

MEMORANDUM

February 25, 2009

To: Official Committee of Unsecured Creditors (the “LES Committee”) of
LandAmerica 1031 Exchange Services, Inc. (“LES”)
From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)
Re: Trust Arguments Advanced by Various Exchange Customers

Many exchange customers of LandAmerica 1031 Exchange Services (“LES”) have initiated adversary proceedings against LES requesting that the Bankruptcy Court (the “Court”) declare that funds held by LES (the “Funds”) are held in trust for the benefit of the applicable exchangers.¹ The LES Committee has intervened in many of these adversary proceedings and contends that the Funds are not held by LES in trust, but rather are property of the LES bankruptcy estate.

If the LES Committee is correct, and the Funds are property of the LES bankruptcy estate:

- A plan of reorganization will be filed with the Court, detailing the distribution to be received by the various groups of creditors of LES in accordance with the priority established by the Bankruptcy Code.
- Once a plan is approved by the Court, LES’s reasonable and necessary expenses, as well as secured and priority claims against LES, will be paid out of the LES bankruptcy estate.
- The remainder of the property of the LES bankruptcy estate will then be distributed to the general unsecured creditors of LES, including the Commingled Exchangers, on a pro rata basis.

If the Funds are found by the Court to be held by LES in trust:

- For the Funds to be distributed to the Commingled Exchangers, each Commingled Exchanger may be required to produce sufficient evidence to clearly trace their exchange

¹ According to the exchange agreements filed in the various adversary proceedings, the funds of some exchange customers are held in separate accounts associated with the exchanger’s taxpayer identification number (the “Segregated Exchangers”), while other exchange customers’ funds are currently held in a general LES account at SunTrust Bank (the “Commingled Exchangers”).

funds to specific Funds held by LES. As the exchange funds of approximately 400 Commingled Exchangers are held in LES's account at SunTrust Bank, the LES Committee believes that tracing will be very difficult, if not impossible.

- The Court may determine that it lacks legal authority to determine which, if any, of the Commingled Exchangers are entitled to the Funds. As a result, the Commingled Exchangers may be required to initiate litigation in another forum.
- The Court may determine that auction-rate securities, which were purchased during or prior to February 2008, and/or other investments held by LES are not part of the Commingled Exchangers' trust. This may limit the pool of assets available for distribution to the Commingled Exchangers.