

MEMORANDUM

January 9, 2009

To: Official Committee of Unsecured Creditors (the “LES Committee”) of
LandAmerica 1031 Exchange Services, Inc.

From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)

Re: Summary of Matters to be Heard at January 12, 2009 Omnibus Hearing

This memorandum summarizes various pleadings to be heard at the omnibus hearing on January 12, 2009 in the jointly administered chapter 11 cases of LandAmerica 1031 Exchange Services, Inc. (“LES”) and its parent affiliate LandAmerica Financial Group, Inc. (“LFG” and together with LES, the “Debtors”) in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the “Court”).

I. Debtor’s Application for Order Authorizing Employment and Retention of Sandler O’Neill & Partners, L.P. as Financial Advisors to LandAmerica Financial Group, Inc. Pursuant to Sections 327(a), 328 and 1107 of the Bankruptcy Code (the “Sandler Application”) [Docket No. 527]

By the Sandler Application, LFG requests the entry of an order authorizing the employment and retention of Sandler O’Neill & Partners, L.P. (“Sandler”) as financial advisors to LFG, *nunc pro tunc* to November 26, 2008 (the “Petition Date”) to assist LFG with the sale of Centennial Bank (“Centennial”), a non-debtor subsidiary of LFG.

LFG seeks to retain Sandler as its financial advisors with respect to a potential sale of Centennial. Prepetition,¹ LFG retained Sandler to act as independent financial advisor to LFG in connection with a potential sale of Centennial. As a result, LFG asserts that Sandler has developed significant and relevant experience and expertise regarding LFG that will assist Sandler in providing effective and efficient services in its bankruptcy case. LFG anticipates that Sandler will provide, *inter alia*, the following financial advisory services to LFG with respect to a sale or other alternative disposition involving Centennial and another party (a “Buyer”):

1. Performing financial analyses of Centennial and a Buyer in the context of a possible sale;

¹ Sandler is not a prepetition creditor of LFG, and there are no outstanding pre-petition obligations owed by LFG to Sandler.

2. Assisting LFG in its determination of appropriate and desirable values to be exchanged in a sale;
3. Reviewing other strategic alternatives which could provide long-term benefits and enhanced value to LFG;
4. Identifying and contacting potential Buyers; and
5. Assuming an agreement in principle is reached for a sale of Centennial, assisting LFG in negotiating the financial terms of a definitive agreement.

LFG asserts that Sandler has substantial expertise in rendering the preceding services and is well qualified to perform same in representing LFG's interests. Subject to the Court's approval, Sandler will be entitled to: (i) a sales transaction fee (the "Sales Fee") of 1% of the Aggregate Purchase Price up to \$100,000,000.00, and 0.75% on any amount in excess of \$100,000,000.00, if LFG consummates a sale;² and (ii) Sandler's reasonable expenses incurred in connection with the provision of services, such as travel and disbursements of its legal counsel. LFG has also agreed to indemnify Sandler and its affiliates and their respective partners, directors, officers, employees, agents and controlling persons in the event of certain losses.³

II. Joint Motion of Debtor and LES Committee for Order Establishing Protocol for Adversary Proceedings [Docket No. 574]

At the December 16, 2008 hearing, the Bankruptcy Court directed LES and the LES Committee to work together to establish a protocol for resolving the legal issues regarding the ownership of monies and assets currently held by LES. Pursuant to the proposed protocol:

- LES and the LES Committee will propose four⁴ lead adversary proceedings (the "Lead Cases").
- All adversary proceedings filed in this case other than the Lead Cases will be stayed pending further order of the Court.

² Aggregate Purchase Price means an amount equal to the sum of the consideration received by LFG in any sale of Centennial plus (a) the net present value of any contingent payments calculated based upon the assumption that the maximum aggregate amount of any consideration pursuant to the contingent payment provisions is received, plus (b) any extraordinary dividends or distributions paid on or prior to the closing in connection with the sale; provided, however, Sandler acknowledges that dividends paid by Centennial up to, on an aggregate basis, \$5 million by December 31, 2008 shall not be included in the calculation of Aggregate Purchase Price. Further, if the party acquiring Centennial is an affiliate of either Corsair Capital, LLC or NewStar Financial, Inc., then the fee paid to Sandler shall be 75% of the Sales Fee. The Sales Fee is payable upon the closing of the sale.

³ In lieu of filing time records, Sandler proposes to present an activity log of time records in one-half of an hour increments, and in a summary format describing the services rendered and the amount of time spent on each date by the individual rendering services on behalf of LFG. The Sandler Application further provides that Sandler shall not be entitled to receive any fees for services rendered in the event that Sandler is terminated by LFG with cause or in the event that Sandler terminates the engagement without cause.

⁴ The proposed protocol seeks expedited consideration of the following types of adversary proceedings: (a) escrow account (b) alleged segregated account, and (c) two variations of commingled account.

- On or before January 19, 2009, the plaintiffs in the Lead Cases, LES, and the LES Committee (the “Parties”) will submit a proposed Agreed Protective Order or, if not agreed, a proposed Protective Order indicating where agreement could not be reached.
- On or before January 19, 2009, LES will respond to the complaints in the Lead Cases.
- Written discovery will be served not later than January 19, 2009, with responses due ten (10) days after the date of service.
- On or before January 19, 2009, LES will produce all books, records, and account and transaction detail (electronically 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.
- On or before February 20, 2009, all fact depositions and third party discovery to be completed.
- On or before February 20, 2009, each party will disclose expert testimony; or if the evidence is intended solely to contradict or rebut evidence provided by another party’s expert witness, disclosures shall be made on or before fourteen (14) days after expert witness disclosure is made by the other party.
- All expert discovery and expert depositions are to be completed on or before March 13, 2009.
- On or before March 13, 2009, the Parties are to 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.
- On or before ten (10) days prior the Trial Date (as defined below), each Party will file (a) a witness list, (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 (with counter designations due five (5) days before the Trial Date).
- On or before seven (7) days prior to the Trial Date, each Party will file (a) any objections to proposed exhibits, (b) responses to motions *in limine*, (c) any objections to the use of deposition testimony, and (d) a list of any rebuttal witnesses. Exhibits to which no timely objection has been made will stand as admitted into evidence.

- The pre-trial hearing for the Lead Cases shall take place on April 7, 2009, at which time the Court shall select the order of trial for the four Lead Cases.
- 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”).
- Plaintiffs in adversary proceedings filed in this case other than the Lead Cases shall not be allowed to intervene in the Lead Cases; provided that: (a) such plaintiffs 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 shall be authorized to file summary judgment and/or pre-trial amicus briefs in accordance with the deadlines set forth above.
- 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.

III. Motion to Compel Substitution of LES on Certain Documents (the “Stone Substitution Motion”) [Docket No. 295]

By the Stone Substitution Motion, Jeffrey L. Stone, as trustee for the March Family Trust dated March 24, 1993 (“Stone”) requests the entry of an order compelling substitution of LES as qualified intermediary to that certain Exchange Agreement (as defined below).

According to the Stone Substitution Motion, on October 24, 2008, Stone entered into an exchange agreement (the “Exchange Agreement”) with LES to facilitate a tax deferred exchange under section 1031(a)(1) of the Internal Revenue Code (the “IRC”). Pursuant to the Exchange Agreement, the relinquished property was sold (the “Sale”) to Xiaodong Sun (the “Buyer”) on November 17, 2008. As part of the Sale, the Buyer paid half of the purchase price in cash and half by way of a promissory note (the “Note”) secured by a deed of trust (the “Deed of Trust”) which is itself secured by the relinquished property. The Stone Substitution Motion states that the cash portion of the purchase price was paid to LES at the closing of the Sale, to be held and released in accordance with the terms of the Exchange Agreement.⁵ Pursuant to the terms of the Note, the balance of the purchase price (the “Balance”) is to be paid by the Buyer to LES (as Stone’s qualified intermediary).

The Stone Substitution Motion states that because LES has ceased operations, LES can no longer accept the Balance and, as a result, both Stone and the Buyer are unable to complete the sale of the relinquished property. Accordingly, Stone seeks to substitute another qualified intermediary for LES to accept the Balance. The Buyer has secured financing from its bank (the “Lender”) to

⁵ Stone asserts that replacement properties have been timely identified, with a closing on the first replacement property occurring on November 19, 2008. This closing was funded through the release by LES of approximately \$135,000 in funds generated by the Sale. Consequently, LES continues to hold approximately \$45,000 of cash from the sale of the relinquished property. The Stone Substitution Motion does not seek the return of these funds.

fund payment of the outstanding Balance. The Lender expects to obtain a first position lien on the relinquished property, but cannot do so until the Deed of Trust is satisfied. In turn, the Deed of Trust cannot be satisfied until the outstanding Balance is tendered to a party able to accept it and release the Deed of Trust. Stone thus maintains that since LES cannot accept the Balance and release the Deed of Trust, the Court should compel LES to substitute another qualified intermediary to do so.

The LES Committee filed an objection to the Stone Substitution Motion on December 22, 2008.

IV. Motion for Turnover and Assignment of Note (the “Kendall Substitution Motion”)
[Docket No. 415]

By the Kendall Substitution Motion, Kendall Square, LLC (“Kendall”), CLA Real Estate Investments (“CLA”), and PC Real Estate Investors, LLC (“PC,” and collectively with Kendall and CLA, the “Exchangers”) request the entry of an order compelling: (i) the return to the Exchangers of a promissory note underlying an exchange agreement (the “Exchange Agreement”) under section 1031(a)(1) of the Internal Revenue Code (“Section 1031”) to which the Exchangers are a party; or (ii) in the alternative, substituting a qualified intermediary for LES under the Exchange Agreement.

According to the Kendall Substitution Motion, the Exchangers entered into the Exchange Agreement with LES on September 30, 2008 to effectuate a Section 1031 tax deferred exchange (the “Exchange”) relating to the sale of property located at 3750 North Cascade Avenue, Colorado Springs, CO 80907 (the “Relinquished Property”). Under the Exchange Agreement, the Relinquished Property was to be sold (the “Sale”) to Town and Country Mobile Lodge, L.P., a California limited partnership (the “Buyer”). In connection with the Sale, the Buyer assigned to LES, as qualified intermediary, a promissory note (the “Note”) secured by a deed of trust (the “Deed of Trust”) which is itself secured by the Relinquished Property.

The Exchangers assert that they have been informed that LES does not intend to consummate any Section 1031 exchanges which are the subject of LES’s various executory exchange agreements, including the Exchange. The Exchangers further maintain that the Note is not property of LES’s bankruptcy estate, and accordingly request that LES turn over and execute an assignment of the Note to the Exchangers or, in the alternative, substitute another qualified intermediary for LES as directed by the Exchangers.

The LES Committee filed an objection to the Kendall Substitution Motion on January 8, 2009.

V. Motion of Getty Realty Corp. to Authorize Debtor to Incur Debt and Complete Certain 1031 Exchanges (the “Getty Motion”)
[Docket No. 473]

By the Getty Motion, Getty Realty Corp. (“Getty”) requests the entry of an order: (i) authorizing LES to complete certain property exchanges under section 1031 of the Internal Revenue Code (“1031 Exchanges”) in accordance with the terms of the four exchange agreements (the “Getty Exchange Agreements”) between LES and Getty; and (ii) authorizing LES to accept a loan from Getty for the sole purpose of completing said 1031 Exchanges.

According to the Getty Motion, prior to November 26, 2008 (the “Petition Date”), Getty and LES entered into the Getty Exchange Agreements between July and November 2008 whereby LES received the net proceeds of the sales of relinquished properties in order to facilitate like-kind exchanges in accordance with the Internal Revenue Code. As of November 12, 2008, Getty asserts that a total of approximately \$1,376,357 was held by LES under the Getty Exchange Agreements. Getty further asserts that these funds have been deposited in a general LES bank account and invested.

In accordance with the Getty Exchange Agreements, Getty has identified or will identify like-kind properties for the purpose of completing the 1031 Exchanges under the Getty Exchange Agreements. Getty asserts that if none of the 1031 Exchanges are completed by the applicable deadlines, Getty will face potential tax liability of approximately \$316,000 plus additional estimated damages in excess of \$10,000. Therefore, Getty seeks to provide LES with sufficient liquidity to complete the 1031 Exchanges by loaning LES the amounts necessary to complete the 1031 Exchanges (the “Getty Loan”). To protect the interests of other 1031 Exchanges and other creditors of LES, Getty requests that the order include language limiting repayment of the Getty Loan to the amount that Getty would otherwise receive through the bankruptcy proceedings.