

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

**In Re:**

**ULRICH FELIX ANTON ENGLER; and  
PRIVATE COMMERCIAL OFFICE, INC.**

**Debtor.**

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**ROBERT E. TARDIF,  
as Chapter 7 Trustee,**

**Plaintiff,**

**v.**

**FIDELITY NATIONAL FINANCIAL, INC;  
and FIDELITY NATIONAL TIMBER  
RESOURCES, INC. f/k/a FIDELITY  
NATIONAL RANCH PROPERTIES, INC.,**

**Defendants.**

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**Case No. 9:08-BK-04360-ALP**

**Chapter 7 cases  
(Substantively Consolidated)**

**Adv. Proc. No: 9:09-ap-1026-ALP**

**MOTION TO CONTINUE HEARINGS SET FOR MAY 21, 2010**

Defendants, Fidelity National Timber Resources, Inc. f/k/a Fidelity National Ranch Properties, Inc. ("Fidelity Timber"), and Fidelity National Financial, Inc. ("FNF") (collectively, the "Defendants"), by and through their undersigned counsel, pursuant to Rule 5071-1 of the Local Rules for the United States Bankruptcy Court for the Middle District of Florida, hereby file this their Motion to Continue Hearings Set for May 21, 2010 ("Motion to Continue") and move this Court for the entry of an Order rescheduling the hearings currently scheduled for May 21, 2010, at 9:00 and 9:15 a.m., in Ft. Myers, to either May 26, 2010 or May 27, 2010, in Tampa or Ft. Myers, and as grounds therefore state the following:

1. On April 23, 2010, in the bankruptcy case, this Court entered a Notice of Preliminary Hearing (Bankr. Doc. 232) on the Trustee's Motion to Substantially Consolidate Non-Debtor Douglas Investments, LLC with and into the Debtors' Bankruptcy Estates (Bankr. Doc. 212), scheduling a hearing for May 21, 2010 at 9:00 a.m. in Ft. Myers, Florida.

2. On May 4, 2010, in Adversary Proceeding no. 9:09-ap-1026-ALP, this Court entered a Notice of Hearing (Adv. Doc. 52) on the Trustee's Motion to Compel Deposition of William P. Foley, II (Adv. Doc. 51), scheduling a hearing for May 21, 2010 at 9:15 a.m. in Ft. Myers, Florida.

3. A number of other Motions and responses, related to the foregoing issues are being filed over the next few days and will likely need to be heard contemporaneously with the above matters and proceedings.

4. Defendants' lead counsel, Steven M. Berman, will not be able to attend the above-scheduled hearings in person due to a scheduling conflict, and the Court has advised that a telephonic appearance will not be permitted. Mr. Berman has long been scheduled to speak at the California Bankruptcy Forum's Annual Insolvency Conference in Monterey, California from May 21, 2010 through May 23, 2010. As president of the San Diego Bankruptcy Forum, Mr. Berman will also participate in meetings on May 21, 2010 and May 22, 2010, and is presiding over a panel presentation on the morning of May 22, 2010. A true and correct copy of the brochure for this conference is attached hereto as **Exhibit A**.

5. While counsel for the Trustee, Robert Elgidely, has been aware of Mr. Berman's conflict on May 21, 2010 since at least the week of April 12, 2010,<sup>1</sup> Mr. Elgidely has advised he "cannot stipulate to ... a continuance of the important matters scheduled for hearing on the morning of May 21, 2010." Indeed, it is the important and critical nature of the matters scheduled for May 21, 2010 that require Mr. Berman's personal attention and appearance, rather than attendance by a colleague to cover the hearings in Mr. Berman's absence.

6. Accordingly, undersigned counsel respectfully requests the Court reschedule the May 21, 2010 hearings for anytime on May 26 or 27, 2010, either in Tampa or in Ft. Myers.

7. No party will be prejudiced by the continuance of the scheduled hearing by only a few days. Indeed, the non-party sought to be compelled by the Trustee for deposition on May 28, 2010 has yet to be served with a subpoena.

8. Additionally, counsel for the Plaintiff is located in Miami and counsel for the Defendants will be coming from Tampa. It makes no material difference if counsel for the Trustee comes to Tampa or Ft. Myers for such hearings if such a schedule is more convenient for the Court. In fact, when the Trustee failed to appear for a consensually scheduled deposition in Ft. Myers on April 28, 2010, counsel for the Trustee offered to travel to Tampa if the Trustee reset the deposition.

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<sup>1</sup> On April 8, 2010, the Trustee initially unilaterally noticed the deposition of William P. Foley, II, Fidelity National's Chairman of the Board and Fidelity Timber's CEO, for May 21, 2010 in Montana (Doc. 41), but Mr. Berman notified Mr. Elgidely that he was unavailable on that date. On April 30, 2010, just minutes prior to filing the Motion to Compel, the Trustee filed an Amended Notice of Deposition for Mr. Foley, rescheduling the deposition for May 28, 2010 (although Mr. Foley has yet to confirm his availability and no subpoena has been served upon Mr. Foley).

WHEREFORE, Plaintiffs respectfully request this Court enter an Order: (i) granting this Motion to Continue; (ii) setting the hearing for a time on or around May 26 or 27, 2010 either in Ft. Myers or Tampa, and (iii) granting any further relief that this Court deems appropriate.

Respectfully submitted,

**SHUMAKER, LOOP & KENDRICK, LLP**

By: /s/ Steven M. Berman

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*Resources, Inc. and Fidelity National*

*Financial, Inc.*

**CERTIFICATE OF GOOD FAITH CONFERENCE**

On May 4, 2010, pursuant to Rule 5071-1 of the Local Rules for the United States Bankruptcy Court for the Middle District of Florida, undersigned counsel conferred with Robert Elgidely, counsel for the Trustee, regarding the continuance requested herein. As more specifically set forth in paragraph 5, above, Mr. Elgidely opposes the request.

/s/ Steven M. Berman

**Steven M. Berman, Esq.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 5, 2010, the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Steven M. Berman

**Steven M. Berman, Esq.**