whose dollar it is.
15 Even if that's an LSG dollar that comes in tomorrow
16 morning, we would like to be able to safely navigate
17 through with a pretty possibly cash management system,
18 that we are not going to be able to replicate without
19 messing up the business, and that that new dollar, which
20 of course is fungible, the old one, but we can figure
21 out with the bench mark be able to be moving through the
22 system. And the other thing that we need is not to work
23 out today, the eve of Thanksgiving, exactly the mechanic
24 of how the check being presented can be worked through,
25 but we ask that they not be bounced. It's okay for them

1 to be held, but we ask that they actually not be
2 rejected for payment, and that way, you know, I'm
3 standing here like a *** do not have the ability to say
4 exactly what the logistics that my client is, either, to
5 work that out, but I'm confident that if we don't have a
6 rejection situation that in the coming days we can
7 figure out something that works for both sides.

8 MR. AUSTIN: On that last point, Your Honor, again
9 for the record, Jess Austin, as we might say that horse
10 may be out of the barn relative to factual banks put a
11 freeze on the account. I don't know. I don't know
12 whether or not they just hold checks or whether they say
13 they bounce them and send them back. I have seen in
14 both circumstances in bankruptcy cases, and I can't
15 answer that question at the moment.

16 MS. STRICKLAND: Right. Whatever horses are still
17 in the barn, we would like them to stay there.

18 MR. AUSTIN: I understand.

19 MR. MARTIN: This is Alan Martin from Sheppard
20 Mullin, Orange County, outside counsel for Bank of
21 America. I'm also joined on the line on separate phone
22 by Eric Sekee, who is in house counsel for Bank of
23 America. We apologize, Your Honor, for tag teaming, but
24 we dealing with this matter. Obviously we haven't had
25 an opportunity to receive and review the proposed order

1 and other statistics. However, I will turn the podium
2 over, if you will, to Mr. Sekee. He can talk to the
3 logistics, we certainly want to cooperate, and we want
4 it to work for all. We see a logistical issue with
5 regard to counsel, that is debtor's counsel's proposal,
6 on the daily status check and manually handling the
7 various checks. And I will now turn it over to Mr.
8 Sekee to describe how the problem comes up.

9 MR. SEKKEE: Well, yes, thank you, Alan. Yes. Our
10 standard procedure is when we freeze accounts on account
11 of a bankruptcy, is that the account, the checks are
12 returned. They are not just held. And that's because
13 the cases, especially where there are hundreds if not
14 possibly thousands of checks involved, our staff needs
15 the time to return checks by the statutory deadlines
16 after which they are no longer returnable.

17 MS. STRICKLAND: For Bank of America ...

18 MR. SEKKEE: Especially in this situation on this
19 date is probably not feasible to do anything but return
20 the checks.

21 MS. STRICKLAND: For Bank of America it's the same
22 situation, and perhaps, if I can continue to rudely
23 interrupt for one more moment, in Bank of America there
24 is one bank account that we are dealing with; and that's
25 the payroll account. There are other Bank of America

1 accounts but they are disbursement accounts that are
2 zero balance accounts that we will have to work through
3 that other issue; but one of the primary agents, payroll
4 agent today is the fact that one hundred percent of the
5 money in that one specific Bank of America payroll
6 account is ElTech. ElTech is what we call Lawyers
7 Title, are Lawyers Title wages. There is nothing else
8 in there. So for that account, the immediate relief
9 that we are seeking is the determination that that is
10 not property of the estate, and to the extent those
11 checks have been mechanically bounced, we can recut
12 them. We know who our employees are and how much they
13 make and the direct deposit obviously. But just to
14 honor that one piece of it, and then obviously with
15 respect to other accounts that Bank of America may have
16 in terms of them being on disbursement accounts, or I
17 think mostly what Bank of America has is incoming
18 deposits. So for that, it's a snapshot and not much
19 beyond that. In green we are talking about snapshot.
20 In red we are talking about snapshot. In blue is the
21 disbursement side of the house, and that's where we are
22 talking about this whole issue of checks back and forth.
23 And as I scan down the list, there are one or two VA
24 accounts. So for that whole mechanic of do we honor the
25 check or don't we honor the check, again in the relief

1 we are seeking hold it, to the extent the horse hasn't
2 left the barn, you can't stop automatic systems, we
3 understand that.

4 THE COURT: You are speaking just specifically the
5 payroll account.

6 MS. STRICKLAND: For the payroll account, which is
7 that right midway down the list that it starts with the
8 word zero --

9 THE COURT: I see it.

10 MS. STRICKLAND: That, a hundred percent of the
11 money in there right now for today's payroll are Lawyers
12 Title employees, Lawyers Title money, to pay payroll.
13 That is not a commingled what do we do, how do we figure
14 out whether it is the property of the estate or not.
15 That is not property of the estate, and it is obviously
16 pretty important to the employees who are waiting for
17 their checks. So for that, to the extent it's down, we
18 would like the authority to reissue it and deal with
19 that and not looking to have Bank of America suspend its
20 automated system, whatever it is; but we do need the
21 money go out for payroll so people don't have no money
22 to buy their turkey.

23 THE COURT: All right. Mr. Martin, do wish to
24 reply to that?

25 MR. MARTIN: I will ask Mr. Sekee to speak to that

1 point.

2 MR. SEKEE: The way I understand the request is
3 that we simply open up the payroll account and allow it
4 to process normally. I believe we have put a block on
5 the account within the last hour or two, but that block
6 could be taken off by the end of this business day, as I
7 understand it, if that is the order of the Court, the
8 agreement of the parties, sir. Is that what is being
9 asked? In other words, is that the only relief that you
10 need immediately today from Bank of America. Is that
11 right?

12 MS. STRICKLAND: Other than to the extent you have
13 the ability not to bounce checks; otherwise presented to
14 Bank of America, we ask that it not be, and to the
15 extent that there is an administrative step that can be
16 taken by Bank of America to hold checks rather than,
17 rather than bounce them on the other account, that that
18 step be taken. But, you know, I am not an expert in the
19 ways of those banking logistics, and if it's impossible,
20 then it's impossible; but if it's possible, we would
21 also seek that relief today.

22 MR. SEKEE: I believe it is feasible for us to do
23 that. As I say, it's an on and off switch that we can
24 throw separately for various accounts; but we have
25 systems for meeting statutory deadlines for returning

1 items that really don't have much give in them. So it
2 has to be either an open account or block account. And
3 a block account will result in items being returned;
4 but, as you have already pointed out, the checks can be
5 recut on those accounts.

6 MS. STRICKLAND: Right. And that is a different
7 issue for us in terms of payroll where it is a pretty
8 discreet issue then, I'm going to make this number up,
9 150 thousand dollars, you know different individual
10 checks that are going to policy holders and you know
11 everybody else in the system. So, I don't know whether
12 it's possible for a short period of time to, on the
13 disbursement account. But again, the accounts where the
14 freeze issue is, that is going to be in all three
15 segments; but because the blue is zero, those are zero
16 balance accounts, they are only funded for what the
17 checks are.

18 THE COURT: As I see your chart, there are only
19 two accounts I see is Bank of America. One is the
20 payroll account, which you say is property of the
21 estate. The second account is something designated as
22 tax and flood disbursements. I don't know what that
23 refers to. That appears also to be Bank of America.
24 Are those the only two accounts that you have at Bank of
25 America?

1 MS. STRICKLAND: That's what I believe on the
2 disbursement side. On the depository side we have an
3 additional accounts with Bank of America. But again,
4 when you are dealing with the deposit account, the only
5 issue is snapshot.

6 THE COURT: Right.

7 MS. STRICKLAND: I'm looking at the CFO to see if
8 that is accurate. You know, there are other accounts
9 here, for example, that one you just referenced, tax and
10 flood. That entire account relates to a specific
11 subsidiary that is a non-debtor. The biggest issue is
12 where you have things like the big red one in the
13 middle. We know that that 3.5 contains all different
14 kinds of money. That is not, you know, like this
15 discreet, like this is Lawyers Title payroll. It may be
16 the case that, you know, tax and flood, which is what
17 Mr. Evans just said, that's entirely a non-debtor's
18 subsidiary disbursement account.

19 So, I don't know how Your Honor wishes to
20 proceed. But I guess --

21 THE COURT: It's under the subject, I ask, what
22 you are asking me to do, and which motion are we really
23 under? Do we want to take up the employee situation,
24 discreet, separate and apart from the overall
25 authorization to continue the use of your centralized

1 cash management, or --

2 MS. STRICKLAND: They are separate. Those are
3 separate pleadings. In terms of the centralized cash
4 management and the form of the proposed order is all
5 new. We would need to practice for this, because this
6 happened very recently. The order that we are asking
7 for is that Your Honor order that there be a
8 determination today, as of the opening of business, of
9 how much money in the aggregate, regardless of who
10 claims it's their money or not their money; at the
11 opening of business today, that there be an accounting
12 of each individual lender account what are the dollars
13 that are in there. And that, to the extent that those
14 accounts have any dollars in excess of that amount, that
15 those dollars, to the extent that the debtors request
16 for that money to be moved, used for operations
17 disbursed, not have any effect by the lenders. So, to
18 the extent they have a freeze of 3.5, and I'm making
19 this up, but when we woke up this morning, the
20 LandAmerica operating account had 3.5 million dollars in
21 it, and tomorrow there's a wire and it has \$3.6 million
22 dollars in it, we have one hundred thousand dollars that
23 Your Honor would order cannot be the subject of any
24 additional assertions of security, and can be used in
25 accordance with Your Honor's *** pre-petition things

1 that we are not allowed to, but we can use it for the
2 business, and it can be, it can safely travel through
3 any lender or non-lender account which is otherwise
4 legal without the ability for a lender to claim it as
5 additional collateral. So that's one order that we are
6 asking for right now. We understand that that order
7 will say that all rights are reserved, and all defenses
8 are reserved as to the snapshot fund, whose it is, what
9 it is, and what we can do with it. And we will
10 subsequently have to come in and deal with issues like
11 if it's theirs, what is the replacement and the
12 opportunities there.

13 The other order we would like is to the
14 extent possible for checks on these accounts not to be
15 honored, but not to be rejected. And I fully understand
16 that we can't make impossible things possible, but if
17 there are steps that can be taken that are commercially
18 reasonable steps, that those checks not be, not be
19 bounced, to give us the next, you know, couple of days
20 to figure out the system that works.

21 And with respect to the payroll account,
22 the payroll account we ask that it be unfrozen and that
23 the money be remitted in the ordinary course to the
24 employees of Lawyers Title. Those are the three things
25 we are seeking on this cash management issue.

1 THE COURT: As I heard you a little bit
2 differently earlier. I thought that you were proposing
3 to take the snapshot that you were talking about as of
4 today, which would be to the extent that there is an
5 offset right that exists at the time of filing. You
6 said whatever the aggregate of that amount is, that you
7 were proposing a replacement lien so that you could free
8 up all of the money to not interfere with your
9 operation. But --

10 MS. STRICKLAND: I would like to do that. I would
11 like to do that.

12 THE COURT: You indicated that you had a hundred
13 million dollars in unencumbered assets available to be
14 able to do that.

15 MS. STRICKLAND: Yes.

16 THE COURT: For the lenders protection. In that
17 way we can get beyond this today --

18 MS. STRICKLAND: Right.

19 THE COURT: -- for purposes of allowing business
20 to flow, but everybody's rights would be protected --

21 MS. STRICKLAND: Right.

22 THE COURT: -- until such time as the issues on
23 both sides --

24 MS. STRICKLAND: Right.

25 THE COURT: -- could be straightened out.

1 MS. STRICKLAND: Sure.

2 MR. AUSTIN: Your Honor, Jess Austin. If I could
3 ask a clarifying question, and then make a request in
4 connection with this proposal. My question is at what
5 time are we taking the snapshot? Is it at the opening
6 of business this morning, or is it at the time of the
7 Chapter 11 filing last night? I recognize that once
8 that snapshot is taken, we also do recognize that cash
9 back of that snapshot is not something that we would be
10 asserting our setoff rights on, but I wanted to just
11 make sure whatever the order is, we ought to make sure
12 what time that snapshot is taken so that we know
13 exactly how to measure things.

14 MS. STRICKLAND: We filed, after the close of
15 business, we filed these petitions at 1:20 a.m. in the
16 morning. So the suggestion that we would make is when
17 the banks opened for business this morning, what was in
18 it. So to that extent right now, somebody is putting
19 some money in it, but that wasn't the balance at the
20 opening of the day today. I think that's the clearest
21 way to determine the snapshot.

22 MR. AUSTIN: I don't have a problem with making
23 that snapshot at that time. But the request, the
24 additional request I have is that I obviously accept the
25 offer relative to a replacement lien on the unencumbered

1 asset. Not knowing completely what they are, I do know
2 obviously that there is, we have been involved with
3 this, with LandAmerica for some weeks ourselves. We are
4 aware that there is value, perceived value in the equity
5 interest in the bank, Centennial Bank, albeit with the
6 overlay that Ms. Strickland noted with respect to the
7 legatory issues there, the additional request for
8 protection is that if and to the extent there is
9 ultimately a completion of the sale to Fidelity or some
10 other party, we at least have a lien interest on the
11 amount of the proceeds received from that sale that
12 would equal whatever the snapshot amount is, until we
13 determine what the process, where we go from there.
14 Especially where the, not that we may necessarily
15 consent to it, but that the debtor is asking for a very
16 quick hearing to complete that sale to Fidelity, and
17 where, obviously, if you are allowing the debtor to use
18 cash, the best protection is replacement with cash; so
19 that we would ask that to be a replacement lien
20 availability, also.

21 MS. STRICKLAND: I understand. I believe that's a
22 perfectly reasonable request.

23 NOTE: Court and Ms. Strickland talk over top of
24 each other.

25 MS. STRICKLAND: --today, that can be used for the

1 value of whatever it is determined to be effectively
2 collateral. So to the extent that they --

3 THE COURT: Yes. I think everybody is in
4 agreement with you on that point.

5 Mr. Martin, did you need to weigh in on
6 this, as well?

7 MR. MARTIN: As to that issue just discussed, no,
8 because we are part of the bank group, and we join in
9 the comments that counsel before the Court.

10 As to the latter issue, that is payroll
11 versus non-payroll, Mr. Sekee can hop in if he
12 disagrees, I think that the Court directs us to unfreeze
13 those accounts, we can, Mr. Sekee can throw the switch
14 and do that fairly quickly and hopefully that can occur
15 today. That is certainly the plan if we get that
16 directive and the order of the Court.

17 As to the non-payroll account, as Mr. Sekee
18 indicated, we have no, it's not a lack of desire or
19 spirit, it's just a lack of feasibility to let that
20 happen. So I would not want the Court to think that is
21 something that we can actually do.

22 MR. AUSTIN: Again, Your Honor, Jess Austin. I
23 also don't know if, with respect to SunTrust, we could
24 just hold the check. Obviously we could do our best and
25 work through that operational issue. And also let me

1 clarify that when I made the request about money in
2 various accounts, taking a snapshot, I think that order,
3 as it may get entered, probably needs to be broader than
4 just SunTrust, if you will, because I know that I have
5 just recently been advised that there is one or two
6 other lenders in our lending group that may have some
7 account with the debtor. I don't know the nature of
8 those accounts, but they may fall into the same
9 category.

10 MS. STRICKLAND: Right. We know that is the case.
11 I believe Wachovia --

12 THE COURT: Citi Bank?

13 MS. STRICKLAND: Right. No, not Citi Bank. Citi
14 Bank is not in the syndicate. Just in terms of
15 liquidity of the estate we do have other concentration
16 accounts with Citi Bank where there are funds; so that
17 is good news.

18 But yes, we will be seeking that snapshot
19 order for any lender bank.

20 THE COURT: Any lender bank.

21 MS. STRICKLAND: Correct.

22 THE COURT: Okay.

23 MS. STRICKLAND: And as soon as possible to so
24 order the record on those components and then we can
25 work out the actual agreement. That would be ideal.

1 THE COURT: Very good. The Court will approve
2 that proposal. The Court will also order that the
3 payroll account be unblocked. It's not property of the
4 estate, so that we can get the employees at Lawyers
5 Title paid today. And then we will take that snapshot
6 and provide the replacement lien on unencumbered assets
7 which will then be substituted for proceeds realized
8 from the sale of the two subsidiaries until such time we
9 can work out everybody's right to the monies; otherwise,
10 might have been subject to a right of setoff debt.

11 MS. STRICKLAND: Thank you, Your Honor. That is
12 cash management for both. I don't know if Your Honor
13 wants to, wants me to address any more about the 1031
14 cash management, which is just, leave it exactly where
15 it is in its existing account.

16 THE COURT: I think the Court will approve that
17 one.

18 MR. WOLFE: Mr. Wolfe, representing a two party to
19 exchange agreement. We do have comments on that
20 feasibility.

21 THE COURT: As does the office of the U. S.
22 Trustee. Mr. Wolfe, did you say?

23 MR. WOLFE: Yes. Kelly, Bryan and Wolfe.

24 THE COURT: All right. I will let you speak to
25 that motion.

1 MR. WOLFE: Your Honor, I am Mr. Warren, counsel
2 for two entities Lubus Clark Land Company, Inc. and
3 Lubus Express Operating Company, Inc, which are two
4 parties with LES on exchange agreement. One of our two
5 clients is prepared to do a transaction with respect to
6 the replacement property within about seventy-two hours.
7 Actually three different days it should be ready. We
8 understand that our two clients, the two Lubus Clark
9 clients, the funds that they have transferred over to
10 the debtor are held in segregated accounts, and they are
11 in the name of our clients, we understand, associated
12 with the tax code name and taxpayer's identification
13 number. We believe that those are funds that are held
14 in trust by the debtor, and they are not property of the
15 estate. We understand from the debtor's motion that
16 there are a total of 450 customers, 50 of which are in a
17 situation like we are. And it was unclear to us what
18 the debtor intends to do with those debtors, the
19 segregated accounts. We don't have clarification that
20 the debtor considers our clients as being the owners of
21 the segregated accounts. The name of the taxpayer on
22 those, and we would like to get that. And then,
23 secondly, we would like to understand what the debtor
24 intends to do with respect to these contracts with the
25 taxpayers associated with the segregated accounts, given

1 that we have a transaction upcoming in a very short
2 period of time. We are actually, we have some concerns
3 about the order. The order seems to say that the, the
4 taxpayers, the motion is approved and the taxpayers, the
5 motion uses the term bank account with a lower case (b)
6 and a lower case (a). Which seems to imply that it
7 only applies to those bank accounts that contain
8 commingled funds; and so we just would want to be clear
9 that the order doesn't give the debtor questions to
10 start commingling the funds in the segregated accounts,
11 which is our clients' segregated accounts with the other
12 commingled funds. We don't want any trust that is
13 established as of the petition date diminished through
14 that process. We need to get those issues cleared up.
15 We need to make sure that the order is limited. And
16 with that, I will turn it back to the debtor.

17 MS. STRICKLAND: Sure. I think that would
18 certainly, part of, I think it's important to lay a
19 little mark for the record, Your Honor.

20 The 1031 is based on the exchange agreement
21 which are executory contracts. And 1031, the section of
22 the tax code, as well as the exchange agreement, are
23 very clear as to whose property it is, because the
24 entire purpose of the 1031 exchange is to do a like kind
25 of exchange in order to get the benefit of that section

1 of that safe harbor from being, you have to agree that
2 you are relinquishing title to the actual fund. If I
3 can give you an excerpt that illustrates that fund, the
4 exchange agreement provides that the customer shall have
5 no right, title or interest in or to the exchange funds,
6 or any earnings there on, and that customer shall have
7 no right, power, or option to demand, call for, or
8 retrieve, pledged funds, or otherwise receive the
9 benefit of any exchange funds, including interest,
10 except it depends when the balance of funds for sale and
11 exchange is effectuated.

12 During the time in between the sale and
13 purchase, that is our position entirely. Those funds
14 are entirely property of the estate.

15 There are two, there are a lot of
16 variations of exchange agreements, and there are some
17 differences, although that is the overall, that initial
18 characterization about whose property it is, is the same
19 in all of them. One of the big differences, to some
20 exchange agreements versus another, is where the
21 customer said I want the money that you are acquiring to
22 be kept in a segregated account. Not in a trust
23 account, because you can't hold money in trust and
24 satisfy 1031 of the Internal Revenue Code. Those things
25 are totally incompatible to one another. You can,

1 however say, and in those bank accounts that are
2 maintained in segregated funds, they are in the name of
3 Lube Express. They are LSG -- I'm sorry. Not LSG, they
4 are 1031 Exchange Entity bank accounts with that
5 entity's name and tax identification number, and then
6 they are called the Lube Express account. In every
7 instance where 1031 Exchange was contracted, obligated,
8 pursuant to the exchange agreement it takes one entity
9 or person's acquisition and put them in something that
10 wasn't commingled. They are there, and they are not
11 commingled, and we are not seeking to change that
12 arrangement at all. To the extent that Lube Express
13 sold proceeds in effect to an exchange company, and are
14 sitting in a Lube Express titled account, that is a 1031
15 Exchange company's money account, we are not moving it,
16 we are not mixing it. And that preserves the issue for,
17 I'm sorry, I don't know the attorney, Mr. Wolfe, to
18 later come in and say that's not property of the estate.
19 I can trace it. It's not commingled. Whatever argument
20 he can make, we want to preserve the status quo. But
21 what we are, are seeking, and we understand that to the
22 extent Mr. Wolfe's client has a position that those are
23 not funds of the estate, we are not saying, oh, well,
24 here's your money for your closing two days from now.
25 That wasn't the claim. We understand that is absolutely

1 a liability against the 1031 Exchange, that the hardship
2 is bad for that individual or entity; but that is the
3 position that these are property of the estate. To the
4 extent that there is legal characteristic about the
5 segregation in a separate 1031 Exchange account versus
6 the commingled 1031 Exchange account, which the vast
7 majority of the exchange agreements are in that ball
8 park; we are not seeking to change those legal
9 characteristics. But we are not looking to give what is
10 property, in our position, property of the 1031 Exchange
11 back to anyone on a preferred basis, because to an
12 extent it is all property of the estate, whether it's
13 one or two; not only are there exchange fund
14 counter-parties that are creditors, but there are other
15 creditors. And there obviously is a short fall with
16 respect to liquidity. The balance sheet of this entity
17 is okay. We have 201 million dollars in par value of
18 auction securities; whether or not today those are 201
19 million dollars in actual liquid cash is a different
20 issue. So there is a short fall, and the reason why we
21 (a) shut down this business and (b) filed for Chapter
22 11, is to stop the music and say now everybody has the
23 same exact right to get their equitable share. Whether
24 or not you are an exchange customer creditor, or whether
25 or not you are the law firm that, you know, did work for

1 this entity and you are owed a bill.

2 THE COURT: All right. I understand. Now, today
3 all you are asking for is to be able to continue to use
4 the existing bank accounts and business forms, and such
5 by way of this motion.

6 MS. STRICKLAND: That is correct. But those bank
7 accounts include bank accounts that are called
8 LandAmerica Exchange, Lube Express, and are segregated
9 funds. We are not going to mix anything or change
10 anything; but we also are not, if that closing is
11 tomorrow, for example, going to complete and perform on
12 the contract, if you will.

13 THE COURT: I understand. Mr. Wolfe, do you wish
14 to respond?

15 MR. WOLFE: Yes, Your Honor. My concern is that,
16 you know, we have heard from debtor's counsel that they
17 don't intend to move the funds out of the segregated
18 funds; but, you know, when we read the order that was
19 proposed, it seems to suggest that they are getting, you
20 know, unfettered relief to continue to use all their
21 bank accounts; even lower case bank account as defined
22 term bank account in the ordinary course. So I guess
23 what I would ask the Court is that with respect to the
24 segregated bank account, our two clients, that the
25 debtor be prohibited from moving the funds out of that,

1 those two accounts.

2 MS. STRICKLAND: We don't object to that. We are
3 not seeking to move the funds out of any account. And
4 we understand that damages may result. That there may
5 be additional damages that parties incur as a result of
6 the monies not being moved out and given to them. But,
7 we are not looking to move any account, commingled or
8 not commingled. All the funds exactly the same.

9 THE COURT: That is the Court's understanding.

10 MR. AUSTIN: Your Honor, Jess Austin. To make
11 sure I understand, too, in connection with the prior
12 motion on cash management, regarding LandAmerica, what
13 I'm taking away from you is that the debtor is asking
14 that all of the 1031s, the 1031 companies account just
15 be effectively frozen, staying in place.

16 MS. STRICKLAND: Yes.

17 MR. AUSTIN: They are asking to do that.

18 MS. STRICKLAND: That is correct. That entity,
19 those accounts, the exchange agreement proceeds that
20 were acquired --

21 MR. AUSTIN: Then the new proceeds coming into
22 those accounts, if I understand correct.

23 MS. STRICKLAND: There will be no new proceeds.
24 The business has been shut down. But those accounts are
25 not in the name of LSG, who is the obligor under the

1 revolving credit facility. 1031 assumes, is not an
2 obligor or a guarantor, so there shouldn't be any issue.
3 That's why those cash management motions are completely
4 separate, despite the administrative joint
5 administration, because there is no issue to work out,
6 from our perspective, with SunTrust Bank, America, or
7 anybody else about protecting their rights to argue
8 collateral, because that entity, that means that bank
9 account is a debtor but it's not their borrower.

10 MR. MARTIN: This is Alan Martin, counsel again
11 for Bank of America. I don't disagree with you, with
12 your observation; I just want to be clear. As to any
13 account which are escrow related as to 1031 Exchange
14 entity, you are requesting the Court, I just want this
15 to be clear, you are requesting that the Court freeze
16 all of those accounts to their current terms. Is that
17 right?

18 THE COURT: I didn't understand that you were
19 asking me to freeze the account. I thought the request
20 was to be able to use or maintain the existence of the
21 existing accounts; but they were not going to commingle
22 any of the accounts, designation of the account where
23 they have a segregated account.

24 MS. STRICKLAND: That's right. We are not looking
25 for any assistance from our lenders. We are not going

1 to do anything with the money. And if you want the
2 order to so order, that we, that we, the debtor, can't
3 do anything, but we don't need a freeze or anything like
4 that under 1031.

5 THE COURT: I'm not going to order a freeze; but I
6 do want the order to reflect that to the extent that
7 counsel segregated the account, that they stay that way.
8 And that there will be no monies transferred either into
9 or out of those segregated accounts. They will be
10 preserved for whatever rights anybody might want to
11 assert in the future with regard to those accounts. I
12 think that has been the thrust of Mr. Wolfe's issue.

13 MR. WOLFE: Thank you, Your Honor.

14 THE COURT: Now, the office of the U. S. Trustee
15 wants to weigh in on this. Mr. VanArsdale, if you will
16 please approach.

17 Stop just a moment to let the court
18 reporter change papers.

19 THE COURT: All right, Mr. VanArsdale. You may
20 proceed.

21 MR. VANARSDALE: Robert VanArsdale for the U. S.
22 Trustee, Your Honor. Also contained in the order
23 concerning cash management are references to a waiver,
24 such as 345.

25 THE COURT: Yes.

1 MR. VANARSDALE: To some extent the office of the
2 U. S. Trustee does not have a problem with that;
3 however, there are funds in banks, such as Wachovia,
4 such as SunTrust, such as Bank of America, with which
5 the office of the U. S. Trustee already has memoranda of
6 understanding concerning the pledging of collateral in
7 Chapter 11 depository accounts. This is not a burden
8 that is placed on the debtor. We have taken this role
9 on ourselves, so that those banks have agreed to pledge
10 collateral for funds that exceed \$100,000 or \$250,000,
11 whatever it is to date dollar limit on the insurance,
12 and pledge collateral. And the only purpose of it is to
13 protect the assets of the debtor and the creditors of
14 the debtor in the case of bank failure.

15 For years we have been doing this without
16 anybody asking us to waive it, and now we get into a
17 context in the economics when, you know, bank failures
18 is not something that happened a long time ago. This is
19 something that could happen at any time. But I would
20 not like to see the order written in terms of a blanket
21 waiver of the requirements of 345. When we can and do
22 on a daily basis have banks maintain collateral
23 positions as to the IP account that provide protection
24 for the account. It really doesn't add anything to
25 that, and to the extent that there are banks, there is

1 the Centennial Bank involved here, and I don't know. By
2 the time we started these processes, California wasn't
3 awake yet, so I wasn't able to call the U. S. Trustee
4 out there to see if they are participating banks, also.
5 But I don't want protections waived that don't need to
6 be waived, and which exist in the ordinary course of
7 business as between the banks, the federal reserve, and
8 the office of the U. S. Trustee.

9 THE COURT: So what are you proposing with regard
10 to this proposed order? To strike Paragraph 12, or
11 what?

12 MR. VANARSDALE: Your Honor, I think you can
13 actually do that to the extent that we either find that
14 all of the banks that they use are participating banks
15 and would have a memorandum of understanding with the
16 office of the U. S. Trustee. So that the protection is
17 maximized. It's nothing done that is out of the
18 ordinary.

19 The other part of 345 sometimes has to deal
20 with what kind of investment the debtor can make in
21 overnights and those kinds of things. And I don't want
22 it to affect their ability to do that. I really don't
23 have an objection to what they have asked for in that.
24 But I would like to carve out of the waiver, you know,
25 just the normal operating protection that are in place

1 through the office of the U. S. Trustee, the Federal
2 Reserve, and the member banks.

3 THE COURT: All right. Very good. Any party wish
4 to be heard concerning the proposal from the office of
5 the U. S. Trustee?

6 MS. STRICKLAND: I'm not sure I understand the
7 proposal.

8 NOTE: Ms. Strickland and Mr. VanArsdale confer.

9 MR. VANARSDALE: It was suggested that we simply
10 put in the order that to the extent that we can get
11 cooperation with the banks to do the collateralization
12 that they normally do with our memorandum, either
13 through coming up with a new agreement, or if it's a
14 different bank that the waiver would not apply.

15 THE COURT: That's acceptable to the Court.

16 All right. Anything further with regard to
17 either of the two motions for the order authorizing
18 maintenance be continued for use of the debtor's
19 position bank accounts?

20 We have resolved all those issues? All
21 right. Well, then the Court will then approve them as
22 we modified it this morning, and you will be submitting
23 new orders then, I would suspect.

24 MS. STRICKLAND: Yes. And you so ordered it on
25 the record.

1 THE COURT: Yes. I so ordered it on the record.

2 MS. STRICKLAND: The next motion on the agenda is
3 number eight, and this is a very long motion that says a
4 lot of what we have already discussed. It makes clear
5 that the employees are not employees of the parent; they
6 are 100 percent of them are employees of Lawyers Title,
7 and so all of the obligations associated with employees
8 are Lawyers Title, monies are Lawyers Title, and
9 obligation, although the intra-structure that manages
10 the payroll account, for example, and other employee
11 benefit programs, is not all Lawyers Title, and this is
12 part of why in the sale we had the Transition Services
13 Agreement to rationalize the ten thousand some odd
14 employees, and their various benefit plans. To make a
15 very long motion short, this relief is to continue in
16 the ordinary course satisfying obligations of employees,
17 which are Lawyers Title, which in turn benefit the
18 estate; that is, you know, one of the most valuable
19 assets that LSG has any interest in its subsidiaries.

20 THE COURT: Does anyone wish to be heard on the
21 motion for the order authorizing payment of pre-petition
22 wages? All right. I think we have heard everything to
23 do with this motion, as well, and the Court will grant
24 the motion.

25 MS. STRICKLAND: With respect to the utility

1 motion. I understand that we have an objection, because
2 we had different fish to fry. We did not resolve with
3 Dominion Virginia Power, and so with respect to that one
4 utility, we would seek to carve them out of the order
5 and deal with them in the twenty days, but they are
6 here. Do you wish to be heard?

7 THE COURT: Mr. Johnson.

8 MR. JOHNSON: Good afternoon, Your Honor. Russell
9 Johnson here on behalf of Dominion Virginia Power. Your
10 Honor, I had discussions with John Maddock this morning
11 regarding this thing. My understanding that they were
12 going to withdraw the motion as to Dominion Virginia
13 Power. I want to make it clear, that this wasn't as
14 clear in Circuit City, or at least with counsel with
15 Circuit City what that meant. What my understanding,
16 they were withdrawing the motion as to Dominion Virginia
17 Power. There is no motion out there to Dominion
18 Virginia Power. If we can't reach an agreement within
19 the next whatever period of time, still have to file a
20 true Section 366 (d) (3) motion as to Dominion. Dominion
21 has already sent them their request. They have it. We
22 have been in negotiations this morning, but that was my
23 understanding. If that's what it is, we are fine with
24 that. We don't think in any case of this nature with
25 true utility that we need all these procedures. We have

1 already sent in our request. We are already having
2 discussions with them. We are not timing the statute
3 for them to get back in Court if they will modify our
4 pledge.

5 THE COURT: The only utility you are representing
6 in this case is Dominion?

7 MR. JOHNSON: Yes. There is only three: County
8 of Henrico, City of Richmond, Dominion Virginia Power.
9 Yes. Again, we are representing Dominion Virginia
10 Power.

11 MS. STRICKLAND: Yes. That is our understanding;
12 that there is no motion with respect Dominion Virginia
13 Power.

14 THE COURT: Once again you win, Mr. Johnson.

15 MS. STRICKLAND: The next motion on the agenda
16 relates to --

17 THE COURT: Just so the Court understands, the
18 motion then with regard to the other two utilities,
19 other than Dominion, you do want to go forward with
20 that, or are you withdrawing the entire motion?

21 MS. STRICKLAND: We would like to go forward on,
22 just carve out that one, Dominion, from the order. We
23 would like you do the entry of that order today.

24 THE COURT: As to the other two utilities.

25 MS. STRICKLAND: Correct.

1 THE COURT: That relief will be granted.

2 MS. STRICKLAND: The next two, the next two
3 motions again, it's strange that they are separated, but
4 they are, are extensions of time to file Schedules and
5 Statements of Financial Affairs. The 1031 doesn't need
6 much time because it is a much simpler situation.
7 That's why they are separated.

8 THE COURT: Anybody wish to be heard on either of
9 these two motions? They will be granted.

10 MS. STRICKLAND: Then the last relates to the
11 Administrative aspect of the sale to Fidelity, which in
12 my opening remarks I outlined. I can certainly lay more
13 of a record for Your Honor, if you wish, but otherwise
14 we are looking for today is to schedule an expedited
15 sale hearing. We do believe that given the type of
16 business that this is, that irreparable harm will result
17 if we do not have an expedited sale hearing. There are
18 no procedures, per se, that we seek in terms of there is
19 no break-up fee or fee reimbursement. There is in terms
20 of, just things that I want to point out, there is a
21 provision in the stock purchase agreement that says that
22 if another party came out of the woodwork magically with
23 a big bag of cash, we don't know about, that we have
24 agreed with Fidelity that that party would be subject to
25 as restrictive or more restrictive of a non-disclosure

1 agreement than they were; and that that party would not
2 be afforded diligence beyond what they were afforded. To
3 keep the playing field level with this hypothetical
4 procedure which will emerge. I don't know whether you
5 want any other details about the transaction, but other
6 than that we are just looking for scheduling, and for
7 Your Honor to approve the form and manner of notice of
8 the sale hearing which is attached as an exhibit.

9 THE COURT: You are also asking me to shorten the
10 time at this point.

11 MS. STRICKLAND: Correct, Your Honor.

12 THE COURT: I would like, what is the emergency
13 that requires to, other than the regulators in Nebraska,
14 in their proceedings, are these entities going to stop
15 functioning if we have a longer time?

16 MS. STRICKLAND: It's not that the entities will
17 stop functioning, except the uncertainty in the market
18 place is making it extremely easy for competitors to
19 approach, and for the agent and customers to get nervous
20 about the fate of Lawyers Title and Commonwealth, and
21 move their business elsewhere. And once you move your
22 business elsewhere, it's hard to get it back. So the
23 faster we can get certainty to say, yes, there has been
24 some bad news, we filed a Chapter 11, the company filed
25 a Chapter 11, and the Nebraska state regulatory body is

1 putting in an order of rehabilitation on those entities
2 today, obviously there is a lot of uncertainty of bad
3 news in the market place. The faster we can proceed
4 toward a good news announcement of, yes, we have an
5 agreement that has been signed with Fidelity and it can
6 close as quickly as possible. Nebraska, subject to
7 Nebraska's rights, obviously, can change its mind and
8 disagree, is on board to get Your Honor's approval on an
9 expedited basis, and have the only other piece out there
10 to the extent it can't be done to determine they have
11 our approval.

12 THE COURT: Now, the Court's next question, the
13 state of Nebraska is in agreement with the fast track?

14 MS. STRICKLAND: Yes.

15 MR. AUSTIN: Your Honor, Jess Austin.

16 Subsequently I would like the opportunity to be heard.

17 THE COURT: I will certainly give the parties an
18 opportunity to be heard. Do you have anything in
19 addition, Ms. Strickland?

20 MS. STRICKLAND: No, You Honor. There are no
21 other questions for me.

22 NOTE: Ms. Strickland is conferring with Mr.
23 Evans.

24 MS. STRICKLAND: The two other aspects of this,
25 one the company has hundreds of e-mails from customers,

1 already, saying what is going on? Bad news
2 announcements we are going to pull our business. And
3 two, there is a material adverse effect if too many
4 customers, if it could be deemed that the complete
5 obliteration of the business qualifies under the
6 provision constituting material effort to back it, it
7 will put the entire transaction in jeopardy.

8 THE COURT: Very good. All right. Does the
9 office of the U. S. Trustee wish to be heard on this
10 motion?

11 MR. VANARSDALE: Your Honor, this, I think
12 requires some balancing. We are talking about
13 December 11th. I know my office, right now, is sending
14 out solicitations for a committee in this case, because
15 for most creditors of this case don't have any idea this
16 has happened already. December 11th will be upon us
17 pretty quickly. I'm just not sure that that is enough
18 kind of time. We did get the Circuit City Committee
19 appointed the second business day, well, the second real
20 day, and *** was the intervening day, so it was really
21 the first business day after that.

22 This is Thanksgiving. This is not where a
23 lot of people are going to be in their office either
24 tomorrow or Friday. I think it may be a little more
25 difficult for us to do it that quick. I don't have a

1 real good suggestion of what other time; I understand
2 the melting ice cube metaphor that was used earlier. I
3 think that is, in fact, something that is in play here.
4 On the other hand, we have a whole room full of people
5 in evidence may not even know about this proceeding at
6 this point. They have a say, and they need to have the
7 ability to assert whatever rights they are going to
8 assert in that.

9 THE COURT: All right. Thank you. Any other
10 party in the courtroom wish to speak to this motion?

11 MS. STRICKLAND: Your Honor, unlike Circuit City
12 --

13 THE COURT: Before you respond, I'm going to let
14 the people on the phone weigh in. All right. Mr.
15 Austin, you wanted to speak to this; I will let you
16 proceed.

17 MR. AUSTIN: Yes, Your Honor. Again, for the
18 record, Jess Austin. While we welcome the opportunity
19 for this debtor to dispose of or otherwise sell the
20 regulated entity. I would have to join in at least the
21 concern stated and frankly a straight up objection from
22 our standpoint, the concern stated by the U. S. Trustee
23 that December 11th is pretty darn quick. It's not even
24 a twenty day notice period. They are selling the guts
25 of this business on a very expedited basis. This may

1 well be the best deal, it may well be the only deal,
2 but, you know, I think that for the debtor to actually
3 prevail on this motion actually needs to have some
4 perspective and give some presentation as to what is
5 going to be the alternative method of marketing to
6 someone else over the next, basically only a
7 week-and-a-half. And to go back to what the U. S.
8 Trustee pointed out, I don't think we are going to get
9 very much marketing effort until starting on
10 December 1st. So you are really looking at only a nine
11 or ten day period. It is not clear to me whether or not
12 that, on the basis stated, which I will tell you again,
13 we have not have had a chance really to review. Is
14 there going to be an auction? They should come into the
15 courtroom and say I'm getting more money, Judge, or how
16 is this whole program set up? It is unclear whether
17 they just setup the sale hearing, not necessarily what I
18 call an auction with 363 sale, and from that standpoint
19 we certainly would think that there ought to be
20 additional time. We are not suggesting that it be two
21 months, sixty days, whatever; but sometime, another week
22 extension, two week extension, I have not heard anything
23 today to suggest that that would be an impairment to the
24 value here, and certainly may allow time for us to
25 understand, those of us who are going to be mostly

1 affected, us to understand exactly how this deal is put
2 together, what is coming out of this deal, what
3 liabilities are going to be assumed, and whether or not
4 there is really anybody else that is out there that may
5 well be in the hunt, so to speak, for this transaction.

6 I can state, and I know, I can't remember
7 if it was presented in the opening statement, but one of
8 our concerns is this deal is with Fidelity. With all
9 due respect to Fidelity and it being one of the larger
10 institutions, not the number one institution in this
11 business, and Fidelity already had a merger agreement
12 which had to diligence this out with this company, and
13 it was noted it pulled that diligence, the effect of
14 that it walked away from the deal earlier this week.
15 That resulted in the actions that the regulators took.
16 We are concerned about whether or not this deal here,
17 what are the levels of out? It's just that Fidelity
18 has, in this transaction, and we are not sure as to what
19 would be any other party's ability to get to the table
20 in this conflict.

21 So, as a result of those, Your Honor, we
22 ask that to the extent the Court is going to approve
23 this process, to certainly set a date that is later than
24 December 11th, and it also needs some clarification the
25 terms and conditions by which someone can come in and

1 present an alternative proposal, and how that is going
2 to be considered.

3 THE COURT: Thank you. Is there anybody else on
4 the phone wish be heard on the motion? All right. Ms.
5 Strickland, I will let you respond.

6 MS. STRICKLAND: Your Honor, the top twenty pages
7 makes it clear that this is pretty different from
8 Circuit City. Because our banks and our bonds are
9 unsecured, the parties that are the primary stake
10 holders in this case are not cats and dogs under all
11 over the world. They are a huge financial institution;
12 maybe from a represented and has its own bank, and we
13 have been talking to for some time. We are not
14 proposing any formal auction. We have been conducting
15 our own auction and marketing this extensively since
16 September, and the Board and Special Committee and its
17 advisers left no stone unturned.

18 In terms of the out, and being nervous
19 because it's Fidelity, and Fidelity walked once before,
20 for sure this is a different type of transaction. It's
21 not a holding company merger, where they take the entire
22 thing. It's the actual underwriting business itself,
23 its stock, its subsidiaries; it is in fact the crown
24 jewel where all the value is. Although there are some
25 other valuable non-regulated subsidiaries that are not

1 part of this deal as well. All the more reason. Let's
2 get it done. Let's close it and get the value, as
3 opposed to waiting and waiting and see, you know, what
4 is going to happen in the world in the market next. And
5 then just like some of the automotive companies who are
6 having long extensive debates about what constitutes a
7 material adverse effect. We just don't have the type of
8 situation that Circuit City would present.

9 That said, we can do September 16th, which
10 is not expedited, but it is doing it as quickly as the
11 Code permits. We do not believe that if we can
12 negotiate a document, which we did over the last
13 seventy-two hours, that parties need an extensive period
14 of time to read the contract, figure out what it says
15 and what it doesn't say, figure out what is being bought
16 and what isn't being bought, certainly, you know, we are
17 happy to have as much dialogue with the parties that
18 they need to understand the agreement; but it can't take
19 longer to review it than it can to draft it. So we can
20 negotiate it. So, with that said, we would ask for the
21 11th. If Your Honor is not available or not
22 comfortable, we would ask for the 16th. We believe that
23 is sufficient time, and on this record that is
24 warranted.

25 In terms of answering the question that I

1 believe was posed as to what someone else who would be
2 interested in acquiring this business should do,
3 obviously the Board takes its fiduciary duty very
4 seriously. To the extent that a higher and/or better
5 offer presents itself, they will certainly avail
6 themselves of that opportunity. There is no no shot in
7 place. There is no, none of those types of
8 restrictions. The only restrictions that I mentioned
9 are the party would obviously have to sign a
10 confidentiality agreement and that would be the same as
11 Fidelity had to do. And they would be afforded the
12 exact same diligence that Fidelity was afforded. There
13 is an on line virtual inter-room. Anything that
14 Fidelity got, another party could get. But other than
15 that, there are no impediments which is the best
16 evidence of the fact that Fidelity and LandAmerica are
17 not confident or worried about the fact that there is
18 somebody out there to scoop this up. Were that the
19 case, Fidelity would certainly, not speaking for them,
20 but one would imagine want a whole host of protection it
21 is not seeking because as being extremely familiar with
22 this business as they are, and we are, we do believe
23 this transaction is the only thing in town to maximize
24 value to this extent.

25 THE COURT: All right. Thank you. The Court, I

1 think, it's convinced that this is probably the best
2 deal that is going to come here; but I'm also concerned
3 with the observation of the office of the U. S. Trustee.
4 There is not going to be committee in place for at least
5 until sometime next week, given Thanksgiving and such.
6 So they should have an opportunity to weigh in on this.
7 So I think the 11th is pretty aggressive. The Court
8 would be willing to set it for either the 16th or the
9 18th of the following week. I have both of those dates
10 available. If one of those would work for counsel.

11 Mr. VanArsdale, before I set a date, do you
12 think that that would give you the opportunity to have a
13 committee in place to weigh in on the sale if we set the
14 sale for either the 16th or 18th?

15 MR. VANARSDALE: Certainly, Your Honor. Either
16 one of those would be fine.

17 THE COURT: All right.

18 MR. AUSTIN: Either of those dates would be fine
19 to us. We can accommodate. I would ask one thing that
20 as relates to the confidentiality agreement that has
21 been referenced by Ms. Strickland, is that if an
22 existing, if an entity that was previously had looked at
23 this company had already executed the confidentiality
24 agreement, one of the questions I would ask is whether
25 or not that entity would have to do another

1 confidentiality agreement, or would the one they have
2 suffice? We are aware that a company did indeed go out
3 and do some marketing. We are aware that it did execute
4 a confidentiality agreement, but certainly the other
5 entities that are, and they operate in the state, and
6 would the company clarification what they executed
7 before suffice as to whether they have a new process
8 they have to go through?

9 MS. STRICKLAND: The confidentiality agreement
10 provision does not say, and I'm looking at my colleagues
11 to be corrected if I'm wrong, it has to be the identical
12 agreement. It just can't be less restrictive. So to
13 the extent that one party had to agree not to do XY and
14 Z, someone else can't walk in and sign a piece of paper
15 that says I won't tell my mother, now show me everything
16 you have. Fidelity is obviously concerned about this
17 because they are so serious about closing and owning
18 these assets. They don't want people coming in for a
19 free look to see the proprietary information. So to the
20 extent the agreement or look is restricted --

21 MR. AUSTIN: I would like to take this comment off
22 line, so I can speak specifically about one other party
23 that we believe was interested at some point but had
24 dropped out in the process.

25 MS. STRICKLAND: Okay. We can take that off line,

1 but we have been continuously reaching out to every
2 party we have had dialogue with throughout, and those
3 parties obviously will also get notice of the sale.

4 THE COURT: All right. We will set the sale
5 hearing then for the 16th of December at 10:00 o'clock.

6 MS. STRICKLAND: Thank you, Your Honor. That is
7 all we had.

8 THE COURT: Did you need additional omnibus dates
9 going forward for your venture, or do you want to get
10 those from the clerk?

11 MS. STRICKLAND: I think we would rather get those
12 from the clerk, Your Honor.

13 THE COURT: All right. Very good. Is there
14 anything else then we need to take up today?

15 MS. STRICKLAND: Oh, and Your Honor, if you could
16 approve the sale notice so we can get that out right
17 away .

18 THE COURT: I did look at the form of the notice.
19 Actually I spent more time on that than some of the
20 other things. It looks fine as far as I'm concerned.

21 MS. STRICKLAND: Thank you, Your Honor. Then the
22 process for selling order we understand what has been so
23 ordered, we will prepare forms of the proposed orders,
24 we will sell them on the banks with respect to cash
25 management on a couple, I don't know how much notice we

1 have given to do on it, we can submit it to Your Honor
2 either concentually or not.

3 THE COURT: On the orders, continuation of the
4 bank account orders, submit those to the banks, if you
5 can't get agreement, and then what I will do is let the
6 banks submit their proposed order, and you can submit
7 yours, and I will enter the one that I think is
8 appropriate.

9 MS. STRICKLAND: And would that be for Friday
10 then, Your Honor?

11 THE COURT: Yes. I can enter them on Friday.

12 MS. STRICKLAND: Thank you, Your Honor.

13 THE COURT: Anything further? Is there any order
14 that we need to get entered today? Do you need the
15 employee order entered today? As far as the payroll
16 order?

17 MS. STRICKLAND: Yes, Your Honor. The unfreezing,
18 as it is being so ordered, presumably the Bank of
19 America is doing that. We will submit orders to
20 Chambers that we would like entered today. To have them
21 change.

22 THE COURT: All right. Very good.

23 MS. STRICKLAND: Thank you.

24 THE COURT: Anything further then this afternoon?

25 MS. STRICKLAND: Thank you for seeing us. Have a

1 happy Thanksgiving.

2 THE COURT: Thank you all. You all have a good
3 holiday.

4 HEARING ADJOURNED AT 2:20 P.M.

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CERTIFICATE OF COURT REPORTER

I, Howard Keith Crane, a Registered Professional Reporter, and a Notary Public, certify that I was the court reporter in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division on November 26, 2008, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents during the hearing herein.

Given under my hand this 4th day of December, 2008.

/s/ Howard Keith Crane

Howard Keith Crane - RPR
CCR No. 0313034