

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 08-27

IN RE SCOTIA DEVELOPMENT, LLC *et. al.*,
*Debtors.*¹

The Bank of New York Mellon Trust Company, N.A.
(f/k/a The Bank of New York Trust Company, N.A.), as Indenture Trustee, *et al.*
Appellants-Movants,

v.

Marathon Structured Finance Fund L.P., Mendocino Redwood Company LLC, and
The Official Committee of Unsecured Creditors,
Appellees-Respondents.

**OPPOSITION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO EMERGENCY MOTION
OF THE INDENTURE TRUSTEE FOR STAY AND INJUNCTION**

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ATTORNEYS FOR APPELLEE,
OFFICIAL COMMITTEE OF UNSECURED CREDITORS

¹ The Debtors are the following entities: Scotia Development LLC; The Pacific Lumber Company; Britt Lumber Co., Inc.; Salmon Creek LLC; Scotia Inn, Inc.; and Scotia Pacific Company LLC.

**CERTIFICATE OF INTERESTED PERSONS PER
FIFTH CIRCUIT LOCAL RULES 26.1.1, 27.4 AND 28.2.1**

(1) 08-27; *The Bank of New York Mellon Trust Company, NA. (f/k/a The Bank of New York Trust Company, N.A.), as Indenture Trustee, et al. vs. Marathon Structured Finance Fund L.P., Mendocino Redwood Company LLC, and The Official Committee of Unsecured Creditors*

(2) The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Appellees - Respondents	Counsel
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<p><u>Mendocino Redwood Company LLC</u></p>	<p>Allan S. Brilliant Brian D. Hail Craig R. Druehl Goodwin Procter LLP New York, NY</p> <p>Frederick C. Schafrick Richard M. Wyner Goodwin Procter LLP Washington, D.C.</p> <p>Kenneth M. Crane Peter G. Lawrence Perkins Coie LLP Chicago, Illinois</p>
<p><u>The Official Committee of Unsecured Creditors</u> (The members of the Committee are Pacific Coast Trading, Inc., Steve Wills Trucking & Logging, LLC, SHN Consulting Engineers & Geologists, Environmental Protection Information Center, Pension Benefit Guaranty Corp., and Steve Cave)</p>	<p>John D. Fiero Maxim B. Litvak Pachulski Stang Ziehl & Jones LLP San Francisco, California</p>
<p>Appellant – Movant:</p> <p><u>The Bank of New York Mellon Trust Company, N.A.</u>, as Indenture Trustee (f/k/a the Bank of New York Trust Company, N.A.)</p>	<p>William Greendyke Zack A. Clement R. Andrew Black Johnathan C. Bolton Fulbright & Jaworski LLP Houston, Texas</p> <p>Louis R. Strubeck, Jr. O. Rey Rodriguez Toby L. Gerber Fulbright & Jaworski LLP Dallas, Texas</p>

<p>Noteholder Appellants:</p> <p>Angelo, Gordon & Co. L.P. Aurelius Capital Management, LP Davidson Kempner Capital Management LLC</p> <p>CSG Investments, Inc. and Scotia Redwood Foundation, Inc.</p>	<p>Isaac M. Pachulski Jeffrey H. Davidson Eric D. Winston Stutman, Treister & Glatt P.C. Los Angeles, California</p> <p>Murry Cohen Akin Gump Strauss Hauer & Feld LLP Houston, Texas</p> <p>Charles R. Gibbs David F. Staber J. Carl Cecere Akin Gump Strauss Hauer & Feld LLP Dallas, Texas</p> <p>Roger D. Townsend Alexander Dubose Jones & Townsend LLP Houston, Texas</p>
<p>Debtors Counsel:</p> <p>The Pacific Lumber Company, Scotia Development LLC, Britt Lumber Co., Inc., Salmon Creek LLC and Scotia Inn Inc.</p>	<p>Shelby Jordan Nathaniel Peter Holzer Jordan, Hyden, Womble, Culbreth & Holzer, P.C. Corpus Christi, Texas</p> <p>James L. Kinzie James R. Prince Luckey Macdowell Baker Botts LLP Dallas, Texas</p>

<p>Scotia Pacific Company, LLC</p>	<p>Kathryn A. Coleman Craig H. Millet Gibson Dunn & Crutcher LLP New York, NY</p> <p>Eric J. Fromme Gibson Dunn & Crutcher LLP Irvine, California</p> <p>Aaron G. York Gibson Dunn & Crutcher LLP Dallas, Texas</p>
<p>Other Interested Parties</p> <p>Bank of America, N.A., as agent for secured lenders to Scotia Pacific Company LLC</p> <p>Various California agencies</p> <p>The United States Department of the Interior, Fish and Wildlife Agency</p>	<p>Evan M. Jones Emily R. Culler Brian M. Metcalf Ana Acevedo O'Melveny & Myers LLP Los Angeles, California</p> <p>Paul Pascuzzi Felderstein Fitzgerald Willoughby & Pascuzzi LLP Sacramento, CA</p> <p>Alan Tenenbaum United States Department of Justice Washington, D.C.</p>

/s/Maxim B. Litvak

Counsel for Official Committee of Unsecured Creditors

July 22, 2008

To the Honorable United States Court of Appeals for the Fifth Circuit:

The Official Committee of Unsecured Creditors (the “Committee”) in the bankruptcy cases of the above-captioned debtors (together, the “Debtors”) hereby joins in, and incorporates by reference, the opposition filed (or to be filed) by Mendocino Redwood Company, LLC (“MRC”) and Marathon Structured Finance Fund L.P. (“Marathon”) to the emergency motion for stay pending appeal filed by The Bank of New York Mellon Trust Company, N.A., as Indenture Trustee (the “Indenture Trustee”).

The Committee agrees with MRC and Marathon that no stay is appropriate here because the Indenture Trustee has failed to carry its burden of proof on the requisites necessary for a stay pending appeal. In addition, the Committee submits this separate opposition to the Indenture Trustee’s motion to address the following key points from the perspective of unsecured creditors.

First, the Indenture Trustee has failed to address, and continues to ignore, the prejudice that unsecured creditors will endure if this Court grants a stay pending appeal. Under the confirmed plan of reorganization proposed by MRC, Marathon and the Committee (the “MRC/Marathon Plan”) that is the subject of this appeal, the sum of \$10.6 million in cash will be funded for the sole benefit of unsecured creditors (an additional \$500,000 in cash will also be made available for administrative purposes in reconciling unsecured claims and making distributions

to unsecured creditors). A stay would put these distributions at risk. MRC and Marathon are under no legal obligation to close and could simply walk away in the event of an extended delay. If that happens, unsecured creditors will be directly and specifically harmed to the tune of \$11.1 million. In addition, under the MRC/Marathon Plan, all of the Debtors' pension obligations will be assumed (these claims have been estimated to exceed \$28 million by the Pension Benefit Guaranty Corporation). A stay could result in such pension claims substantially diluting any potential recoveries by unsecured creditors. The Bankruptcy Court properly took all these facts into account in crafting the security that the Indenture Trustee should be required to post. The Indenture Trustee, however, continues to ignore the harm that could befall unsecured creditors if this Court grants a stay pending appeal.²

Second, the “discount log program” proposed by the Indenture Trustee to fund The Pacific Lumber Company (“Palco”) during the pendency of the stay does not preserve the status quo. As things stand today, MRC and Marathon are ready and able to consummate the MRC/Marathon Plan. The discount log program does

² The Indenture Trustee also suggests that it should not be required to bond for harm to creditors of any Debtor estate other than Scotia Pacific Company LLC (“Scopac”). Regardless of whether the Indenture Trustee’s claims and its collateral interests are limited to Scopac’s estate, the fact remains that the MRC/Marathon Plan covers each of the Debtors’ estates. Hence, all of the Debtors’ creditors are at risk in the event of a stay and are entitled to be fully protected to the extent of the benefits derived under the MRC/Marathon Plan.

not protect against the harm noted above to unsecured creditors if the MRC/Marathon Plan falls apart as a result of a stay. The discount log program is also inherently flawed because (a) it does not contemplate the payment of accrued administrative expenses at Palco (such claims would be paid in full under the MRC/Marathon Plan on the effective date); (b) it does not cover the full duration of a possible appeal (the Indenture Trustee has only committed to the program through the end of this year; an appeal could take significantly longer to resolve); and (c) it can be revoked at any time (the Indenture Trustee has reserved the right to change its mind and to withdraw this appeal and the discount log program).³

Third, the Indenture Trustee suggests that this Court should extend the stay without a bond pending an “irrevocable” notice by MRC/Marathon that they will not extend the deadline to consummate the plan. There would be a hearing to consider the setting of a bond once such notice is provided. This proposal is not workable or helpful. By the time that an adequate bond is set by this Court, there would be no assurance that the Indenture Trustee would post the bond (indeed, the Indenture Trustee could choose not to do so) and yet, the harm against which the bond is designed to protect will have been done. This is another example of the Indenture Trustee refusing to accept responsibility for, or to commit sufficient

³ It also bears mention that the terms of the discount log program keep changing. There has yet to be a formal written agreement between Scopac and the Indenture Trustee that sets forth the definitive terms of the deal.

security to protect against, the risks to which unsecured creditors are exposed in the event that a stay is imposed.

The bottom line is that the Indenture Trustee endeavors to have unsecured creditors and other parties in interest bear the risk associated with this appeal. The Bankruptcy Court thoroughly analyzed and outlined a detailed methodology for calculating the appropriate security that the Indenture Trustee must post in order to obtain a stay pending appeal. Rather than proposing to post a bond consistent with the Bankruptcy Court's findings, however, the Indenture Trustee has reverted to the same arguments that it made below to the effect that the Indenture Trustee is only required to preserve and protect the Debtors' operations for a limited time pending the outcome of this appeal. By doing so, the Indenture Trustee ignores the harm to unsecured creditors from a stay pending appeal and the likely eventuality that the MRC/Marathon Plan may not be consummated.

Based on the foregoing and the points set forth in the brief submitted (or to be submitted) by MRC and Marathon, the Committee urges the Court to deny any further stay of the Bankruptcy Court's confirmation order or, alternatively, condition any stay on the posting of security sufficient to protect the interests of unsecured creditors and all other parties in interest as outlined by the Bankruptcy Court.

Respectfully submitted,

Dated: July 22, 2008

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ Maxim B. Litvak

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CERTIFICATE OF SERVICE

I, Maxim B. Litvak, certify that foregoing pleading was served via electronic mail on the parties listed below on July 22, 2008.

/s/Maxim B. Litvak

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