

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE: SCOTIA PACIFIC, *
 * CASE NO. 07-20027
DEBTOR *

* * * * *

DAILY COPY

MAY 2, 2008

* * * * *

On the 2nd day of May, 2008, the above entitled and

numbered cause came on to be heard before said Honorable

Court, RICHARD S. SCHMIDT, United States Bankruptcy

Judge, held in Corpus Christi, Nueces

County, Texas.

Proceedings were reported by machine shorthand.

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1 THE COURT: Be seated. Send it in. All
2 right. Let's see. Christopher Johnson. Ana Acevedo.
3 Alan Tenebaum.

08:59

4 MS. RILEY: Rebecca Riley standing in for
5 Mr. Tenebaum, Your Honor.

6 THE COURT: Thank you. Robert Black.

7 MR. BLACK: Present, Your Honor. And on
8 the line I have Mr. Jerry Gerog of Timber Start, who is
9 an interested bidder, and counsel Neal Wolf.

08:59

10 THE COURT: Okay. Wendy Laubach.

11 MS. LAUBACH: Present, Your Honor.

12 THE COURT: Alan Gover.

13 MR. GOVER: Present, Your Honor.

14 THE COURT: Allison Byman. Ira Herman.

09:00

15 Ephraim Diamond.

16 MR. DIAMOND: Good morning, Your Honor.

17 THE COURT: Heather Muller.

18 MS. MULLER: Good morning, Your Honor.

19 THE COURT: Francine Brodowicz. Todd

09:00

20 Hanson.

21 MR. HANSON: Present, Your Honor.

22 THE COURT: Wei Wang.

23 MR. WANG: Present, Your Honor.

24 THE COURT: David McLaughlin. Joli Pecht.

09:00

25 MS. PECHT: Present, Your Honor.

1 THE COURT: Dominic Santos. Rocky Ho.
2 Jacob Cherner.
3 MR. ADAMS: Mark Adams sitting in for
4 Mr. Cherner, Your Honor.
09:00 5 THE COURT: Brett Young.
6 MR. YOUNG: Present, Your Honor.
7 THE COURT: Eric Waters.
8 MR. WATERS: Present, Your Honor.
9 THE COURT: Nathan Rushton.
09:00 10 MR. RUSHTON: Present, Your Honor.
11 THE COURT: Heather Zelevinsky. John
12 Driscoll.
13 MR. DRISCOLL: Here, Your Honor.
14 THE COURT: James Delaune. Kyung Lee.
09:01 15 MR. LEE: I'm in the courtroom, Your
16 Honor.
17 THE COURT: Dan Kamensky. Kenneth Crane.
18 MR. CRANE: Present, Your Honor.
19 THE COURT: Okay. Daniel Zazove.
09:01 20 SPEAKER: He's not on the line.
21 THE COURT: Anyone I didn't call? All
22 right. In the courtroom.
23 MR. JORDAN: Shelby Jordan, Pete Holzer as
24 co-counsel for Palco Debtors.
09:01 25 MS. COLEMAN: Good morning, Your Honor,

1 Kathryn Coleman, Rich Doren and Eric Fromme and Aaron
2 York of Gibson, Dunn & Crutcher on behalf of Scotia
3 Pacific Company.

09:01

4 MR. JONES: Good morning, Your Honor.
5 Evan Jones for Bank of America.

6 MR. FIERO: Good morning, Your Honor.
7 John Fiero and Max Litvak of the Pachulski Stang firm for
8 the Committee.

09:01

9 MR. BRILLIANT: Good morning, Your Honor.
10 Alan Brilliant and Brian Hail on behalf of Mendocino
11 Redwood Company.

12 MR. PENN: Good morning, Your Honor. John
13 Penn, David Neier and Steven Schwartz on behalf of
14 Marathon.

09:01

15 MR. STERBACH: Good morning, Your Honor.
16 Charles Sterbach for the United States Trustee.

17 MR. SPIERS: Good morning, Your Honor.
18 Jeff Spiers with Alan Gover on the phone for Maxxam.

09:02

19 MR. PASCUZZI: Good morning, Your Honor.
20 Paul Pascuzzi for the California State Agencies. And my
21 co-counsel will be joining us later, Mike Neville from
22 the California Attorney General's office.

09:02

23 MR. GREENDYKE: Good morning, Judge. Bill
24 Greendyke from Fulbright & Jaworski on behalf of Bank of
25 New York as Indenture Trustee. I'm joined by my partner

1 Richard Krumholz, Zack Clement, Rich Strubeck. And Isaac
2 Pachulski on behalf of several of the noteholders is also
3 present, Your Honor.

09:02

4 THE COURT: And which noteholders? I
5 mean, is it different from the Committee? Or are they
6 all in the committee?

7 MR. GREENDYKE: Yes.

09:02

8 MR. PACHULSKI: No, no. I represent three
9 noteholders. I've heard about a committee. Our
10 representation has nothing to do with any committee. We
11 represent three noteholders, basically Aurelius Capital
12 Management, Davidson Kemper, Angelo Gordon, who jointly
13 retained my firm. No representation of the committee.

09:02

14 It's not a committee, it's not a group, it's three
15 noteholders.

16 THE COURT: I understand your reluctance
17 to call it a committee.

18 MR. PACHULSKI: It's not one.

09:03

19 THE COURT: I'm not suggesting that it is
20 a committee. But are those noteholders members of the
21 Committee?

22 MR. PACHULSKI: I'm not sure, Your Honor.
23 They're not being claimed. I'm not sure.

09:03

24 THE COURT: Do you know, Mr. Greendyke?

25 MR. GREENDYKE: Yes.

1 THE COURT: You do know?

2 MR. GREENDYKE: Yes.

3 THE COURT: Are you at liberty to say?

4 MR. GREENDYKE: That I don't know.

09:03 5 THE COURT: All right. Well, let me ask
6 you this. With Beal Bank and those noteholders, do you
7 have two-thirds of the notes? Or is that -- do you know
8 that? I'm not sure it matters.

9 MR. GREENDYKE: I would need to check.

09:03 10 THE COURT: Okay. I'm just wondering.
11 All right.

12 MR. GREENDYKE: The steering committee
13 that I respond to is a significant portion of the
14 noteholders.

09:03 15 THE COURT: Well, I wasn't suggesting that
16 you use the noteholders themselves. The noteholders
17 committee control more than 66 percent of the notes is
18 what I understand. From the beginning you've always told
19 me that. However, Beal Bank is a member of that?

09:03 20 MR. GREENDYKE: Right. Yes, sir.

21 THE COURT: And Beal Bank may have issues
22 that are contrary to the general issues of the Committee
23 maybe, maybe not. Nobody has said.

24 MR. GREENDYKE: Some people think so.

09:04 25 THE COURT: Some might think, some may

1 not. Who knows.

2 MR. GREENDYKE: Might I --

3 THE COURT: To the extent that they
4 don't -- to the extent that they don't vote to allow you

09:04 5 to credit -- you know, if they force you to credit bid
6 because they don't give your vote stock, they can put \$20
7 million in their pocket if your plan is accepted; isn't
8 that correct?

9 MR. GREENDYKE: I'm not following the
09:04 10 question. Beal Bank or Scotia Redwood Foundation has
11 instructed the Indenture Trustee not to credit bid in
12 excess of \$603 million, so Beal Bank or Scotia Redwood
13 Foundation, that group of --

14 THE COURT: So that's not on the table?

09:04 15 MR. GREENDYKE: That is not an issue as
16 far as Beal Bank is concerned with Scotia Redwood.

17 While I'm standing here -- I don't mean to
18 intrude on Mr. Jordan. When we left last night, you
19 wanted to know when Mr. Cherner was going to be here. He
09:05 20 --

21 THE COURT: 10 o'clock apparently.

22 MR. GREENDYKE: Yes, sir.

23 THE COURT: Okay.

24 MR. JORDAN: As long as it's clear that "I
09:05 25 don't know" is on second and "who" is on third.

1 THE COURT: All right. Go ahead.

2 MR. JORDAN: I'd like to address the issue
3 that you asked us to postpone until this morning. And it
4 is a single issue that has been raised as to whether or
5 not the term sheet, that is, the agreement, the contract
6 and the signed off term sheet would, for any reason,
7 justify not closing the evidence for this confirmation
8 hearing. And my response to the Court, it will be very
9 briefly, is absolutely not. It was drafted with that
10 exact --

11 THE COURT: Do we know if anybody wants
12 the evidence to not close today?

13 MR. JORDAN: Well, the noteholders --

14 THE COURT: Has anyone decided that they
15 don't want to close down the confirmation today?

16 MR. JORDAN: That may make my argument
17 very short. I don't know whether they have decided that
18 or not.

19 THE COURT: Have you decided yet whether
20 or not you think there's something about the term sheet
21 that's going to lend you to have to call additional
22 witnesses that you're not -- or add additional evidence
23 that you're not going to have available today?

24 MR. GREENDYKE: Yes. Yes. And I think as
25 I told you yesterday, the term sheet and the 9019 motion

1 is going to overlap, I think, the findings the Court
2 needs to make in connection with the plan.

3 THE COURT: Obviously you'll be allowed to
4 call witnesses on the 9019 motion.

09:06 5 MR. GREENDYKE: I would also like to tell
6 the Court that our clients have listened to the things
7 that you said to us yesterday and our clients are very
8 strongly working to try and only answer your question,
9 but answer it in a way that you might find helpful to the
09:06 10 problem that, I think, you described to us in response to
11 that question. So with that in mind, I mean, there were
12 a number of pleadings that were filed last night. And we
13 can talk about those today now -- and they're not set for
14 hearing obviously, but I want to inform the Court of
09:06 15 things that we have done, things we have filed, one of
16 which answers one of Mr. Jordan's questions put to me
17 earlier in the week.

18 If I might, there was a plan amendment
19 that I can pass up in a moment that resolves the retiree
09:07 20 benefits question that was raised or catalyzed by the
21 amendment or plan modification we filed earlier in the
22 week. In cowboy English, our plan now proposes that the
23 retiree benefits, to the extent that they are ongoing at
24 the company, are going to be assumed and carried forward
09:07 25 just as if there wasn't a bankruptcy case to comport with

1 1114 in the code and 1129(a).

2 THE COURT: Okay.

3 MR. GREENDYKE: We have also filed a
4 significant administrative claim at the Scopac level that
09:07 5 the Court needs to be aware of and take notice of. It
6 doesn't have anything to do with today's presentation.

7 And we also filed a declaration -- I filed a declaration
8 on my behalf to address the Court's concerns about
9 whether or not a resolicitation might be necessary in

09:07 10 connection with the unsecured deficiency claim of the
11 noteholders. Again, that was brought up in argument on
12 Tuesday. I was on the meeting. I was counting noses for
13 the noteholders. And my declaration is that more than
14 two-thirds of the noteholders have voted for the

09:08 15 modification that was filed earlier in the week and is
16 aware of and would not have any impact or require
17 resolicitation in connection with that deficiency vote.

18 It doesn't answer the Court's questions
19 put to me on Tuesday afternoon about whether or not the
09:08 20 treatment, if you will, of the general unsecured class
21 would require resolicitation. We will be prepared to
22 argue the law on that wherever the Court desires. But in
23 order to answer the question, we think the Court ought to
24 keep open the evidence. I realize we are going to call

09:08 25 our last witness today. And Marathon/MRC may or may not

1 call Mr. Dean in response to Mr. Cherner's testimony.
2 Then we will be done with what we're doing this week.
3 But a lot is happening on the outside and we would like
4 the Court to keep the door open so that we can try and
09:08 5 answer the question with something material between now
6 and the 16th, which I think is when we return. And
7 that's our request.

8 THE COURT: Okay.

9 MR. JORDAN: Your Honor, I'm not going to
09:09 10 assume that I understood any of that. I did hope the
11 employees of Scopac heard that their benefits are not
12 going to be cut. But aside from that, let me address one
13 thing. I don't think the Court suggested or asked any
14 questions yesterday that could be construed as the
09:09 15 Court's becoming involved in the noteholders' plan or
16 tell the noteholders how to propose a plan or otherwise.
17 I think the Court's inquiries were limited to exactly
18 what we asked the Court earlier at a preconfirmation
19 hearing, is to give us any indication you can, your
09:09 20 inclination, but you have never suggested that you were
21 going to begin to dictate terms of a plan or in any
22 fashion tell any of the particular parties terms of the
23 plan.

24 So I would like to address what I thought
09:09 25 was the only issue this morning, which I heard nothing

1 about in that presentation. And that is, should the
2 Court keep this very complex case on a very tight time
3 schedule and a very tight budget, by the way, the
4 evidence open for another two weeks to allow whatever
09:10 5 could go on in the next two weeks. And the excuse that I
6 heard yesterday, aside from the fact that they have now
7 filed claims that they may then argue, which they would,
8 because it's only argument, that resolicitation is
9 required. And there's no factual need to develop further
09:10 10 those issues. They can make whatever arguments they want
11 to, and that's a call for this Court to make.

12 However, they are, with respect to their
13 amended claims, their administrative claims or their new
14 claims or whatever their claims may be, to stop the
09:10 15 process from going forward because delay benefits no one
16 except the beneficiaries of the conversion of this case.
17 So let me address a single issue that I think the Court
18 should be certainly aware of with regard to the term
19 sheet.

09:10 20 First of all, the term sheet is clearly
21 two-tiered. It self-executing. It is an agreement
22 between three adult corporations and that are
23 non-debtors. They made decisions with respect to how
24 that agreement should be implemented. It has been
09:11 25 implemented. And, in fact, that includes certain

09:11

1 agreements by the Debtor in performance of its fiduciary
2 duties. We have certain portions of the term sheet. In
3 fact, the term sheet are self-executing and have already
4 been done in the performance of what our client -- what
5 Palco believed was their fiduciary obligation to attempt,
6 if anyone would talk to us, to negotiate the best plan
7 possible. We believe we have done that. We believe it's
8 already now been filed. We believe that the benefits
9 from that are all laid out in the term sheet and that
10 that is a done deal, insofar as the Palco Debtors are
11 concerned.

09:11

12 There was a final element of the term
13 sheet which we believed required -- was not among the
14 three adult corporations not requiring supervision, but
15 among the one adult corporation that has this issue of
16 supervision, and that is a 9019 settlement. That is
17 something the Court approves. It can only be brought by
18 a Debtor and it has been. And it's on a single issue,
19 the single issue which we believe is highly beneficial.

09:11

09:12

20 We're not here to argue it, but we believe
21 the issue is highly beneficial to the estate; and that
22 is, the releases among the estate and all of the
23 affiliates. The minimum of that is a \$40 million
24 unsecured claim that Maxxam is going to release so that
25 it doesn't go into the pile of claims, which then,

09:12

1 because of the nature of the claim, would be into a pile
2 of litigation. That, we believe, will be -- there will
3 be plenty of evidence on the reasonableness of why that's
4 being done. And the short version is that the official
09:12 5 unsecured creditors committee has evaluated that benefit
6 as well as a number of others that we'll talk about, and
7 has agreed to support the 9019 motion so that we can
8 conclude all of those issues.

9 That single issue has nothing to do with
09:12 10 confirmation of the plan. There is a litigation trust
11 set up. If that issue is not approved by the court, if
12 it is in any fashion, it will go as the plan directs.
13 The plan at this point directs that it will go into a
14 litigation trust with respect to all claims. And it
09:13 15 would be litigated, which I am certain the Court is aware
16 that Maxxam will be litigating their claim if it was not
17 going to be paid. And I'm certain the creditors
18 committee will have litigation positions on that. All of
19 that will be developed at the 9019, none of which has
09:13 20 anything to do with confirmation.

21 The final comment I want to make, aside
22 from this whole compromise, is to do this at one time
23 with one package deal and at a time when the Court is
24 aware of the entire financial impact of the decision, is
09:13 25 that it parallel track the confirmation, but it is not

1 contingent upon confirmation. Whether the Court could
2 deny the 9019 is not in the business judgment of the
3 Debtor. The plan would be -- or notwithstanding that the
4 Court grants it. I'll put it the other way.

09:13

5 If there is no confirmed plan, then the
6 9019 is not a motion that will be granted or will be
7 dealt with. But if there is -- if it is denied, it is
8 not contingent upon confirmation. I think the critical
9 aspect of this case and it's evident, I think, in every

09:14

10 way that the formula is changing is to close the
11 evidence. If the Court closes the evidence, we have two
12 weeks to conclude all potential rewrites that anyone
13 wants to do on the terms of their respective plans.

14 They can only rewrite to make it better.

09:14

15 Otherwise, resolicitation will be required. And as this
16 Debtor, who is quickly running out of money and has
17 discovered less than a week ago that it cannot access the
18 SAR account because of the issues of the market rate
19 securities which, by the way, were traded to us as cash
20 equivalents, and they obviously are not. We could not
21 tolerate a renote and a start over process. For that
22 reason, Your Honor --

09:14

23 THE COURT: That whole issue of the SAR
24 account is sort of a non-issue, isn't it? I mean, there
25 have been Wall Street Journal and New York Times articles

09:14

1 about those types of securities, but they're meant to be
2 cash equivalents. They still are considered cash
3 equivalents. Isn't there a Bear Stearn aspect to all of
4 that, why that stuff was --

09:15

5 MR. JORDAN: Actually, Bear Stearn was
6 forced to write off about \$3 billion, I think -- I'm
7 sorry, Citibank \$3 billion off its books as cash
8 equivalents just in the last quarter. There's 75
9 lawsuits across the country in federal court over the
10 fact that people can't access their cash.

09:15

11 Now, I think there are a number of ways
12 that you access, which, for instance, you borrow against
13 it because it is secured ties, it is running a huge rate
14 of interest, which maybe or may not the municipalities
15 can pay or can't pay. But we have to come to the Court
16 to borrow. You can imagine that fight, if it meant that
17 we survived or not. There are a dozen problems, Your
18 Honor, in delaying the close of the evidence.

09:15

19 And I would suggest this: That when the
20 evidence is closed, we now have a format from which
21 everyone will work toward the arguments and the positions
22 for confirmation. And at this point, Your Honor, keeping
23 that a moving target is to no one's benefit except to the
24 conversion of the case and the disaster that would result
25 to all of the estates' interest if that occurred.

09:16

1 THE COURT: Okay. I'm not sure what we're
2 doing now. I mean, we gave Mr. Jordan an opportunity to
3 argue about that motion that he filed, but we're not
4 really arguing the motion. So that was his preliminary
09:16 5 statement about a motion that he filed and his
6 preliminary statement about what he believes is your
7 position that you want the evidence left open in the
8 trial for the confirmations.

9 Okay. Obviously I'm not going to decide
09:16 10 that issue until we finish today. I mean, so that issue
11 is going to get decided today. I've already told you
12 my -- I mean, my strong preference is, is that we're
13 going to close the evidence today. And then if you want
14 to reopen it, you follow the rules, and we reopen it.

09:16 15 But, I mean, I think we've given time to try these
16 issues, and so that's -- the normal procedure is to
17 finish, so we'll go on to that motion and arguing about
18 the -- arguing about confirmation, but we're not really
19 having that argument now because we don't even know where
09:17 20 we are at the end of today.

21 MR. BRILLIANT: Well, then, Your Honor,
22 maybe I should just sit down. And you let me know when
23 to argue about this issue. I was just going to --

24 THE COURT: When to argue about it, okay.
09:17 25 I heard all the argument I want on the issue of the

1 document that was prepared for the mediation. And I'm
2 going to -- if I'm erring, I'm erring on the side of
3 supporting the mediation. The documents prepared for
4 mediation are not going to be admissible, so it was a
09:17 5 document that was prepared for mediation. It later
6 became non -- it became public by virtue of some
7 securities issues regarding trading and insider
8 information, things of that sort, but it still didn't
9 become admissible by that.

09:18 10 And so I mean, I -- because it was
11 prepared for a mediation, there may well be statements in
12 there that are part of their mediating thought, and I
13 don't think that that has any bearing on the actual
14 lawsuit or the trial today. So I'm going to -- I'm not
09:18 15 going to admit that document.

16 All right. Now, we have a witness that's
17 coming at 10 o'clock. I guess, again, since -- one thing
18 that might be helpful is I'm wondering if the Noteholders
19 still believe that under the code there is a right to
09:18 20 credit bid in the plan that's been proposed by Mendocino.
21 Do you still take that position?

22 MR. GREENDYKE: Absolutely.

23 THE COURT: Okay. So as I understand the
24 law of bankruptcy, there are several things that can be
09:18 25 dealt with security claims. First of all, their secured

1 claim is whatever the value of your security, and then
2 you have an unsecured claim or a deficiency. And you can
3 transfer that security with the indubitable equivalent.
4 And their case is all about all that. You give them
09:19 5 substantive security. That's one thing you can do. You
6 can sell the asset and normally you're allowed to credit
7 bid. And as a practical matter, when you do that, I
8 mean, if you recall, they suggest that a court would --
9 even though a court has permission to not allow you to
09:19 10 credit bid, the court would never do that.

11 And I don't know of a case where a court
12 has said there's no right -- in other words, have found
13 circumstances to suggest that if they're selling it, you
14 have -- you don't have a right to credit bid. We're
09:19 15 going to make that decision. Maybe there are cases on
16 that. I don't know that. I have not seen one. And
17 Colliers doesn't think that that is a right that really
18 means anything. But you found some cases.

19 MR. JORDAN: I have five citations if you
09:20 20 need them.

21 THE COURT: But do we even get there? Is
22 this a sale? Why isn't this just a reorganization? Or
23 in the unlikely -- this is one of those things that
24 rarely happens in bankruptcy. They're just paying your
09:20 25 claim. They're paying that secured portion. So if

1 they're paying cash for the secured portion of your
2 claim, isn't this just a valuation issue? If your claim
3 is secured at the value of collateral and they're paying
4 your secured claim, why isn't it just a valuation issue?

09:20

5 And then, of course, the other way you can look at this
6 is -- I have not read the technicalities of the --are
7 they buying the assets or are they buying the stock and
8 then forming these organizations, Newco and Townco. I
9 mean, I'm not sure if they drafted it as though they're

09:20

10 an asset purchase or did they draft it as a stock
11 purchase and a reorganization.

12 MR. GREENDYKE: I think the plan is an
13 asset purchase, and I think Mr. Breckenridge told you on
14 the stand that they're buying the assets of Scopac, which
15 is the forest.

09:21

16 THE COURT: But what is the actual terms
17 of the plan? Did they buy the stock and then reform into
18 Newco and Townco?

09:21

19 MR. GREENDYKE: I think it's assets, and I
20 think it's -- it counts as a transfer rather than a sale,
21 to use the magic words.

22 THE COURT: So when would there ever be a
23 reorganization in which you're paying off the secured
24 claim and buying all the assets of the case?

09:21

25 MR. GREENDYKE: I'm not sure I understand

1 the question.

2 THE COURT: Are you suggesting that there
3 are no -- every reorganization in which someone pays off
4 a secured claim as a part of reorganizing the company,
09:21 5 taking control of a company, that in every case like
6 that, it's an asset purchase and not a --

7 MR. GREENDYKE: We are talking about
8 closing arguments now.

9 THE COURT: Yeah, I know. I'm getting a
09:21 10 preview.

11 MR. GREENDYKE: I think if you look at
12 1129(b), if you look at what somebody in the case could
13 do those secured creditors' reports.

14 THE COURT: Right.

15 MR. GREENDYKE: You can either --

16 THE COURT: Pay the claim.

17 MR. GREENDYKE: -- pay the claim over time
18 with interest and restructure it that way, in which case
19 you would have --

09:22 20 THE COURT: It's got to be fair and
21 equitable.

22 MR. GREENDYKE: Sure. And then the second
23 choice is the 363 transfer sale choice. And then the
24 third choice is whatever you do, it's got to be the
09:22 25 indubitable equivalent. And I think because they haven't

1 really characterized it as a sale of the asset, you know,
2 they -- by the semantics they've deprived us of the right
3 to credit bid under 363. It's not what they call it.

09:22

4 THE COURT: But the alternative, if they
5 decided to pay the claim, the only right you have is
6 1111(b). If you don't like the fact that they're paying
7 the claim, then you elect 1111(b), and you get the full
8 payment of your entire claim over the --

09:22

9 MR. GREENDYKE: The better question -- the
10 better question if you're taking that approach or that
11 concept on how to look at the plan is who's doing this to
12 us? I mean, it's not the debtor. Scopac is not doing
13 that to us. The interloper, Mendocino Redwood Company,
14 is going to do that to us?

09:23

15 THE COURT: They would like to say the
16 White Knight.

09:23

17 MR. GREENDYKE: And then if you want to
18 say it's Marathon because Marathon has some interest in
19 Palco, they've already admitted and all the witnesses
20 have admitted there's no equity at the Scopac level for
21 the benefit of anybody. So, if there's any value in
22 excess of whatever you find the claim to be of the
23 forest -- of the value of the forest, it belongs to us.

09:23

24 THE COURT: I agree with you that they got
25 to pay you the value of your claim, your secured claim.

1 All right. There's no question about that. And so if
2 they can't convince me -- I mean, if it's one dollar
3 short, they lose.

4 MR. GREENDYKE: Right.

09:23

5 THE COURT: But it seems as though this
6 has become -- this is getting -- this is narrowing down
7 to a valuation issue and not a legal issue. There were
8 lots of legal issues, but now that they're paying cash
9 for your claim, and isn't it not just a valuation issue?

09:24

10 MR. GREENDYKE: I think it is centrally a
11 valuation question. But I also think there are a lot of
12 legal issues. I still think --

09:24

13 THE COURT: So the story on the real
14 issues, I'm giving you the benefit of my problems right
15 now thinking about this.

16 MR. GREENDYKE: Okay.

09:24

17 THE COURT: It will make it better for me
18 if you -- I mean, if you're going to convince me
19 otherwise that there's a legal issue now that -- then it
20 helps me to figure that out. But in that regard then,
21 let me just add because valuation is now becoming so
22 central, and we got I don't know how many experts. Now
23 they've gone and valued -- some of them are precursors to
24 the ultimate value issues, and that's not -- I'm not to

09:24

25 discount them. That's important, too. Obviously the

1 growth rate, obviously how much you can cut is all
2 important, all those things. How many redwood you can
3 stock on there is important. All those things are
4 important to the value.

09:25 5 It would seem to me that in the next two
6 weeks that each plan proponent -- and I don't care who
7 does it for each plan proponent. In the course of
8 submitting proposed findings of fact and conclusions of
9 law would focus on each expert, their own experts, at
09:25 10 what they said and why it's the right thing. And the
11 other experts of what they said and why it's the wrong
12 thing. So, I mean, obviously there are legal issues, but
13 there are profound factual issues in this case.

14 And it would help me if somebody from that
09:25 15 table and somebody from this table and not three or four,
16 but you know, one proposal of facts and law that they
17 think I would -- I should find. And that in doing the
18 facts, they do it on a witness basis. They sort of
19 focus --

09:25 20 MR. GREENDYKE: We will do that.

21 THE COURT: -- on each of the witnesses.
22 Yes, sir.

23 MR. PACHULSKI: Your Honor, may I
24 approach?

09:26 25 THE COURT: You may.

1 MR. PACHULSKI: For the record again,
2 Isaac Pachulski, Stutman, Treister & Glatt, appearing on
3 behalf of the Aurelius Capital Management, Davidson
4 Kemper and Angelo Gordon. If I might take a few minutes
09:26 5 of the Court's time. I have been uncharacteristically
6 quiet, as anyone who knows me will tell you. I'd like to
7 go back and try to offer an approach in answer to a very
8 good question, Your Honor asked.

9 As you said, we often have reorganizations
09:26 10 where you simply pay the creditor a defined value, and
11 that's it. There's no credit bid. The problem is one of
12 terminology. This isn't a reorganization. This is a
13 sale. Mr. Breckenridge testified it's a purchase. And
14 there's a difference between a reorganization and sale.

09:26 15 And the fact that people will be employed, the fact that
16 Newco, the buyer, will employ, will operate the business,
17 it's still a sale. And that's the critical difference.

18 If a debtor wants to reorganize, and a
19 debtor in order to reorganize wants to give a creditor
09:27 20 the value of its collateral, that is an alternative under
21 the code. As the Court will recall, there are kind of
22 three boxes that you have to fit in in order to confirm a
23 plan over the descent of a class. One is you give them
24 value over time with a present value equal to the value
09:27 25 of the collateral. That's not at issue here because

1 they're paying cash.

2 Option two is you have a sale free and
3 clear of liens. And this is a sale to Newco, free and
4 clear of liens, with the right to credit bid under
09:27 5 363(k). Okay. They flunk that test because we're not
6 getting 363(k). This is a sale by Mr. Breckenridge's
7 admission, so you don't have to believe me.

8 The third alternative is indubitable
9 equivalence. Now, there are some cases that say that
09:27 10 where you have a sale free and clear of liens with a
11 right to -- a sale free and clear of liens, you have to
12 go the credit bid route. And why do they say that? I'm
13 not going through my whole closing argument -- I don't
14 want to scare the Court -- but you asked a very good
09:27 15 question, and Your Honor is going to be thinking about
16 this for two weeks, and I want to make sure we're in the
17 right legal box.

18 The cases say if you have a sale free and
19 clear of liens, you have to give the creditors 363(k)
09:28 20 route. And one reason given -- and I don't have the case
21 site, it will be in our post closing brief or their post
22 closing brief. The Court said in its footnote a sale
23 with a credit bid enables the court to determine the
24 actual value of the asset as opposed to a hypothetical
09:28 25 value based on appraisers. And with all respect, Your

1 Honor, what happened yesterday is a poster child for
2 this. After swearing up and down that this asset was not
3 worth more than \$430 million, Marathon -- that's what
4 MRC's appraisers said. After they swore up and down and
09:28 5 they challenged everybody and they poked everyone, well,
6 guess what, it's now 530, exactly 530 with some
7 adjustments. And we have no way of knowing whether
8 that's a best price either because there's not an
9 auction. But I will -- but in terms of statutory --

09:28 10 THE COURT: And what you're telling me, if
11 they had just simply written their plan to provide that
12 they were buying the stock of Scopac and Palco -- maybe
13 they did. I haven't looked at that.

14 MR. PACHULSKI: That's not what the plan
09:29 15 says.

16 THE COURT: If they're buying the stock
17 and reforming it into two new corporations, Newco and
18 Townco, then -- and reorganizing it that way, that this
19 would not be a sale. But if they're buying all the
09:29 20 assets of Scopac and Palco in their plan, that that's a
21 363 sale.

22 MR. PACHULSKI: Well, I can answer the
23 second part. Clearly what we have now is a 363(K) sale
24 without being caught -- I haven't found out the other
09:29 25 option. There are obviously reasons they didn't want to

1 do that because if they had wanted to do that, they could
2 have. And I don't think -- with all respect, I don't
3 think that what the code says, the sale has to be -- a
4 sale free and clear of liens has to permit 363(k). I
09:29 5 don't think there's such -- there's a document such as
6 the could have doctrine because this isn't a could have
7 case. The code requires the court to look into their
8 actions, not a could have or a might have or a what if.
9 They have reasons for doing this. They're smart people.
09:29 10 And there's obviously some reason they didn't want to
11 stop at Scopac, and it's a little too late to change it.
12 They chose to ride this horse and have to ride this horse
13 wherever this horse takes them. And this horse takes
14 them to a sale free and clear of liens.

09:30 15 We believe we have an absolute right to
16 credit bid. And even if we don't, if you conclude that
17 they can do something like this under indubitable
18 equivalent, I would ask the Court to consider two issues
19 which we don't have to get into detail today. One, how
09:30 20 can a forced sale without an auction be the indubitable
21 equivalent of an auction when you've already had evidence
22 in this court that appraisal testimony doesn't mean much.
23 And second -- we'll get into this -- they're actually
24 getting some assets for free that weren't included in the
09:30 25 valuation of the timberland. But we'll discuss that in

1 two weeks.

2 THE COURT: Okay.

3 MR. PACHULSKI: But the main point is,

4 Your Honor, is courts form legal views before closing

09:30 5 arguments. And that's a fair thing because you've

6 thought about this case for months. I've kind of been

7 dropped into the middle of a war zone, and I've been

8 thinking about this for a week and a half. So you've

9 thought about it much longer than I have. But I would

09:30 10 like the Court to think about this legal perspective and

11 the 363 problem under this context and not what might

12 have been. And thank you for hearing me out on this,

13 Your Honor.

14 THE COURT: All right.

09:31 15 MR. BRILLIANT: Your Honor, Alan Brilliant

16 on behalf of Mendocino Redwoods. I'm going to reserve my

17 closing argument to the closing as well, but I guess if

18 we're all giving Your Honor things to --

19 THE COURT: I don't mind using the hour

09:31 20 that we have waiting for the witness to discuss some of

21 these issues up front because it helps focus the

22 argument. Go ahead.

23 MR. BRILLIANT: The first thing is, Your

24 Honor, we wholeheartedly, you know, agree with your

09:31 25 intellectual framework in that the issue of indubitable

1 equivalent, and the situation where cash is being paid
2 truly is just the issue as to whether or not the amount
3 that the lender is receiving is full payment on account
4 of their collateral. We do agree with that. The issues
09:31 5 that the Indenture Trustee are raising, we think, put
6 form over substance.

7 This is a reorganization, Your Honor,
8 and -- but the assets, you know, are being put into a new
9 entity. There are assets that are coming from the Palco
09:32 10 side, and there are assets that are coming from the
11 Scopac side. And at the end of the day, there are going
12 to be transactions after the effective -- you know, on
13 the effective date of the plan to move the assets around
14 to put them into the same company. And we could have
09:32 15 chosen to do that, you know, through mergers or through,
16 you know, transfers. And ultimately the conclusion, you
17 know, for various reasons, which I'm sure Your Honor can
18 appreciate, you know, involve taxes and other things, was
19 to, you know, put them, you know, in two separate, you
09:32 20 know, new entities.

21 But that doesn't somehow miraculously
22 create credit bid rights on behalf of the, you know, the
23 Noteholders. I think Your Honor, you know, appreciates
24 what we're doing, which is reorganizing, you know, the
09:32 25 two different debtors' assets, you know, through a plan

1 of reorganization pursuant to which with the amendment we
2 are paying the --

3 THE COURT: Let me ask you this.

4 MR. BRILLIANT: Sure.

09:32

5 THE COURT: Is there a tax consequence
6 difference between taking -- in a plan providing that
7 Scopac and Palco are merged into one entity, which, in
8 turn, is separated into two entities?

9 MR. BRILLIANT: Yes. And I'd rather

09:33

10 not --

11 THE COURT: There are different tax
12 consequences for doing that than just simply taking all
13 the assets of Scopac and Palco and putting them into two
14 different entities?

09:33

15 MR. BRILLIANT: Merging them versus --
16 yes.

17 THE COURT: Okay.

18 MR. BRILLIANT: Yes. We have tried to
19 come up with the most tax efficient structure which
20 benefits all the creditors.

09:33

21 THE COURT: Okay.

22 MR. BRILLIANT: That's the first point I
23 want to make. The second point I wanted to make is this
24 issue we heard a little bit of in argument from, you

09:33

25 know, Mr. Greendyke, and now we're hearing it from

1 Mr. Pachulski, that somehow the fact that we raised our
2 bid undercuts, you know, our expert appraisals and
3 somehow creates the impression that, you know, the assets
4 are now worth the 530 million rather than what our
09:34 5 experts testified to. And that's just wrong. People pay
6 amounts for assets for different reasons. Assets have a
7 value. And then in addition to that, they may be worth
8 more to certain people.

9 Now, Mendocino, which is a competitor here
09:34 10 and has certain synergies, has the ability to do more
11 with these assets and other people. And so when an
12 acquirer negotiates with the seller, generally you pay
13 what the value of the assets are generally. You don't
14 pay what you can necessarily do with them. In a
09:34 15 negotiated transaction, we sometimes -- you know, the
16 seller works very hard to try to get the buyer to share
17 its synergies, its special values with the seller. And
18 you know, here in this circumstance, in order to get
19 something done, and having heard Your Honor at the end of
09:35 20 the first week of trial, we worked with our clients and
21 we figured out what is the indifferent point here
22 throwing in all of your synergies.

23 THE COURT: I don't think that the idea
24 that you listened to the Court and the Court was trying
09:35 25 to work toward some kind of resolution and -- I mean, I

1 think the Noteholders are in business to make money, not
2 necessarily cut trees. I suspect your clients are in the
3 business of wanting to cut trees. So, I mean, if you're
4 going to get them to come aboard, you're going to just
09:35 5 have -- obviously going to have to offer more money. I
6 mean, and you did that.

7 Now, if I were to somehow hold that
8 against you, then if that were the rule in bankruptcy,
9 we'd never reach deals. So I don't think I would ever
09:35 10 worry about that. I would worry more about the fact that
11 we've got, to quote somebody else, a plethora of
12 different expert opinions about all of this.

13 And so how do I get certain about the
14 value of their assets? Maybe that's just the big
09:36 15 decision that courts are faced with doing. But I think
16 that there has been a movement lately at least to the
17 position that value is not supposed to be what some Court
18 just somehow looks at and decides because of all these
19 experts; it's supposed to be tested. Now, you know, I
09:36 20 mean, I don't know, but that's the issue I would have
21 you-all be looking at.

22 MR. BRILLIANT: Your Honor, and we'll do
23 that. And we understand and obviously I think the way
24 Your Honor has suggested this, where everybody, you know,
09:36 25 analyze the various expert witnesses, I think will be

1 helpful. But the only point I want to make, and it
2 sounds like Your Honor has already picked it up, what we
3 bid doesn't necessarily, you know -- because we're
4 getting a whole lot of different things here.

09:36

5 THE COURT: I understand that. And I'm
6 going to go back to my fundamental statement about
7 bankruptcy being a forum in which people negotiate and
8 come up with a resolution. I mean, ultimately it would
9 be very counterproductive for me to hold against you the
10 fact that you raised a bid in order to attempt to work
11 out a deal. I don't know if that's working out a deal or
12 just the hope of buying, you know -- whatever. For
13 whatever reason, I mean, I'm not sure. I think they're
14 entitled to argue that, you know, but, I mean, it's going
15 to be very hard for me to find that the value is
16 something less than you're offering now.

09:37

09:37

17 MR. BRILLIANT: Well, I think, Your Honor,
18 I think that we are being buying a lot of different
19 things here. We're buying the Palco business, the mill,
20 the real estate. You know, we have a situation where
21 Marathon, you know, is contributing, you know, the mill.
22 So it's not as if we are just, you know, buying, you
23 know, the trees. In addition to that, as there's been
24 extensive testimony, you know, Mendocino has a
25 distribution business and Mendocino is buying a steady

09:37

09:38

1 supply for its distribution business.

2 THE COURT: Right. I think we're -- I
3 mean, I think you rose to be concerned about his
4 statement about raising your value, and I'm telling you
09:38 5 that I probably wouldn't waste my time on that argument.
6 But the rest of this is legal argument and closing; and
7 just as you have a position on that, they've got a
8 counter position. And I don't think we need to discuss
9 that right now. But I appreciate you --

09:38 10 MR. BRILLIANT: Thank you, Your Honor.

11 MR. KRUMHOLZ: Your Honor, can I --

12 MR. FIERO: I'm closer.

13 THE COURT: You blocked him out. You
14 should have walked up earlier. Take his seat then.

09:38 15 MR. FIERO: John Fiero for the Committee,
16 Your Honor. I don't want to address the subject of --
17 the substance of the topic, but I would like to talk a
18 little bit about procedure and at least highlight it for
19 the Court. The testimony presented to the Court shows

09:38 20 that these businesses are very close to running out of
21 money. I don't think delay is in any parties' interest,
22 including the Noteholders. If they're going to have
23 their auction, they need time to do their marketing. And
24 we heard Mr. Pachulski suggest that there would be post

09:39 25 closing briefs. The Committee would suggest that the

1 evidence close today, that briefs be filed next Friday,
2 and that we go ahead and argue Thursday and Friday, if
3 that's what it takes.

09:39

4 But there is no reason to bring everybody
5 down here to argue without everybody seeing what's on
6 paper and what people have to talk about in terms of the
7 legal issues. And so I would urge the court to consider
8 that before we leave today.

9 THE COURT: Okay.

09:39

10 MR. FIERO: Thank you.

11 MR. JONES: Thank you, Your Honor. Evan
12 Jones on behalf of Bank of America. Your Honor, since we
13 have a few minutes I want to respond to one comment that
14 Your Honor made because I don't want -- I don't want the
15 Court to take it as our agreement, and that is on the
16 auction rate securities. Various people may argue for
17 purposes of various documents that they are cash
18 equivalents and that they comply with the documents, but
19 the one thing I think is completely clear from

09:39

09:40

20 Mr. Clark's testimony yesterday is he can't get cash from
21 those auction rate securities. He can't pay his loggers
22 with auction rate securities. And so, Your Honor, I
23 would suggest that between now and when we come back in
24 two weeks all of the parties are going to have to sit

09:40

25 down and figure out whoever's plan gets confirmed, how do

1 we get enough cash in this estate to make sure we get to
2 effectiveness?

3 Your Honor, I noted on a number of
4 occasions and various people have told me, I think I'm --
09:40 5 well, I guess the state also, we're the only ones in the
6 room who everyone wants to pay. And so when we get up to
7 talk, people say why do you care? And that's our --
8 that's our concern we think the parties need to address.

9 I think it can be addressed, but I did want to make sure
09:40 10 that at least from our viewpoint for purposes of
11 operating this estate to consummation of a plan, those
12 auction rate securities aren't the same as cash. And
13 someone is going to have to deal with that issue. Thank
14 you, Your Honor.

09:41 15 THE COURT: Yes, sir.

16 MR. KRUMHOLZ: I'm a fact guy, not a law
17 guy obviously, but since you're going to be thinking
18 about a host of facts contained in a very big transcript,
19 I at least thought that the issues you asked about might
09:41 20 be addressed by Mr. Breckenridge's testimony.

21 MR. NEIER: No, Judge, this is absurd.
22 Let's not argue the record. I would think the plan
23 speaks for itself. But if they want to -- if they want
24 to argue this, they can argue this in closing. Your
09:41 25 Honor, I just have a very ministerial point. I don't

1 have any big points, you know. I kind of think people
2 are wrong in the facts and the law on the Noteholders'
3 side.

09:41

4 THE COURT: Is this ecclesiastically
5 ministerial or --

6 MR. NEIER: No, the secular.

7 THE COURT: Okay.

09:42

8 MR. NEIER: No, we gave parties -- we
9 mentioned yesterday we would have some additional
10 exhibits, which are the SBE prices for the past two years
11 or so, three years. And we've given copies of them to
12 the Noteholders and the debtors, and we're adding them to
13 our witness list. And I don't know if there are any
14 objections to that.

09:42

15 THE COURT: Somebody will let us know.

16 MR. KRUMHOLZ: No objection.

09:42

17 MR. DOREN: Your Honor, just a couple of
18 draft documents in there we'd like to discuss with
19 counsel before we agree to their admissions. But we
20 certainly won't have any objection to the majority of
21 them.

09:42

22 And in that same vein, Your Honor, we have
23 reached an agreement regarding the testimony of
24 Dr. Mundy, Mr. Kieser, Mr. Waltner, and additional
25 testimony from Mr. Fleming. And to save the Court's time

1 and resources, we are limiting and have revised the
2 proffers and reports for each of those individuals to
3 limit the scope of the testimony to the MMCAs to leave
4 out discussions of any development project.

09:42 5 And so, Your Honor, we offer DX 115, which
6 is the supplemental -- or the revised, should I say,
7 declaration of Dr. Mundy; DX 116, which is the revised
8 report of Dr. Mundy, which again, just limits it in scope
9 to the MMCAs. And we have agreed, counsel for the
09:43 10 Noteholders, that they, in turn, will be submitting a
11 revised proffer from Waltner, Kieser and Fleming.

12 THE COURT: All right. And this table
13 have any objection to that?

14 MR. HAIL: No, Your Honor, we're in
09:43 15 agreement.

16 THE COURT: Yes, sir.

17 MR. SHIELDS: The only thing -- this is
18 Todd Shields for Bank of New York, Indenture Trustee.
19 The supplemental declarations and revised declarations
09:43 20 for Indenture Trustee witnesses, James Fleming, Walter
21 Kieser, and Alan Waltner have been given exhibit numbers,
22 and I don't have them at hand. I might in about five
23 seconds here, but I wanted to offer those. It's IT
24 Exhibit 234, Your Honor, is the declaration of Walter F.
09:43 25 Kieser. IT Exhibit 235 is the declaration of Alan C.

1 Waltner. And IT Exhibit 236 is the supplemental
2 declaration of James E. Fleming, and we'd like to offer
3 those into evidence.

4 THE COURT: And there is no objection?

09:44 5 MR. SCHWARTZ: No, sir.

6 THE COURT: They're admitted.

7 MR. DOREN: As well as the Mundy
8 documents?

9 THE COURT: Yes, sir.

09:44 10 MR. GREENDYKE: Judge, this is Bill
11 Greendyke for the Bank of New York as Indenture Trustee.
12 A moment ago I was advised by one of my partners that the
13 Bank of New York has requested that we be allowed to
14 respond to the testimony that Mr. Clark gave late last
09:44 15 night about the auction rate securities. And I'm not
16 sure the extent of that, whether to characterize or
17 quantify what those holdings are in the SAR account or to
18 at least defend itself with regard to who gave the
19 advice, who gave the instruction. I think there was some
09:44 20 uncertainty.

21 THE COURT: I don't think anyone suggests
22 that the Indenture Trustee has done the wrong thing with
23 respect to purchasing auction rate securities. I think
24 the only suggestion was that on a going forward basis,
09:45 25 which is certainly important in the sense that we do have

1 a problem with -- we certainly have a huge problem with
2 Palco, if I confirm your plan. Something's got to happen
3 to Palco. They have no more money. They got no way to
4 get it. They got nothing.

09:45 5 And whatever plan is confirmed, somehow
6 there's got to be a way to get to the auction or get to
7 the sale to Mendocino or get to the reorganization to
8 Mendocino. Whichever it is, there's got to be a way to
9 get there. And I had asked the question about what money
09:45 10 is available. And, you know, down the road, if one side
11 doesn't like it, and they want to appeal all of this
12 stuff, then that issue becomes very germane as to a stay
13 panel appeal. How do we get there and what's it going to
14 cost?

09:46 15 MR. GREENDYKE: I really have two things.
16 First of all, I'll finish what I started to say, and I'll
17 respond to the Court's comments just now. Bank of New
18 York, I think, wants the make the Court aware that it may
19 want the opportunity to respond to what Mr. Clark said
09:46 20 yesterday about the auction rate securities.

21 THE COURT: In what regard?

22 MR. GREENDYKE: I don't know, yet, Judge.
23 I just got a Blackberry message, and I don't know what
24 that response will be. But as you know, Bank of New York
09:46 25 has two sets of lawyers. Thompson Knight represents them

1 institutionally, if you will. And we do the bankruptcy
2 work. Our clients -- again, I'll be more specific to my
3 comments earlier today -- want the opportunity to address
4 the Court's concern about the mill. They know -- they
09:46 5 understand the issue that a confirmation of our plan
6 doesn't directly deal with the mill.

7 They want the opportunity to figure out
8 whether they can bring something to the Court about the
9 mill or bring something to the Court with regard to
09:46 10 interim financing pending a sale, an auction process
11 involving the forest, to allay the Court's concerns about
12 those employees who work in the Court's words paycheck to
13 paycheck, payday to payday. And they hear you, and they
14 want the ability to respond to that, but they need next
09:47 15 week basically to try and put together something to bring
16 to you as an alternative course, not an amended plan, but
17 an alternative course. If you do confirm our plan, your
18 concerns will be resolved, which I think is what you've
19 been asking us to do all along. And that's my response
09:47 20 to the Court's comments.

21 MR. JORDAN: I have two very brief
22 responses. I completely agree with Mr. Greendyke, that's
23 what you've been asking us to do all along. Since last
24 October you've been telling that side of the room and
09:47 25 this side of the room, I don't want to reorganize these

1 businesses with just one or the other. And to suggest
2 today, gosh, we would like to be able to think about
3 that. They've been thinking about that since October.
4 There were six days of mediation. Through today they've
09:48 5 been thinking about that, and the answer has always been
6 no. And to suggest we want to keep the record open so
7 they could think about what you've been telling
8 everybody, I think, is certainly no grounds.

9 But let me direct one other thing because
09:48 10 the Court asked a question, and I want to just give you a
11 few quick citations to the code to address the issues
12 that I think are important for the court in answering the
13 inquiry. First of all, the idea that there's a right to
14 credit bid, that comes in Section K of 363. Section K
09:48 15 says if there's a sale under Section B of 363, so we go
16 to B or F -- I'm sorry, B(1)F. And that provides that
17 the trustee may sell property under B or C in this
18 section free and clear of liens, claims, and interests,
19 the trustee, that is, the debtor in possession or a
09:48 20 trustee can do it.

21 THE COURT: But isn't there a general
22 provision in 129 somewhere that they can sell assets
23 pursuant to a plan?

24 MR. JORDAN: Let me take you to the next
09:48 25 thing. The right to credit bid is a 363 right, and even

1 in K it is discretionary. Unless the court orders
2 otherwise, they have a right.

3 THE COURT: And you have a cite where the
4 court ordered otherwise?

09:49 5 MR. JORDAN: I have a cite where the court
6 ordered otherwise. I have cites to answer the exact
7 question you asked, and that is, is there a right to
8 credit bid under what 1123 describes as the contents of a
9 plan? That's where it comes from. The contents of a
09:49 10 plan under 1123-5(d), not any applicable non-factual law,
11 plan shall -- 5(d) provide adequate means for plan
12 implementations -- again, I'm reading from 1123-5(d),
13 provide adequate means for a plan implementation, such as
14 sale of all or in part of the property of the estate,
09:49 15 either subject to or free of any lien. And it stops. It
16 doesn't say claims and interests. It says lien. And
17 then read the rest of the code.

18 There is no credit bid rights, which are
19 expressly limited to a trustee bringing an action in 363.
09:49 20 There are no credit bid rights under a Chapter 11 plan of
21 reorganization. Why? Because the code in the current is
22 beautiful. I mean, it fits like two gears should.
23 1111-B. It's a trump card. A secured creditor, 1111-B,
24 and that's the same as a credit bid. I get every penny
09:50 25 of my claim. The concept is this. Yes, you're going to

1 get every penny of your claim, but you only get the value
2 of your claim. Chapter 11 reorganization --

3 THE COURT: You're basically just saying
4 what I said at the beginning. So I was alerting them to
09:50 5 my thoughts about it because I want them to divert that
6 issue. And obviously you know what they're going to say
7 because now we've had a preview of it, so you're going to
8 brief that issue also. But I'm not going to rule on
9 this. I'm not -- I'm just telling you this is sort of --
09:50 10 this is the quasi California rule in that I talk too much
11 during the trial and tell you what I'm thinking so that
12 you can help me if I'm thinking wrong.

13 MR. NEIER: Your Honor, I have an easy
14 solution. Mr. Cherner is now in the room, so why don't
09:51 15 we just go ahead and get the testimony on and get him --

16 THE COURT: Yes, sir.

17 MR. PACHULSKI: Please, Your Honor,
18 counsel cited every statute for his position, except the
19 one that applies. The one that applies is 1129(b) which
09:51 20 deals with cram down.

21 THE COURT: Okay.

22 MR. PACHULSKI: And I'm not going to go
23 through the subdivision, but there is a subdivision that
24 specifically refers to 363(k).

09:51 25 THE COURT: Right.

1 MR. PACHULSKI: So I just want to make
2 sure we cite the provisions that apply as opposed to the
3 ones that don't.

09:51

4 THE COURT: Okay. So now we have -- the
5 witness has flown in on the company plane, and we're
6 ready to proceed.

7 MR. KRUMHOLZ: Yes, Your Honor. We call
8 Jacob Cherner to the stand.

9 THE COURT: All right.

09:51

10 MR. HELD: Your Honor, I might just
11 announce for the record, Michael Held here on behalf of
12 Scotia Redwood Foundation.

13 THE COURT: All right. Thank you.

14 (The witness is sworn in.)

09:52

15 THE COURT: This is Mr. Cherner?

16 MR. KRUMHOLZ: Yes, sir.

17 THE COURT: Do we have a proffer?

18 MR. KRUMHOLZ: Yes. Good morning,
19 Mr. Cherner.

09:52

20 THE COURT: And this is a fact witness?

21 MR. KRUMHOLZ: Correct.

22 THE COURT: So are you --

23 MR. KRUMHOLZ: All I'm going to do is
24 offer it up.

09:52

25 THE COURT: You're just going to have him

1 identify his proffer? Okay.

2 JACOB CHERNER,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

09:52 5 BY MR. KRUMHOLZ:

6 Q. Could you reintroduce yourself to the judge.

7 A. Yes, my name is Jacob Cherner.

8 Q. I've handed you Indenture Trustee Exhibit 237.

9 Do you have that in front of you?

09:52 10 A. Yes, sir.

11 Q. Is that a true and correct copy of your
12 supplemental proffer in this case?

13 A. Yes, sir.

14 Q. Is all of the testimony that's contained in
09:52 15 Exhibit 237 based upon your own personal knowledge?

16 A. Yes, sir.

17 Q. And does it reflect some events that have
18 occurred since you last testified?

19 A. Yes, sir.

09:53 20 MR. KRUMHOLZ: We seek introduction of
21 Exhibit 237 into evidence.

22 THE COURT: Any objection?

23 MR. HAIL: No objection, Your Honor.

24 MR. DOREN: No, Your Honor.

09:53 25 THE COURT: All right. It's admitted.

1 MR. KRUMHOLZ: Pass the witness.

2 THE COURT: Anyone have any questions for
3 the witness?

4 MR. HAIL: Your Honor, speaking for this
09:53 5 table, we'd rather go last, if that's the preference of
6 anyone else.

7 THE COURT: All right. Bank of New
8 York -- Bank of America. I'm sorry.

9 CROSS-EXAMINATION

09:53 10 BY MR. JONES:

11 Q. Mr. Cherner, Evan Jones on behalf of Bank of
12 America. Good to see you again. Mr. Cherner, I don't
13 know if you heard about Mr. Clark's testimony yesterday,
14 that part of the SAR account is invested in auction rate
09:53 15 securities and may be difficult to access. Did you hear
16 that or hear about that?

17 A. Yes, sir.

18 Q. Have you considered if the Noteholders' plan is
19 confirmed and your bid becomes the stalking horse bid,
09:54 20 whether you would be prepared to in some way advance loan
21 funds, whatever, to Scotia so it could continue to
22 operate until the closing, whenever that might occur?

23 A. I understand that the Noteholders are
24 considering doing that through the indenture estate.

09:54 25 Q. Do you know if any decision has been reached on

1 that?

2 A. No, sir.

3 MR. JONES: I have no further questions.

4 Thank you, Mr. Cherner.

09:54 5 THE WITNESS: Yes, sir.

6 THE COURT: Does the Committee have any
7 questions or you want to go last, too? What about the
8 Debtor, do you have any questions? Palco Debtor, how
9 about the Palco debtor, you have any questions?

09:54 10 MR. JORDAN: No questions, Your Honor.

11 THE COURT: All right. The Scopac Debtor?

12 MR. DOREN: Your Honor, if we could
13 reserve. Likely we will not, but if we could reserve
14 until the end for any follow-up.

09:54 15 THE COURT: They already asked first to go
16 last.

17 MR. DOREN: Fair enough, Your Honor. We
18 have no questions.

09:54 19 THE COURT: All right. Now, we're down to
20 last.

21 MR. NEIER: Your Honor, I think the
22 Committee just got the proffer. It was from last night.
23 They're just reviewing for one second.

09:55 24 MR. FIERO: It wasn't e-mailed to us, Your
25 Honor. I'm sorry.

1 THE COURT: Okay.

2 MR. FIERO: Can we take ten minutes, Your
3 Honor?

4 THE COURT: We can. Ten minutes.

10:03 5 (A recess was taken.)

6 MR. BRILLIANT: Your Honor, the Committee
7 won't be asking any questions of the witness.

8 THE COURT: All right. Get the witness
9 back.

10:08 10 MR. HAIL: Your Honor, Brian Hail on
11 behalf of Mendocino Redwood Company. We have no
12 questions for Mr. Cherner.

13 THE COURT: Okay. How about Marathon?

14 MR. NEIER: No questions, Your Honor.

10:08 15 THE COURT: Does anybody have any
16 questions? So you flew all the way in for this?

17 MR. NEIER: Your Honor, we only got the
18 proffer late last night. If we had gotten it a little
19 earlier, then maybe we could have advised them.

10:09 20 THE COURT: Okay. Thank you.

21 THE WITNESS: Yes, sir, Your Honor, thank
22 you.

23 THE COURT: All right.

24 MR. BRILLIANT: Your Honor, we will not be
10:09 25 calling Mr. Dean, so we believe all the evidence is

1 closed at this point, Your Honor.

2 THE COURT: Okay.

3 MR. KRUMHOLZ: Not all the evidence, Your

4 Honor. But Exhibits 227, 228, and 229 are the three

10:09 5 documents to Mr. Cherner that I understand there's no

6 objection to; is that right?

7 MR. SCHWARTZ: No objection.

8 THE COURT: So they're admitted.

9 MR. KRUMHOLZ: And we also have an issue

10:09 10 with the hearing transcripts. We told the various

11 counsel that we would highlight the various transcripts

12 from the last year and a half that were relevant. We've

13 done that. There are several who've represented they

14 don't have time to look at it yet. So I don't know what

10:09 15 you're going to do with the closing of evidence today or

16 not.

17 THE COURT: There are hearings before this

18 court that you want me to take judicial notice of.

19 MR. KRUMHOLZ: Sure.

10:09 20 THE COURT: Is that what you're saying?

21 MR. SCHWARTZ: That's what he's saying.

22 THE COURT: And you've got copies of the

23 actual hearings, and you're going to highlight them.

24 You'd like those to be a part of the record.

10:10 25 MR. KRUMHOLZ: We would. Obviously they

1 have the opportunity to object or not based upon what the
2 court --

3 THE COURT: Okay. And do you -- well, I
4 think -- I mean, I don't know how they would object to me
10:10 5 taking judicial notice of hearings, but if they want to
6 object. Are you going to object on the doctrine of -- I
7 mean, I don't mind taking judicial notice of every
8 hearing we've had.

9 MR. NEIER: Your Honor, we just got them
10:10 10 today, and they designated. We'd like to see if we want
11 to counter designate. I don't think it's an objection
12 issue so much as what are they asking the court to take
13 judicial notice of? Do we have something in addition to
14 that or counter to that that we also want the court to
10:10 15 take judicial notice of. I think that's the only issue.

16 THE COURT: Okay.

17 MR. NEIER: Obviously the Court -- I never
18 knew that -- all of us have put on our exhibit list
19 various things that are in the docket and in transcripts,
10:11 20 hearing transcripts, whatever. I think --

21 THE COURT: This is one of those issues
22 that sometimes is an issue and sometimes it isn't. I
23 mean, bankruptcy court traditionally -- I'm not sure
24 exactly how to say it. So, you know, sometimes we take
10:11 25 judicial notice of the whole record and that -- if you do

1 that, does that mean that on appeal that you can
2 designate everything that was ever said in this -- in any
3 hearing before this court over the past two years? I
4 mean, that could be an incredible record on appeal. So I
10:11 5 think the safest thing to do is to do what you've done,
6 which is if there are specific things in hearings that
7 you want me to look at, I'll do that.

8 MR. NEIER: And we'll obviously do the
9 same.

10:11 10 THE COURT: Okay.

11 MR. DOREN: Will you provide us some time
12 for that exercise, Your Honor?

13 THE COURT: Okay. How much time? Are we
14 talking about -- can you redesignate, I mean, even if you
10:12 15 don't have -- are you going to know by noon today whether
16 or not you have any additional stuff that you need to add
17 to the record?

18 MR. KRUMHOLZ: Frankly, in fairness to
19 them, there's no way they would. It's going to be a
10:12 20 difficult task. I know Mr. Doren is wanting to say that,
21 and we don't mind saying that on the record. What I
22 would suggest, Your Honor, is between -- I don't know
23 what you're going to do as to the closing of the evidence
24 or not. Obviously the parties disagree to that. But
10:12 25 even if you were to close the evidence, if you could hold

1 it open just for this limited purpose over the course of
2 the next however many days.

3 THE COURT: All right.

4 MR. JORDAN: Your Honor, I would also
10:12 5 agree that limited holding the record open to allow that
6 to occur.

7 THE COURT: Okay. Well, let's talk about
8 the briefing schedule.

9 MR. JORDAN: That's what I was going to
10:12 10 ask about because if you can let us know when you want
11 findings and conclusions -- proposed findings and
12 conclusions and those sort of things.

13 THE COURT: Well, there are two things
14 that I would like before we argue the case.

10:12 15 MR. KRUMHOLZ: I hate to interrupt, I
16 really do.

17 THE COURT: That's all right.

18 MR. KRUMHOLZ: There are some depositions
19 that we've been provided, Your Honor, by MRC and Marathon
10:13 20 as well as, I think, maybe the debtors. We certainly
21 have submitted them. I don't think it has been formerly
22 entered into --

23 THE COURT: To the extent that -- aren't
24 those marked as exhibits, and they're going to be
10:13 25 admitted into the record.

1 MR. KRUMHOLZ: They have not been marked,
2 Your Honor, but I would just ask the court reporter to
3 mark them as the exhibit next for each party.

10:13

4 MR. SCHWARTZ: Your Honor, for us, we did
5 mark them on our exhibit list and added them.

6 THE COURT: So if you wouldn't mind the
7 Indenture Trustee can mark them. Now, are you submitting
8 a disk with them on it or not?

10:13

9 MR. KRUMHOLZ: We haven't yet, Your Honor,
10 but we will.

11 THE COURT: You can mark these. I'm not
12 sure. Just mark those and submit the disk.

10:13

13 MR. DOREN: And, Your Honor, the Debtors
14 are in the exact same situation. We have our
15 designations -- the counter designations. We need to
16 mark them as an exhibit for Your Honor. Would you like
17 them as one exhibit or an exhibit for each witness?

18 THE COURT: I would put an exhibit for
19 each witness.

10:14

20 MR. DOREN: We will do that, sir. And
21 would you also like a disk, or are you comfortable with
22 just the hard copies?

10:14

23 THE COURT: Well, I don't want a disk. I
24 just don't want -- I want to keep the record in here on a
25 disk.

1 MR. DOREN: Thank you.

2 THE COURT: Now, when I do that, all of
3 you who have provided exhibits need to understand that I
4 might well require that you submit the actual exhibits at
10:14 5 a later date, if there's an appeal. I can also just
6 print them out because I have a disk. But, I mean, there
7 is no rule anywhere that says that I have the authority
8 to keep the official record of the disk even though we
9 have electronic filing and all that other stuff and even
10:14 10 though a disk is a whole lot easier way for the appeal
11 court to look at. So the official record is what we'll
12 keep is the disk, but the -- but the actual exhibits, you
13 need to keep so that if we tell you to bring them, you
14 have to bring them. Okay.

10:15 15 MR. KRUMHOLZ: Your Honor, I've marked as
16 IT Exhibit 239 the deposition designations as well as the
17 underlying testimony for Sid Weiss, Georgia O'Brien,
18 Andrew Wilshire, and Christopher DiMauro, and offer them
19 into evidence.

10:15 20 THE COURT: All right. They're admitted.

21 MR. SCHWARTZ: And, Your Honor, on our
22 exhibit list our deposition designations are marked as
23 Exhibit 88, and we handed you those yesterday, our
24 exhibits. And I offer them into evidence.

10:15 25 MR. NEIER: And, Your Honor, with respect

1 to the SBE prices that I talked about this morning, those
2 are MMX 83 through 87, and there were no objections to
3 that.

4 THE COURT: And so they're admitted.

10:15 5 MR. SCHWARTZ: Thank you, Your Honor.

6 MR. DOREN: And, Your Honor, we'll get you
7 our deposition exhibit list in just a moment.

8 MR. JORDAN: Your Honor, so that -- so
9 that I think we're all on the same page, you're going to
10:16 10 talk to us about working back from the date of May 15th,
11 2 o'clock in the afternoon, your return from the Valley
12 to start the --

13 THE COURT: Okay. Well, how much time do
14 we think we need to argue this case?

10:16 15 MR. JORDAN: May I make our observation.
16 We're going to notice our 9019 for 2 o'clock on Thursday,
17 and then it fits in the Court's calendar as you want, but
18 that shouldn't take but a couple of hours. Assuming that
19 that takes a few hours, then -- and I think the issue on
10:16 20 argument should go -- I also want to let the Court know
21 that the next day has an Asarco meeting. That should not
22 take longer than two hours. And that'll still be a
23 matter I think that could conflict with the Court's
24 giving us those times.

10:16 25 THE COURT: Yes, sir.

1 MR. WOLF: Your Honor?

2 THE COURT: Yes.

3 MR. WOLF: This is Neal Wolf. I'm a
4 partner in law firm of Katten Muchin Rosenman in Chicago,
10:16 5 Illinois. And I represent a potential bidder for the
6 property. And I've been sitting listening, and we are
7 new to the proceedings, Your Honor.

8 MR. NEIER: Your Honor, we're -- I'm sorry
9 to interrupt, but we went through this with Harvard
10:17 10 yesterday. This is not evidence. This is some
11 attorney --

12 THE COURT: I don't know what he's going
13 to ask.

14 MR. NEIER: Okay.

10:17 15 THE COURT: I mean --

16 MR. NEIER: He already said he's
17 representing an interested bidder.

18 THE COURT: So what is the question?

19 MR. WOLF: Your Honor, we are working hard
10:17 20 on the finalization of a written proposal to acquire the
21 property and then to enter into long-term supply
22 agreements with the mills. And because we are very, very
23 new to the process, as I listened to the proceedings this
24 morning, I'm not quite sure when to break in to say that
10:17 25 we are prepared early next week to deliver a proposal in

1 writing to acquire these assets and enter into these
2 contracts. And I'm not sure how all that fits into the
3 timing considerations that Your Honor is discussing with
4 the parties right now.

10:18 5 If you would like, Your Honor, I'd be
6 very, very glad to lay out in some detail the parameters
7 of the proposal that we are going to make. I am
8 literally looking, as I speak, at a draft written
9 proposal letter, which with some fine tuning and some
10:18 10 drilling down on some issues, will probably be final by
11 early next week. And I just wondered how this would fit
12 into these timing considerations. And I didn't want to
13 let things get further down the road without saying that
14 we are here and would like the opportunity to tell Your
10:19 15 Honor, number one, who we are; number two, what business
16 we're engaged in; and number three, at least the
17 generalities of the proposal that we are going to make.

18 THE COURT: Well, I guess I would be
19 remiss without just asking, first of all, which property
10:19 20 are you talking about?

21 MR. WOLF: Well, the -- what we were
22 talking about --

23 THE COURT: The redwoods forest or the
24 mill?

10:19 25 MR. WOLF: -- would be the -- what I'm

1 going to call the timberland assets --

2 THE COURT: Okay.

3 MR. WOLF: -- which will be about 210,000

4 acres of land presently owned by Scotia Pacific, all

10:19 5 rights with respect to harvesting that they may own,

6 license, lease, or otherwise control, any tangible or

7 intangible assets that they may have, any harvesting,

8 trucking agreements, leases, license, or other contracts

9 or agreements that they may have subject, of course, to

10:20 10 our due diligence and discretion.

11 We would also be interested, Your Honor,

12 in making a proposal with respect to a 20-year supply

13 agreement or agreements with the mills, significant --

14 which would contain significant minimum volume

10:20 15 commitments with options to increase the amount of those

16 commitments. Obviously, Your Honor -- and we are talking

17 about a price range right now internally that would range

18 between \$565 and \$590 million.

19 THE COURT: Okay.

10:20 20 MR. WOLF: It would be obviously some

21 contingencies, including financing and so forth. We are

22 looking at a \$300 million loan from one or all of the

23 members of the lender group. But we, Your Honor, are an

24 entity, a partnership entity that currently owns in

10:21 25 excess of 1.3 million acres of timberland in Maine,

1 Louisiana, Arkansas, and Texas, having a total value
2 today in excess of \$1.8 billion. We are for real. We
3 are genuinely interested in making a bid. We are putting
4 that bid together as we speak. And we'd like the
5 opportunity to present it to the Court.

10:21 6 THE COURT: Okay. Well, let me say this,
7 that early in this case -- not early, not as early as the
8 Noteholders wanted, exclusivity was lifted with respect
9 to proposal of plans, except that by agreement of all the
10:22 10 parties, the exclusivity lifting was limited to several
11 participants, the Noteholders and various parties. There
12 was another plan presented by some Indian tribe that
13 wanted to sell lotteries to buy the property. They had
14 no permission to file a plan.

10:22 15 At the present time you don't have
16 permission to file a plan by the property. You do have,
17 I guess, the right to talk to any of the particular plan
18 proponents that you want to and discuss that. And, of
19 course, bankruptcy court's always grateful for
10:22 20 participants wanting to buy assets in bankruptcy. And
21 so -- I mean, I'm not discouraging you from doing that.
22 I mean, I don't know if you're -- we're on the last day
23 in plan confirmation of what narrowed down to two plans
24 pretty much. And so, I mean, obviously if the plan that
10:23 25 provides for an auction is confirmed, then you'd have a

1 right to bid in that auction. If the plan that provides
2 for Mendocino and Marathon either reorganizing or buying
3 the assets, depending on how you characterize it, then
4 you'd pretty much will be out of luck. Now, if I said
5 something -- I'm not ruling here. I'm just -- maybe I'm
6 giving him advice, which I shouldn't be doing.

10:23

7 MR. WOLF: Obviously we couldn't be a plan
8 proponent because we're not a party in interest here as
9 such. But what we are interested in doing is either
10 initiating or participating in a robust auction process.

10:23

11 THE COURT: Okay.

12 MR. WOLF: And we think that we've got a
13 lot to -- you know, our proposal will have a lot to lend
14 itself to, and we wondered whether we are going to have
15 an opportunity to present this to the Court.

10:24

16 THE COURT: Well, you'll have an
17 opportunity if I confirm -- if I confirm the Noteholders'
18 plan, you'll certainly have an opportunity. If I confirm
19 the other plan, you won't. Okay. Is that -- have I said
20 anything --

10:24

21 MR. JORDAN: I believe you're on
22 scheduling, Your Honor.

23 THE COURT: But I thank you for your
24 statement. And I mean, you now know what the status of
25 the case is, so you should take whatever steps you deem

10:24

1 appropriate. We're on scheduling.

2 MR. WOLF: Yes. Thank you.

3 MR. JONES: Your Honor, I think at one

4 point you'd indicated you might be able to clear the

10:24 5 Thursday morning time also, at least those in the jury

6 box think that might be a good idea, no matter what our

7 estimates are.

8 THE COURT: It sound like if we've got a

9 two-hour hearing on the 9019 and arguments, I would

10:25 10 suggest that we start in the morning on Thursday and use

11 Thursday for that day, and that way you don't have to be

12 either behind -- you don't have to be behind Asarco or

13 Asarco doesn't have to be behind you on Friday. Okay.

14 Now, that gives us -- today is Friday. That gives us

10:25 15 until that Thursday.

16 The briefs -- I mean, I don't care whether

17 the findings of facts and conclusions of law that you

18 provide, if you have written ones, to the extent that

19 those are provided, it would be nice to have one for each

10:25 20 plan. And that -- and that could be done -- given to me

21 on Thursday morning as far as I'm concerned. But the

22 briefs and where you're arguing, it would -- could we

23 have those by Tuesday, the 13th, at 4:30? And, I guess,

24 is there a way that you can get them a hard copy to me by

10:26 25 Tuesday.

1 MR. JORDAN: Your Honor, if everyone will
2 at least copy my office, we will bring you a full set as
3 we usually do of all the briefing by 5 o'clock.

10:26

4 THE COURT: Okay. 4:30 or 5:00, anytime
5 that afternoon would be good.

6 MR. JORDAN: We'll handle putting a
7 notebook together with everybody's briefing.

8 THE COURT: Okay. How does that work?

10:26

9 MR. FIERO: Your Honor, it will be okay
10 then for each plan proponent to submit a brief, even
11 though we're going to submit one set of --

12 THE COURT: Oh, sure. Sure, I would
13 suspect that everyone who has an interest will probably
14 submit a brief. And I wouldn't want to restrain that
15 opportunity. I just don't think that findings of fact,
16 conclusions of law, proposed ones -- more than one
17 doesn't really matter.

10:27

18 MR. KRUMHOLZ: Your Honor, I just wanted
19 to make sure and address an issue. I've been told that
20 Exhibit 220 may or may not be admitted in evidence.

10:27

21 THE COURT: What is 220?

22 MR. KRUMHOLZ: It's the amended plan.

23 THE COURT: It's admitted.

10:27

24 MR. DOREN: Your Honor, further on nuts
25 and bolts in terms of the Scotia Pacific's deposition

1 designations, they would be Exhibits 117 through 122.

2 THE COURT: All right. They're admitted.

3 MR. DOREN: And, Your Honor, with one

4 detail, which is DX 121, our deposition designations

10:27 5 related to the deposition of Harvard management, and

6 there's currently a motion for entry of a protective

7 order to the Court, so if this could be filed under seal.

8 THE COURT: Any objection?

9 MR. NEIER: Your Honor, we're not filing

10:27 10 any exhibits. We're not filing --

11 MR. DOREN: Fair enough. So it goes into

12 the record.

13 MR. NEIER: Yes.

14 MR. DOREN: Thank you. I appreciate that.

10:28 15 MR. KRUMHOLZ: Just in connection with the

16 deposition designations mentioned, we just got them. And

17 all we would like is a chance to review them before

18 they're admitted. I know that you've said they're

19 admitted, but I haven't had a chance to --

10:28 20 THE COURT: Okay. We have deposition

21 testimony that perhaps hasn't been reviewed, and we have

22 trial testimony or hearing -- something in hearings that

23 haven't been reviewed. So those have been admitted

24 subject to the right of any party to -- under the

10:28 25 doctrine of optional completeness add additional

1 information. All right?

2 MR. DOREN: Thank you, Your Honor. And
3 may we file or may we submit DX 121 under seal?

4 THE COURT: Okay. That's fine with me.

10:28 5 MR. DOREN: Thank you.

6 MR. KRUMHOLZ: I guess we have the same
7 issue with respect to Mr. Wilshire's -- is that right --
8 Mr. Wilshire's deposition.

9 THE COURT: We will need to get an order
10:28 10 on both of those, and we'll need to have those submitted
11 in a separate place.

12 MR. SCHWARTZ: Your Honor, I'm not sure
13 that this is an issue. They're not being on the record.
14 They're just being given to you as exhibits, so I
10:29 15 don't -- I'm not sure why any of it needs to be under
16 seal.

17 THE COURT: I think exhibits are probably
18 public documents, unless they're put under seal.

19 MR. SCHWARTZ: Okay.

10:29 20 THE COURT: So if you think that those
21 exhibits need to be under seal, I think probably let's
22 just put them under seal.

23 MR. DOREN: Thank you, Your Honor.

24 THE COURT: And I'm going to also maybe
10:29 25 throw one last little wrench. I think in this case it's

1 probably significant enough that maybe we ought to have a
2 disk and one full hard copy of all the exhibits. So
3 before we leave today, could someone for each side who's
4 presented exhibits make certain that Frenchie has a
5 complete, full copy of all the exhibits as well as that
6 has them on diskette.

10:29

7 MR. SCHWARTZ: We have done that, Your
8 Honor.

9 THE COURT: Okay.

10:29

10 MR. BOLTON: Your Honor, we've submitted
11 the disk. We'll make sure your book is updated.

12 THE COURT: Okay.

13 MR. NEIER: Your Honor, the only thing, I
14 think, that's different --

10:29

15 THE COURT: So probably all these books up
16 here are updated, and they have the right --

17 MR. NEIER: I think the only difference
18 is, is that certain exhibits were withdrawn and certain
19 exhibits you ruled should not come into evidence, and
20 they're still in the binding. I think that's the only
21 difference.

10:30

22 THE COURT: Okay. Well, I think that even
23 if it's not admitted, the record will show that. It can
24 stay in the binder --

10:30

25 MR. NEIER: I think that's right.

1 THE COURT: -- because there may be
2 argument about evidentiary issues.

3 MR. KRUMHOLZ: I think there's a couple of
4 documents from the last witness that need to be updated.

10:30 5 THE COURT: Okay. So --

6 MR. KRUMHOLZ: We'll do that.

7 THE COURT: Somebody do that before they
8 leave.

9 MR. GREENDYKE: Judge, this is Bill
10:30 10 Greendyke for the Indenture Trustee. Earlier on in
11 conversations we were having with the Court this morning,
12 I made the Court aware of the filing of pre-pleadings
13 last night. I've given copies to the courtroom deputy.

14 They are 2813, 2814, and 2815, a proffer in this case. I
10:30 15 just ask the Court to take notice the purpose of each
16 record. One is a motion. 2814 is a motion to grant a
17 super priority administrative expense to the Indenture
18 Trustee. 2815 is our motion to deem additional
19 modifications to nonmaterial.

10:30 20 I mean, we have plenty of time to make
21 that type of modification to the plan, notwithstanding we
22 haven't set that motion for hearing yet. And then 2813
23 is my declaration that I alluded to earlier. For
24 purposes of the record for the confirmation hearing, I
10:31 25 want to make sure that I bring those to the Court's

1 attention and make you aware and ask you for judicial
2 notice of the filing of those matters.

3 THE COURT: Okay.

4 MR. JORDAN: Your Honor, on the hearing
10:31 5 that's set for the 15th, the morning of the 15th, can I
6 ask the court to set that at 9:30 to cure a kind of a
7 reconcilable conflict. I have a --

8 THE COURT: Well, 9:30 might allow people
9 to come in on Thursday, wouldn't it? I mean, I think
10:31 10 we'll finish Thursday. Anyone have any problems with
11 9:30? All right. 9:30.

12 MR. JORDAN: We'll be noticing that 9019
13 for 9:30 subject --

14 THE COURT: Everything starts at 9:30.

10:31 15 MR. JORDAN: Your Honor, I think the last
16 issue is closing the evidence.

17 THE COURT: Okay. Well, I'm closing the
18 evidence subject to somebody wanting to -- ask to open
19 it. But the evidence is now closed as to all of the
10:32 20 documents are admitted, all the witnesses have been
21 taken. Evidence is closed. Is there anything further
22 then we need to do?

23 MR. JORDAN: I believe that's all that's
24 on the Court's docket for today.

10:32 25 THE COURT: Okay. Did you want any of

1 these motions -- you know, are we trying to set these
2 also on Thursday?

3 MR. GREENDYKE: Judge, we'd be glad to
4 have that super priority administrative expense heard at
10:32 5 that time. I think the Court needs to be aware that it's
6 there. Obviously the motion to deem --

7 THE COURT: What's the amount of the --

8 MR. GREENDYKE: 2815 is the motion to deem
9 additional modifications nonmaterial. We have a prior
10:32 10 earlier this week motion to deem modifications
11 nonmaterial. Those need to be set for the confirmation
12 hearing. You know, I think it's probably also
13 appropriate to have 2814, at least before the court.

14 2813 is a declaration. It's my declaration to the court,
10:33 15 the tally of votes of Noteholders because I was the
16 secretary, if you will, taking the count of noses. And
17 there's really no one better, I think, capable of making
18 that representation to the Court that we have the
19 requisite votes and approvals to make the modification
10:33 20 that we made earlier this week and the one that we made
21 today. So that 2813 is something, I think, I would ask
22 the court to take notice of from the evidentiary
23 standpoint.

24 THE COURT: Your administrative claim is
10:33 25 based on diminution of cash collateral?

1 MR. GREENDYKE: Yes, sir.

2 THE COURT: Okay.

3 MR. GREENDYKE: Yes, sir. I mean, I heard
4 the Court's comments with regard to the gentleman,

10:33 5 Mr. Wolf, who appeared and talked. I don't know what
6 other folks will show up. I just can tell you that I am
7 aware from our clients, from a group of our clients that
8 they're working hard to put a commitment together and, I
9 believe, counter commitment together to bridge, if you

10:34 10 will, the employees and the mill. You may see something
11 like that next week.

12 THE COURT: Okay.

13 MR. GREENDYKE: That is part of what we're
14 asking the Court's record --

10:34 15 THE COURT: Thank you.

16 MR. JORDAN: Just one last --

17 MR. NEIER: Judge, that last comment was
18 really inappropriate. We just closed the evidence.

19 THE COURT: Look, I know we closed the
10:34 20 evidence. He was just telling me he may try and seek the
21 reopening of it. I don't think it's appropriate to say
22 what you might try to do in the future if you get another
23 deal or something.

24 MR. NEIER: It seemed like he was saying
10:34 25 that without putting the first part of it in, which was

1 that we would seek to reopen the record for this.

2 THE COURT: Okay.

3 MR. FIERO: Your Honor, with regard to the
4 setting of the 507-B motion, John Fiero for the

10:34 5 Committee. I would be very surprised if there were time
6 to address that on Thursday. It's -- somebody's going to
7 get up in that box, and they're going to be there for a
8 while talking about how fast the trees have grown, you
9 know, how many weren't cut. It's complicated, Your
10:35 10 Honor. I don't know that it's appropriately on calendar
11 for the date of closing argument.

12 THE COURT: Okay. Well, we will deal with
13 the 9019. We'll deal with the confirmation argument for
14 sure on Thursday. Anything further?

10:35 15 MR. JORDAN: I believe that's it, Your
16 Honor.

17 THE COURT: All right. We may not have
18 everyone here, so I will commend all the lawyers. You
19 know, we get lots of times great bankruptcy lawyers
10:35 20 coming in on a case like this. We also get great trial
21 lawyers coming in. So it's been very enjoyable from the
22 standpoint of the quality of the lawyering in this
23 hearing. And I say that just because it doesn't always
24 happen, number one. But you-all should be congratulated
10:35 25 on the quality of what you've done in representing your

1 clients. Thank you.

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1 THE STATE OF TEXAS:

2 COUNTY OF NUECES:

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