

Paul V. Shalhoub (Admitted *Pro Hac Vice*)
Rachel C. Strickland (Admitted *Pro Hac Vice*)
Lawrence O. Kamin (Admitted *Pro Hac Vice*)
Terence K. McLaughlin (Admitted *Pro Hac Vice*)
Elizabeth J. Bower (Admitted *Pro Hac Vice*)
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

- and -

Dion W. Hayes (VSB No. 34304)
John H. Maddock III (VSB No. 41044)
McGUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
(804) 775-1000

Attorneys for the Debtors and
Debtors in Possession

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

.....	X	
	:	
In re:	:	Chapter 11
	:	
LandAmerica Financial Group, Inc., <u>et al.</u> ,	:	Case No. 08-35994 (KRH)
	:	
Debtors.	:	Jointly Administered
.....	X	

**ORDER ESTABLISHING SCHEDULING PROTOCOL
FOR ADVERSARY PROCEEDINGS**

The Joint Motion of LandAmerica 1031 Exchange Services, Inc. (the “**Debtor**”) and the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the “**Committee**”) to Establish Scheduling Protocol for Adversary Proceedings (the “Joint Motion”) is GRANTED.

IT IS ORDERED that the following schedule is established for adversary proceedings filed in the above-captioned cases:

1. *Millard Refrigerated Services, Inc. v. LandAmerica 1031 Exchange Services, Inc.*, Adv. Proc. No. 08-03147, *Frontier Pepper's Ferry LLC v. LandAmerica Exchange Services, Inc.*, Adv. Proc. No. 08-03148, *HealthCare REIT, Inc. v. LandAmerica 1031 Exchange Services, Inc.*, Adv. Proc. No. 08-03149, another case involving a Commingled Type A Case as defined in the Joint Motion to be determined by Debtor, the Committee, and the Official Committee of Unsecured Creditors for LandAmerica Financial Group, Inc. (the "LFG Committee"); and *Howard Finkelstein v. LandAmerica 1031 Exchange Services, Inc.*, Adv. Proc. No. 08-03171, shall serve as the lead adversary proceedings (the "**Lead Cases**") in this matter because they provide a representative sampling of the adversary proceedings filed to date with respect to the terms and conditions of the parties exchange agreements, use of the exchange funds, and applicable governing law, and provided that no Lead Case shall include LandAmerica Financial Group, Inc. ("LFG") as a party or involve adjudication of any claims by or against LFG.

2. All adversary proceedings in the above-captioned cases other than the Lead Cases, all adversary proceedings filed in these cases subsequent to the entry of this Order, and all motions or other requests for relief (whether pending as of the entry of this Order or filed subsequent to entry of this Order) directed to the disposition of Exchange Funds (as defined in the Joint Motion) or concerning the parties' rights and obligations under an Exchange Agreement(s) (as defined in the Joint Motion) are hereby stayed pending further order of this Court. The stay imposed hereto includes, but is not limited to, the requirement to file an answer or other responsive pleading, pretrial conference, discovery (including discovery related motion

practice), the amending of pleadings (including complaints), and the filing of dispositive motions and responses thereto.

3. The LFG Committee is hereby authorized to intervene into any or all of the Lead Cases by filing with the Court a Notice of Intervention in the bankruptcy case and in each applicable adversary proceeding on or before January 19, 2009.

4. On or before January 19, 2009, the Plaintiffs in the Lead Cases, the Debtor, the Committee, and the LFG Committee to the extent the LFG Committee has elected to intervene in the Lead Cases (the "**Parties**") shall submit to the Court a proposed Agreed Protective Order or, if not agreed, a proposed Protective Order indicating where agreement could not be reached.

5. On or before January 19, 2009, Debtor shall answer or otherwise respond to the complaints in the Lead Cases.

6. On or before January 19, 2009, the Parties shall serve any written discovery to Parties, with responses due ten (10) days after the date of service. No Party shall serve more than ten (10) Interrogatories, including subparts, or twenty (20) Requests for Admission on another Party. Nothing herein shall prevent the Parties from serving discovery requests or responses prior to the filing of the Debtor's responsive pleading(s).

7. On or before January 19, 2009, Debtor shall produce (1) all books, records, and account and transaction detail (electronically and in native format where available) relating to all accounts holding customer funds of the Lead Plaintiffs at any time during the previous 12 months, any transactions impacting such accounts, or the tracing of funds into, out of, or among such accounts; (2) back-up documentation or data, if any, to the spreadsheets submitted as Exhibit A to the Declaration of Ronald Ramos in Support of Debtor's Motion for an Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019

Establishing Procedures to Settle Claims Involving Segregated Exchange Funds filed on December 15, 2008 (Exhibit 1, docket entry no. 334); and (3) readily available and identifiable general information describing the movement of exchange funds in or through all accounts holding exchange funds.

8. On or before February 20, 2009, all fact depositions and third party discovery to be completed, at which time motions for summary judgment may be filed.

9. In the event a Party intends to rely upon expert opinion(s), on or before February 20, 2009, the Party shall make the disclosure of expert testimony required by Rule 7026(a)(2) of the Federal Rules of Bankruptcy Procedure; or if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 7026(a)(2)(B) of the Federal Rules of Bankruptcy procedure, disclosures shall be made on or before fourteen (14) days after the disclosure made by the other party.

10. Where designated, all expert discovery and expert depositions to be completed on or before March 13, 2009.

11. On or before March 13, 2009, the Parties shall file all motions, including motions for summary judgment and motions objecting to the reliability of expert testimony. Responses to motions for summary judgment shall be due on the later of twenty-one (21) days after the date of filing or the deadline for fact discovery set forth above. Responses to all other motions shall be due ten (10) days after the date of filing.

12. On or before ten (10) days prior the Trial Date (as defined below), counsel for each of the Parties shall file (a) a list of witnesses the Party intends to call at trial, (b) a list of proposed exhibits and the proposed exhibits, (c) motions in limine, and (d) a designation of witnesses whose testimony is expected to be presented by means of a deposition and a redacted

transcript of the pertinent portions of the deposition testimony. Any other Party may file counter designations to the redacted portions designated of a deposition transcript they deem relevant on or before five (5) days prior to the Trial Date.

13. On or before seven (7) days prior to the Trial Date, counsel for each of the Parties shall file (a) any objections to proposed exhibits, (b) responses to motions in limine, (c) any objections to the use under Rule 7032(a) of the Federal Rules of Bankruptcy Procedure of a deposition so designated, and (d) a list of any rebuttal witnesses. Exhibits to which no timely objection has been made will stand as admitted into evidence.

14. The Pre-Trial Hearing for the Lead Cases shall take place on or about April 7, 2009, at which time the Court shall select the order of trial for the four Lead Cases.

15. The trial of the first of the Lead Cases shall commence on or before April 23, 2009 at 10:00 a.m. (the "**Trial Date**").

16. Plaintiffs in adversary proceedings filed in this case other than the Lead Cases and other customers of LES shall not be allowed to intervene in the Lead Cases; provided that: (a) such plaintiffs and customers on whose behalf counsel has filed a notice of appearance shall be entitled to receive copies of documents and deposition testimony from the Lead Cases upon request and at their cost if they have agreed to be bound by the terms of the protective order referenced above; and (b) such plaintiffs and customers shall be authorized to file amicus briefs in connection with summary judgment motions or pre-trial proceedings in accordance with the deadlines set forth above.

17. Counsel to the Parties may by agreement continue discovery beyond the deadlines set forth herein, but shall not have the authority to continue motions, pretrial, or trial deadlines.

The Parties may also agree to shorten the deadlines should the need for discovery in the particular case not warrant the length of time accorded.

18. Entry of this Order is without prejudice to Debtor's right to seek to settle any adversary proceeding under Rule 9019 of the Bankruptcy Rules, on motion and two-days' notice. See Hr'g Tr. (12/16/08; recorded by electronic sound recording) at 44.

19. The Court may modify this Order on motion of Debtor, Committee, or any Lead Plaintiff for cause shown.

20. The Clerk of Court is directed to enter this Order on the docket of each adversary proceeding commenced in this case.

Dated: January _____, 2009

Jan 16 2009

/s/ Kevin Huennekens

KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY JUDGE

Entered on docket: Entered on docket: January 16, 2009

STIPULATED AND AGREED:

January 16, 2009

<p>Lawrence O. Kamin Terence K. McLaughlin Elizabeth J. Bower WILLKIE FARR & GALLAGHER LLP 787 Seventh Avenue New York, New York 10019 (212) 728-8000</p> <p>- and -</p> <p><u>/s/ John H. Maddock III</u> Dion W. Hayes (VSB No. 34304) John H. Maddock III (VSB No. 41044) McGUIREWOODS LLP One James Center 901 East Cary Street Richmond, Virginia 23219 (804) 775-1000</p> <p>Counsel to the Debtor and Debtor in Possession</p>	<p>Mary A. House (VSB No. 66613) AKIN GUMP STRAUSS HAUER & FELD LLP 1333 New Hampshire Avenue, NW Washington, DC 20036 (202) 887-4000</p> <p>-and- Charles R. Gibbs Keefe Bernstein Sarah Link Schultz AKIN GUMP STRAUSS HAUER & FELD LLP 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201 (214) 969-2800</p> <p>-and-</p> <p><u>/s/ Lynn L. Tavenner (with permission via email dated January 16, 2009)</u> Lynn L. Tavenner (VSB No. 30083) Paula S. Beran (VSB No. 34679) TAVENNER & BERAN, PLC 20 North Eighth Street, 2nd Floor Richmond, Virginia 23219</p> <p>Counsel to the Official Committee of Unsecured Creditors for LandAmerica 1031 Exchange Services, Inc.</p>
---	---