

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

3 In re: ) **Case No. 09-37010-sgj-11**  
4 ERICKSON RETIREMENT ) Jointly Administered Ch. 11  
COMMUNITIES, LLC, et al., )  
5 Debtors. ) Dallas, Texas  
6 ) Tuesday, March 23, 2010  
7 ) 1:30 p.m.  
8 ) - MOTION TO REJECT CERTAIN  
9 ) UNEXPIRED LEASE [794]  
 ) - MOTION TO EXTEND OR LIMIT  
 ) THE EXCLUSIVITY PERIOD [819]  
 ) - MOTION FOR VALUATION [906]

10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

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1                   DALLAS, TEXAS - MARCH 23, 2010 - 1:34 P.M.

2                   THE COURT: Good afternoon. Please be seated. All  
3 right. We have various Erickson matters set on our docket  
4 this afternoon. Let's start by getting appearances from  
5 counsel, please.

6                   MR. CALIFANO: Good afternoon, Your Honor. Tom  
7 Califano, DLA Piper, on behalf of the Debtors. With me are my  
8 partners Michael Hynes and Vincent Slusher.

9                   THE COURT: Good afternoon.

10                  MR. BOONE: Good afternoon, Your Honor. Bill Boone  
11 for the Corporate Revolver Group.

12                  THE COURT: Okay. Good afternoon.

13                  MR. WALLANDER: Good afternoon, Your Honor. Bill  
14 Wallander and Molly Sorg on behalf of HCP, Inc.

15                  THE COURT: Good afternoon.

16                  MR. SWETT: Good afternoon, Your Honor. Brian Swett  
17 and Myja Kjaer on behalf of Bank of America as agent for the  
18 Dallas lenders.

19                  THE COURT: Okay. Good afternoon.

20                  MS. RERKO: Good afternoon, Your Honor. Cynthia  
21 Rerko. Here with me is Lisa Epps of the law firm Spencer  
22 Fane. She's been admitted *pro hac vice*. We are here on  
23 behalf of U.S. Bank as indenture trustee.

24                  THE COURT: Okay. Good afternoon.

25                  MR. BLECK: Good afternoon, Your Honor. Daniel Bleck

1 representing Capmark Finance, Inc. as agent for the Littleton  
2 lenders.

3 THE COURT: Okay. Good afternoon.

4 MS. CALLARI: Good afternoon, Your Honor. Carollynn  
5 Callari with Venable on behalf of Redwood.

6 THE COURT: Good afternoon.

7 MS. TANCREDI: Good afternoon. Lisa Tancredi and  
8 James Smith from Gebhardt and Smith on behalf of PNC Bank,  
9 National Association.

10 THE COURT: Okay. Good afternoon.

11 MS. RUCKMAN: Good afternoon, Your Honor. Dee  
12 Ruckman and Stuart Glick on behalf of M&T Bank as agent.

13 THE COURT: Okay. Good afternoon.

14 MR. ROBERTS: Good afternoon, Your Honor. Ian  
15 Roberts of Baker Botts on behalf of the Michigan Retirement  
16 System Entities.

17 THE COURT: Okay. Good afternoon.

18 MR. HAMILTON: Good afternoon, Your Honor. Jeff  
19 Hamilton on behalf of Key Bank, N.A.

20 THE COURT: Okay. Good afternoon.

21 MR. HOWELL: Good afternoon, Your Honor. Jonathan  
22 Howell with Munsch Hardt representing Coastwood.

23 THE COURT: Okay. Good afternoon.

24 MR. STRICKLIN: Sam Stricklin on behalf of the  
25 Official Committee -- non-disbanded -- of Unsecured Creditors.

1 THE COURT: Okay. Still alive and kicking.

2 (Laughter.)

3 MR. STRICKLIN: Still alive.

4 THE COURT: Okay.

5 MR. CHEVALLIER: Good afternoon, Your Honor. Mark  
6 Chevallier and Tom Francella on behalf of the NSC NFPs.

7 THE COURT: Okay. Good afternoon. All right. That  
8 looks like all of our courtroom appearances. Let's go ahead  
9 and get appearances from the phone people.

10 MR. MORRIS: Good afternoon, Your Honor. This is Hal  
11 Morris of the Texas Attorney General's Office on behalf of the  
12 Texas Department of Insurance and Texas A&M University.

13 THE COURT: Okay. Good afternoon.

14 MS. MIRSKY: Arlene Mirsky, Sills Cummis, on behalf  
15 of M&T Bank.

16 THE COURT: Okay. Good afternoon.

17 MR. SUMMERS: Good afternoon, Your Honor. Matthew  
18 Summers on behalf of the MSRESS Dallas, Denver, and Kansas  
19 lenders.

20 THE COURT: Okay. Next?

21 MR. MARKS: Good afternoon, Your Honor. Jeffrey  
22 Marks; Squire, Sanders, & Dempsey; on behalf of Sovereign  
23 Bank.

24 THE COURT: Okay. Next?

25 MR. CUSACK: Good afternoon, Your Honor. John



1 Cusack; DLA Piper; on behalf of Erickson Retirement  
2 Communities.

3 THE COURT: Okay. Next?

4 MR. BERKOWITZ: Good afternoon, Judge. Ted Berkowitz  
5 from Farrell Fritz on behalf of the Debtors.

6 THE COURT: Okay. Next?

7 MR. WEAVER: Good afternoon, Your Honor. Robert  
8 Weaver, former employee, on behalf of myself.

9 THE COURT: All right. Next?

10 MR. ROSE: Good afternoon, Your Honor. Jorian Rose  
11 on behalf of ERC Funding and Redwood.

12 THE COURT: Okay. Anyone else?

13 (No response.)

14 THE COURT: All right. Well, Mr. Califano, looks to  
15 me as though we have primarily up for hearing today the  
16 valuation allocation motion. Why don't you tee us up by  
17 telling us what settlements you may have reached since last  
18 time?

19 MR. CALIFANO: Well, I'm happy to inform the Court,  
20 Your Honor, that we've reached agreement, subject to  
21 confirmation of the plan, with the Michigan State Retirement  
22 Entities, and have resolved the issues set forth in their  
23 motion and have resolved the issues in the adversary  
24 proceeding. And in exchange for payment of \$1 million, they  
25 will deed the property -- they will drop their objections and

1 deed the property to the Debtors, the Concord property. So,  
2 we don't need to go through that recharacterization action,  
3 and we don't have a contested valuation allocation issue  
4 today.

5 THE COURT: Okay.

6 MR. CALIFANO: So, in fact, all of the adversary  
7 proceedings are resolved, all the sub debt issues are  
8 resolved, and I think we have a much clearer path to  
9 confirmation.

10 And I have to thank the Court. I think the Court's  
11 willingness to schedule these hearings at this point and put  
12 us on a very tight leash required the parties to do a lot of  
13 work in a short period of time and realize that a settlement  
14 was in everyone's best interest. So, I thank the Court for  
15 that.

16 What we would like to do, Your Honor, in addition to a  
17 brief status conference, we'd like to put on the allocation  
18 and valuation evidence that the Debtor intended to put on,  
19 because as Your Honor noted in your decision, the Court does  
20 have to make an independent determination of valuation and  
21 allocation. Everybody is here and we'd like to do that today,  
22 and we think it will also help us make confirmation more  
23 streamlined when we're here on April 15th and the 16th.

24 So that's what we'd like to go forward with today. We  
25 have Mr. Niemann prepared to testify. And my partner, Mr.

1 Hynes, will do his direct examination.

2 THE COURT: All right. Before we go to that, is  
3 there anyone who wanted to say anything on the record  
4 regarding these matters? Ms. Tancredi?

5 MS. TANCREDI: Yes, Your Honor, very briefly. With  
6 regard to the Michigan Retirement Entities, that settlement is  
7 also, of course, subject to the voting being done by all the  
8 lenders in their respective classes, because the agent doesn't  
9 have the authority to bind any of those particular classes.

10 With regard to the valuation evidence today, the parties  
11 have agreed to a stipulation and order such that, instead of  
12 every party here putting on valuation evidence, the idea was  
13 that the Debtor would put on its evidence, and it wouldn't be  
14 binding on anybody in the event that the plan is not  
15 substantially consummated by April 30th. And I had circulated  
16 a stipulation and order, and Adrienne Walker has also done  
17 yeoman's work in getting people to sign off. I don't have all  
18 the signatures quite -- I have the signatures, but not  
19 collected physically here. But we will upload that order. I  
20 don't know if Your Honor wants to see it. I can hand it up if  
21 you would like.

22 THE COURT: Yes, why don't you?

23 MS. TANCREDI: Thank you.

24 THE COURT: Okay.

25 (Pause.)

1 THE COURT: All right. So, as I understand it,  
2 you've circulated and I guess gotten tentative agreements from  
3 all representatives of secured lenders, subordinated lenders,  
4 the Secured Creditor Committee, and Debtor that --

5 MS. TANCREDI: Yes, actually, I've received  
6 signatures to that order. It's just some of them are in  
7 electronic form and I don't have them physically here.

8 THE COURT: Okay.

9 MS. TANCREDI: But, yes.

10 THE COURT: So, everyone will defer to the valuation  
11 evidence of Mr. Niemann. Ms. Rerko is shaking her head no.  
12 Well, Ms. Epps?

13 MS. EPPS: Oh, I'm sorry. I didn't want to --

14 THE COURT: Well, I mean, what I'm understanding Ms.  
15 Tancredi is presenting is that everyone is willing to rely on  
16 the valuation testimony only of Mr. Niemann, but this only  
17 applies to this plan that is on the table with this  
18 transaction.

19 MR. CALIFANO: Yes, Your Honor.

20 MS. TANCREDI: That's correct, Your Honor.

21 THE COURT: And all bets are off, everyone is  
22 entitled to put on their own evidence, if everything falls  
23 apart and we have some different reorganization scenario?

24 MS. TANCREDI: Right. And in fact, it's with regard  
25 to any evidence that any party might put on. Because what we

1 didn't want is we didn't want everybody to have to come in  
2 here with their own evidence in case things blew up. So,  
3 everybody agreed that they wouldn't be bound in the event that  
4 this plan is not confirmed and consummated.

5 THE COURT: Okay. All right. Ms. Epps?

6 MS. EPPS: Your Honor, on behalf of U.S. Bank as the  
7 successor trustee for the Sedgbrook Communities, we haven't  
8 been involved in any of these discussions and we will have  
9 questions of Mr. Niemann with respect to allocation issues.

10 THE COURT: Okay. Understood. Thank you.

11 MR. CALIFANO: Just briefly, Your Honor. The reason  
12 why this stipulation is appropriate in this circumstance is,  
13 unlike all the cases that were cited in the motion, there  
14 hasn't been a sale closed here. There's no pot of money that  
15 we're asking the Court to divide up. The sale only occurs  
16 under a plan which will be supported by the creditors. So  
17 that's what it's appropriate in this circumstance, because  
18 this -- the plan represents a compromise. It is the result of  
19 our informal mediation process where all the lenders who have  
20 an interest in these properties -- now all the lenders -- are  
21 on board with the settlement, senior and subordinated, subject  
22 to voting, and I do understand the agents can't bind their  
23 participants.

24 But that is why the compromise is appropriate in these  
25 circumstances, Your Honor, because the plan represents a

1 compromise. There will be no deal without a confirmation.  
2 There will be no monies to divide up absent the compromise and  
3 the confirmation of the plan. So, really, it is consistent  
4 with everything else that has occurred over the last few  
5 months, where the parties are reserving their rights in the  
6 event that this particular deal doesn't close, this plan is  
7 not confirmed. Then everybody goes back to where they were.  
8 But the parties have agreed that if this plan is confirmed and  
9 this deal is closed, this division of proceeds is appropriate  
10 and acceptable.

11 THE COURT: Okay. Understood. Mr. Wallander?

12 MR. WALLANDER: Your Honor, because we have, in  
13 addition to the plan, a settlement motion pending, the  
14 reservation would also apply in the event there's any  
15 objections or issues with the settlement that we are seeking  
16 with the Debtor. So, the reservation of rights and the  
17 stipulation would apply for that as well, because we have a  
18 settlement process and then also, of course, a plan process.  
19 So, in our case, it would be in either of those events.

20 THE COURT: Okay.

21 MR. WALLANDER: Thank you.

22 THE COURT: The so-called HCP settlement?

23 MR. WALLANDER: Yes.

24 THE COURT: All right. Well, I think we're all  
25 clear. The Court is certainly willing and happy to accept

1 this stipulation that has been negotiated among the parties to  
2 streamline this valuation testimony.

3 Mr. Califano, let me just look at the docket to make sure  
4 I don't fail to come back to something. There were a couple  
5 of other motions set today. They're uncontested, I think,  
6 right?

7 MR. CALIFANO: Yes. There was the expedited briefing  
8 on the motion for summary judgment. That's no longer  
9 necessary.

10 THE COURT: Uh-huh.

11 MR. CALIFANO: And the summary judgment motion also.

12 The pretrial and status conference, Your Honor, I believe  
13 we've had that.

14 There's a relief from stay motion that was filed by a  
15 creditor, Westside Mechanical. We've agreed to the relief  
16 requested, and there's an agreed-upon order to be submitted.

17 The valuation motion, we're going to deal with Mr.  
18 Niemann's testimony.

19 The motion to reject, we haven't received any objection to  
20 that.

21 The motion to compromise, that is being kicked out.  
22 That's being continued to the first day of confirmation.

23 The PNC preliminary injunction and TRO, that would also be  
24 resolved, both of them. There are two of them, one against  
25 Ashby and one against Concord.

1 THE COURT: All right. Well, the motion to lift stay  
2 and the motion to reject, do I have orders that have already  
3 been uploaded on those?

4 MR. SLUSHER: Your Honor, we have attached a form of  
5 order to the rejection motion.

6 THE COURT: Okay.

7 MR. SLUSHER: The lift stay, we have agreed to the  
8 order and I believe that the Movant will submit that order.  
9 On the rejection motion, Your Honor, we can upload an order.  
10 The form of order was attached to the motion.

11 THE COURT: Okay.

12 MR. SLUSHER: But we can upload the order.

13 THE COURT: Just for the record, was there anyone who  
14 wanted to be heard on those motions?

15 (No response.)

16 THE COURT: All right. Well, the Court will accept  
17 the orders that are uploaded approving the rejection of the  
18 various executory contracts and lease that are referenced in  
19 Docket No. 794, and will look for and sign the agreed order on  
20 No. 891.

21 All right. With that, are you ready to call Mr. Niemann,  
22 then?

23 MR. CALIFANO: Yes, Your Honor.

24 THE COURT: I'm not showing that on the calendar, the  
25 motion -- was there a motion to extend exclusivity in the



1 pipeline?

2 MR. SLUSHER: Yes.

3 MR. CALIFANO: Yes.

4 MR. SLUSHER: It was set for today, too, Your Honor.

5 It was not on the docket. There was set a notice for today.

6 THE COURT: Okay. Well, I guess Laura had retrieved  
7 your notice of hearing. I don't know why it is not showing up  
8 on the written calendar. We --

9 THE CLERK: I thought it was on -- yes. But --

10 THE COURT: Okay. But it's not on the official --

11 THE CLERK: -- it's not on this, yes.

12 THE COURT: -- written calendar. We're running up on  
13 a deadline on that?

14 MR. SLUSHER: We can actually reset that again, Your  
15 Honor. It's essentially the -- extending the solicitation  
16 period.

17 THE COURT: Solicitation? Uh-huh.

18 MR. SLUSHER: We filed the plan within the  
19 exclusivity. We've run -- I think we have until April 15th --

20 MR. CALIFANO: Right.

21 MR. SLUSHER: -- on the solicitation period. So I  
22 think we could reset that, if we needed to, Your Honor, to a  
23 different day.

24 THE COURT: Okay. But you did notice it for hearing  
25 today?

1 MR. SLUSHER: We did notice it and received no  
2 objection.

3 THE COURT: I'm just not sure why --

4 MR. SLUSHER: Yes.

5 THE COURT: Was there anyone who wanted to be heard  
6 on that?

7 (No response.)

8 THE COURT: Okay. And it currently goes through the  
9 15th, --

10 MR. SLUSHER: Of April, Your Honor. We wanted --

11 THE COURT: -- and you're wanting it extended through  
12 the end of the month?

13 MR. SLUSHER: We wanted to extend it another 60 days,  
14 until June 15th. Yes. June 15th, Your Honor.

15 THE COURT: Okay. Is there anyone who wished to be  
16 heard on that?

17 (No response.)

18 THE COURT: All right. Well, the Court will find  
19 cause and grant that. And so if you will upload your order,  
20 we'll get that signed as well.

21 All right. Now, are you ready to call Mr. Niemann?

22 MR. CALIFANO: Yes, Your Honor.

23 THE COURT: All right. Mr. Niemann, if you could  
24 come up here to the court reporter and please raise your right  
25 hand.

1 MATTHEW NIEMANN, DEBTORS' WITNESS, SWORN

2 MR. HYNES: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. HYNES: Does Your Honor have copies of the  
5 exhibit volumes that we brought?

6 THE COURT: I think I've got everything. I've got  
7 lots of notebooks.

8 MR. HYNES: Okay. Great. For purposes of the  
9 record, there is Exhibits Volume 1, which is a binder that has  
10 six tabs. We'll be referring to these documents as Exhibits  
11 1, 2, 3, 4, 5 and 6 that correspond with the tabs.

12 THE COURT: Okay.

13 MR. HYNES: And the second binder contains Tabs 7  
14 through 13. And we'll be referring to those as well as  
15 Exhibits 7 through 13.

16 THE COURT: Okay. It looks like I've got them all.

17 DIRECT EXAMINATION

18 BY MR. HYNES:

19 Q Mr. Niemann, do you have copies of those binders before  
20 you as well?

21 A Yes, I do.

22 Q Okay. Thank you. Could you please introduce yourself to  
23 the Court?

24 A My name is Matt Niemann. I'm a Managing Director with  
25 Houlihan Lokey.

1 Q Okay. And are you a member of a particular practice group  
2 at Houlihan?

3 A Yes. I run our real estate restructuring practice, and am  
4 a member of our financial restructuring group.

5 Q Could you describe for the Court briefly your experience  
6 in restructuring matters and issues regarding valuation?

7 A Yes. I've been in the restructuring business for going on  
8 21 years now, the first seven or so as an attorney at Bryan  
9 Cave in St. Louis in the real estate and corporate practices,  
10 restructuring, and also transactional experience. And during  
11 that time, in my early years, was involved in a lot of the  
12 RTC/FDIC real estate single-asset and multi-asset  
13 transactions. And then later I joined Pricewaterhouse for  
14 several years, and then Houlihan Lokey roughly 12 years ago.  
15 I actually left Houlihan Lokey for two and a half years and  
16 went with Cerberus Capital.

17 And while I was at Cerberus I both was involved in the  
18 investment side and also actually became a senior officer with  
19 one of their portfolio companies, ResCap, which is a GMAC  
20 subsidiary. And my roles there were to manage a \$5 billion  
21 portfolio of real estate investments, many of which were in  
22 development. We were a lender to builders and developers.  
23 And I take you through all that history because at every stage  
24 of that, whether as an attorney or, more importantly, as a  
25 financial advisor and investor, I've been involved in

1 assessing and distributing value with respect to assets.

2 Q Do you have any experience in the senior living sector?

3 A Yes. I've been involved in several senior living  
4 restructuring transactions, some of the more recent ones being  
5 the National Benevolent Association, which was another  
6 continuing care retirement community, a CCRC restructuring a  
7 few years back in San Antonio. And then also, more recently,  
8 Brandywine Senior Living, which is an assisted living  
9 portfolio. That was an out-of-court restructuring. And I've  
10 been involved in other senior living restructurings with our  
11 health care group since I, as I indicated, run our real estate  
12 restructuring practice. Anything that has to do with real  
13 estate, I generally get involved in. With respect to senior  
14 living, I'll partner with our health care practice as well.

15 Q And about how many times have you testified in court with  
16 respect to those types of matters?

17 A With respect to valuation, I would say I probably testify  
18 three or four times a year, whether it be in conjunction with  
19 plan confirmation, 363 processes or DIP financings, not unlike  
20 my prior testimony here. And when I say three or four times a  
21 year, I mean three or four different cases a year. So,  
22 Erickson would be one time. I've been involved, you know,  
23 this past year with *Norwood*, for instance, in testifying. So,  
24 other cases, it's probably three or four times a year. And  
25 that often with respect to valuation.

1 Q Has a court ever recognized you as an expert?

2 A Yes, multiple times.

3 Q Has a court ever declined to accept your expert testimony?

4 A No, it hasn't. And I've actually been *voir dired*, being  
5 challenged on my expertise, and the Court overruled the *voir*  
6 *dire*.

7 Q Okay. Thank you.

8 MR. HYNES: Your Honor, Mr. Niemann has testified  
9 several times on some of the subjects we're going to cover  
10 today. We're going to, for purposes of the record, touch upon  
11 those items. But we would like to just refer to the Court and  
12 the record, his prior testimony on some of these issues, just  
13 for purposes of the record.

14 THE COURT: Okay. That's fine.

15 MR. HYNES: Thank you, Your Honor.

16 BY MR. HYNES:

17 Q Mr. Niemann, could you please tell us a little bit about  
18 your efforts in this matter since your initial engagement up  
19 until this point?

20 A Yes. I'll try to keep it short. We were engaged formally  
21 back in March, so pretty much a year ago, on behalf of  
22 Erickson. Our retention was to assist the company and its  
23 board in evaluating the strategic alternatives available to  
24 Erickson Retirement Communities. Very early on, it was clear  
25 to us that there was going to be impairment in the capital

1 structure. And by that, I mean that the creditors were not  
2 going to be able to realize a 100 percent recovery.

3 So, I would say within a month or two of our engagement,  
4 we presented sort of our preliminary findings to the  
5 creditors. And I can remember in particular -- I don't  
6 remember the exact date, but I want to say it was maybe April  
7 or May of last year, at DLA's Baltimore offices, there must  
8 have been 80-some odd attendees from the senior corporate  
9 lenders, as well as agents of the campus revolvers, as well as  
10 participants in those campus revolvers, in attendance. And we  
11 gave a full presentation on our preliminary findings, none of  
12 which was good news for them and created quite a bit of a sort  
13 of backlash and I'd say hostility about, you know, what the  
14 expectations were.

15 Frankly, I think part of it was there hadn't been a full-  
16 on analytic presented to the lenders up until that point. The  
17 work that had been done prior to that didn't go as deep or as  
18 comprehensive and didn't kind of lay out "Here's what we're  
19 dealing with." It's just the way it is. We don't like to  
20 convey these facts either. But it wasn't good news. And so,  
21 you know, I think from that point forward it became a pretty  
22 contentious process of, you know, what the solution was going  
23 to be.

24 And it wasn't as if we were fighting with the lenders, but  
25 the lenders didn't like what they were hearing. And also

1 there was a lot of inter- and intra-creditor dynamics, because  
2 you had corporate lenders who of course want as much value as  
3 possible, and then campus lenders that want to ship as much  
4 value down to them as possible, and then you have overlap  
5 where some lenders are both, you know, in the campus lending  
6 revolver and they're up at Corporate. So, they're conflicted  
7 amongst themselves.

8       So, and I've said -- I think I've testified to this -- and  
9 I've said multiple times to the board and the lenders,  
10 certainly, in my 21 years of experience, this is the most  
11 complicated restructuring I've ever been involved in. And  
12 I've been involved in larger and smaller restructurings. It's  
13 just, given all the dynamics of this restructuring and the  
14 impairment, unlike a case where, you know, at the campus level  
15 there's sufficient value to cover the campus level debt but  
16 there's not sufficient value up at Corporate. You know,  
17 that's a much easier restructuring. Here, you had impairment  
18 across the entire developing campus pool.

19       So, fast forward, our involvement was to really be the  
20 bearers of reality, if you will, and let people know what  
21 exactly we're dealing with, the cards we're dealt, and make  
22 suggestions and guide all of the lenders toward a solution.  
23 In some ways, although technically we're retained by the  
24 company, you know, we're really in effect working on behalf of  
25 all the creditors who are the true economic stakeholders.



1       And again, saying that back in April or May of last year  
2 didn't have the same impact as it is saying it today, because  
3 ultimately we've gone from 100 percent opposition to what we  
4 -- and when I say "we," I mean Erickson's management, board,  
5 DLA, A&M, and Houlihan -- were, you know, conveying, to now  
6 100 percent support, but it's been with a lot of give-and-take  
7 through the process. And you know, I mean, just even as  
8 evidenced by five months ago, you know, when we'd line up in  
9 court and it would be us against everybody else.

10       So, that's been our involvement. That's been the process.  
11 And you know, I'm happy to report it looks like we're a month  
12 or so away from being done-done with this, for the benefit of  
13 the residents and everybody else.

14 Q     Thank you. Can I direct your attention to Tab 1 in  
15 Exhibit Book 1? Do you see a document -- it's actually  
16 stamped at the bottom, Exhibit D-1?

17 A     Yes, I do.

18 Q     Okay. Do you recognize this exhibit?

19 A     Yes, I do.

20 Q     Okay. Can you explain to the Court what this exhibit is?

21 A     This is an exhibit, we, Houlihan, prepared early on  
22 outlining the full organizational or legal organization of  
23 Erickson. It shows -- I mean, the takeaway from this is it's  
24 a very complicated organization and -- as far as the debt  
25 instruments, the ownership, the recourse. And then there's,

1 you know, Exhibit D-1 has probably a book this size supporting  
2 every one of these boxes. So, it was an attempt to summarize.  
3 Every time I'm here, I'm reminded of this being one level and  
4 the judge taking it to a much more understandable level on  
5 that board. So, I would say that board's an even better  
6 summary of Erickson's organizational and legal structure.

7 THE COURT: It's the stick figure version.

8 MR. HYNES: Your Honor, this particular exhibit was  
9 admitted into evidence on October 29th during Mr. Niemann's  
10 direct testimony, and I would just ask the Court to take  
11 judicial notice of that.

12 THE COURT: Okay. The Court will do so.

13 MR. HYNES: Thank you, Your Honor.

14 (Debtors' Exhibit 1 is to be judicially noticed.)

15 BY MR. HYNES:

16 Q Could you move to Tab 2, Mr. Niemann?

17 A Yes.

18 Q When you were originally retained by Erickson, did you  
19 explore certain strategic alternatives?

20 A Yes, we did. Yes, we did.

21 Q Can you explain what strategic alternatives you explored  
22 at that time?

23 A One of the initial strategic alternatives was to explore a  
24 standalone restructuring with the lenders. We were not  
25 successful at doing that. And by that, I mean where no new

1 capital comes in, no third-party source comes in. While we  
2 were doing that, we were also exploring with what I'd call a  
3 select few potential outside investors -- Jim Davis and his  
4 investment firm, Redwood Capital, being one of them. Redwood  
5 also happened to be a sub debt holder in the Erickson  
6 structure, so they had some level of familiarity. We also  
7 approached a couple other select potential investors who we  
8 thought could move quickly because of their familiarity,  
9 whether it be like Davis, who had familiarity by being an  
10 investor, and Davis had been involved in a prepetition process  
11 that was run by Goldman Sachs and Lehman Brothers. So, they  
12 had a good deal of visibility and familiarity. There were a  
13 couple of other select investors like that, that we  
14 approached.

15       And the reason I say we went to some sort of a select few  
16 is, in these types of transactions, at least my approach, is  
17 you can't run what I'd call like a cattle call, which is just  
18 a typical M&A process where you say, you know, you put up a  
19 "For Sale" sign and you say, "We're for sale" and you get  
20 everybody in. The company and the structure of this  
21 transaction wouldn't allow itself for that. First of all, all  
22 these investors climbing all over the company when it's in  
23 triage dealing with its lenders, and the complexity of the  
24 structure, we couldn't just do a 363 sale. That wasn't going  
25 to work. So, we had to do a structured plan.

1       So that, by definition, requires that you go to a smaller  
2 universe. Once you lock down that structure, then you go out  
3 and shop it on a more broader, cattle-call basis to truly  
4 clear the market.

5       So, you know, the strategic alternatives we considered  
6 were again, the standalone, and then third-party investment,  
7 ultimately pursuing the third-party investment strategy.

8       Q    In addition to the selected investors you approached, did  
9 you also market the assets more broadly?

10      A    Yes, we did. And in fact, this Exhibit 2 summarizes what  
11 I'd call the marketing process. This was as of mid-December  
12 2009.

13      Q    Okay. Do you recognize that document that's down behind  
14 Tab 2 of Exhibit Book 1?

15      A    Yes, I do.

16      Q    Okay.

17      A    It's a summary that we, Houlihan Lokey, prepared.

18      Q    Okay. And can you explain to the Court what this document  
19 reflects?

20      A    Yes. What this reflects is -- and I think I've walked  
21 through this before for the Court -- is we went out to 91  
22 potential investors. And by that I mean strategic investors,  
23 those that are in the senior living space and/or continuing  
24 care retirement community-type investors, as well as financial  
25 investors that perhaps aren't in the space but would be

1 interested in this potentially as a financial investment as  
2 opposed to a strategic investment. It also -- so that's 91 up  
3 at the top. Forty signed confidentiality agreements and  
4 received the offering memorandum, "OM," which are those two  
5 boxes on the left. Fifty-one declined. Without even signing  
6 a confy, they just said, "I don't have any interest."

7 So, of the 91 we approached, 40 received the offering  
8 memorandum, which is a summary of the investment opportunity  
9 and a campus-by-campus and corporate level summary, as well as  
10 access to a data room we established, which we believed would  
11 give sufficient information upon which to make an investment  
12 decision.

13 Ultimately, 38 of the 40 that received the offering  
14 memorandum declined to make an investment. And ultimately,  
15 two actual bids were received, those being the Redwood bid and  
16 the Coastwood KKR bid.

17 So, of the 91 parties we contacted -- and this is, by the  
18 way, on top of a process that was run a year or so earlier,  
19 prepetition, which I think contacted at least 91, so -- I  
20 should -- strike that. It may not have been 91. I know it  
21 was certainly in excess of 50, because I think in aggregate we  
22 had 150-some-odd that we approached between ours and the prior  
23 process. Two bidders bid, and the same two bidders showed up  
24 at the prior process.

25 Q Thank you. Did you market the campuses individually, or

1 did you market all the assets as a package?

2 A We marketed them both ways. In other words, our  
3 invitation to bidders was, bid in bulk on everything or bid  
4 separately. By campus, corporate versus the campuses. Any  
5 way you want to bid, we want to hear from you.

6 Q Thank you.

7 MR. HYNES: Your Honor, at this point we would  
8 respectfully request that Exhibit 2 be moved into evidence.

9 THE COURT: Any objection?

10 (No response.)

11 THE COURT: 2 is admitted.

12 (Debtors' Exhibit 2 is received into evidence.)

13 MR. HYNES: Thank you, Your Honor. Your Honor, I  
14 have one addition. May I approach the witness?

15 THE COURT: You may.

16 THE WITNESS: Thank you.

17 MR. HYNES: May I approach the bench, Your Honor?

18 THE COURT: You may.

19 MR. HYNES: Thank you.

20 THE COURT: Thanks.

21 BY MR. HYNES:

22 Q Mr. Niemann, I've handed you a document that's been marked  
23 Exhibit 2-A for identification purposes only. It's a two-page  
24 document. Do you have that in front of you?

25 A Yes, I do.

1 Q Okay. Do you recognize this document?

2 A I do. It's a summary of the Kansas Tallgrass campus  
3 marketing effort that we undertook back in 2009.

4 Q Okay. Can you walk us through the first page of this  
5 exhibit?

6 A Yes. This first page is really the same summary-type  
7 information as I just walked through on the broader basis.  
8 This is just with respect to Kansas. Kansas was what I  
9 considered the greatest triage campus. We had a campus in  
10 Columbus, for instance, which we had not opened yet, so we  
11 didn't have residents. And so, early on, March/April, the  
12 board and we, the advisors, and counsel debated, should we  
13 start accepting residents? Should we -- in some ways,  
14 Columbus was the easiest of our problems, because we didn't  
15 have residents there. So, the board decided, you know what?  
16 We should give the initial deposits back, which were nominal  
17 deposits. They were like \$1,000 or \$2,000 apiece, as opposed  
18 to the \$250,000 when you're actually moving in. So, with  
19 respect to Columbus, we said, we're not going live there.  
20 We're not going to accept residents. Let's just kind of  
21 mothball that.

22 But with respect to Kansas, Kansas was the worst-  
23 performing, and it was clear that, really, almost under any  
24 scenario, it was going to be difficult to operate that on a  
25 basis that you could support any level of debt to speak of.

1 And so the revolver lenders on Kansas -- and we opted to go  
2 into the market and see if we could find somebody to take care  
3 of Kansas. And so we kind of singled that out back in, I  
4 believe, August, and this reflects the efforts as of September  
5 2009. We didn't do this with any of the other campuses, okay,  
6 because they were performing. Even though they couldn't  
7 satisfy the full amount of the debt, at least they were  
8 performing where they could continue to provide the services  
9 that the residents had come to expect. We were worried, given  
10 Kansas' performance, we may have issues even providing the  
11 service, which is a big issue. And so we went out, we  
12 marketed that specific asset to 57 potential investors.  
13 Sixteen expressed an interest, and of those, 13 received the  
14 offering memorandum and declined. Three received the offering  
15 memorandum and submitted an IOI, an indication of interest.

16 Q And are those three reflected on Page 2?

17 A Yes, they are. Page 2 summarizes the three indications of  
18 interest that we received, all dated August 31st or September  
19 1, 2009. And if I might, could I just summarize this page  
20 briefly?

21 Q Please.

22 A It's Midwest Health Management, Upton and Associations,  
23 and Senior Care Development. Each submitted indications of  
24 interest. Each of them effectively said, "Look, there's a tax  
25 increment financing obligation here," which we didn't believe



1 we could compromise, "of \$15 million. So, we'll assume that."  
2 At least the first two said that. The third one, Senior Care,  
3 wasn't even willing to take that on. They said, "Look. We'll  
4 pay the special taxing authority a certain amount based on  
5 units sold." I think we had 250 sold. So, we'd have to sell  
6 another 150 even to start getting anything to the taxing  
7 authority.

8 So, bottom line, the three offers we got didn't provide --  
9 and we provide the summary on the far right side,  
10 "Estimated Value to Senior Lenders" -- none of these  
11 proposals, after clearing the entire market in Kansas, got any  
12 value to the senior lenders.

13 And by the way, these were all very preliminary  
14 indications of interest. You know, the timing to close these  
15 and the carrying costs for Kansas -- I mean, I'd actually  
16 argue that, in the end, the senior lenders were actually going  
17 to be getting less than zero, because they'd have to bear the  
18 carrying costs. Even though Erickson pays it, it just  
19 ultimately impacts the recovery to the senior lenders.

20 So this summarizes those three proposals. Then what we  
21 put at the bottom, just by way of, you know, comparison is  
22 what the Redwood transaction, as it currently is structured  
23 and as settled with all the parties provides, is effectively a  
24 \$19.3 million purchase price, and that's really the assumption  
25 of the TIP. So, Redwood's taking it subject to the TIP. And

1 then with respect to the IEDs of roughly \$4.3 million and  
2 ultimately a resolution around the IEDs and payment of certain  
3 postpetition DIP financing costs, DIP claims and tax claims on  
4 the asset, that nets out \$2.8 million to the lenders.

5 So, the real purpose of this summary is to show that,  
6 after clearing the entire market on Kansas, the Redwood  
7 transaction is clearly the best available alternative for the  
8 Kansas lenders relative to every other alternative that we've  
9 explored and relative to, you know, a full market clearing.

10 Q And was this exhibit prepared under your supervision?

11 A Yes, it was.

12 Q Okay.

13 MR. HYNES: Your Honor, at this point we would  
14 respectfully request that the Court admit Exhibit 2-A into  
15 evidence.

16 THE COURT: Any objection?

17 (No response.)

18 THE COURT: It's admitted.

19 (Debtors' Exhibit 2-A is received into evidence.)

20 MR. HYNES: Thank you, Your Honor. Your Honor, at  
21 this point, I'm going to take Mr. Niemann through the next few  
22 documents just to admit certain documents, source documents,  
23 into evidence, and then we're going to move quickly to the  
24 chart that's behind Exhibit 7.

25 THE COURT: Okay.

1 BY MR. HYNES:

2 Q Mr. Niemann, could you please look at the document behind  
3 Tab 3 of Exhibit Book 1?

4 A Yes, I see it.

5 Q Okay. Do you recognize that exhibit?

6 A Yes, I do. It's an amended and restated master purchase  
7 and sale agreement with Redwood. It was effective as of  
8 November 11, 2009.

9 Q And if you look behind the first blue separation tab, do  
10 you see a series of term sheets dated November 11, 2009?

11 A Yes, I do.

12 Q And these documents are Bates-stamped ERC 01707 through  
13 ERC 0721. Is that right?

14 A That's correct.

15 Q Okay. Are these term sheets part of the proposal that  
16 came in on November 11, 2009?

17 A Yes, they are. They're the individual campuses and  
18 corporate-level restructuring term sheets with respect to the  
19 initial Redwood structure.

20 Q All right. So, the Redwood structure was organized by  
21 campus and Corporate?

22 A Yes.

23 MR. HYNES: Your Honor, we respectfully move Exhibit  
24 3 into evidence.

25 THE COURT: Any objection?

1 (No response.)

2 THE COURT: It's admitted.

3 MR. HYNES: Thank you, Your Honor.

4 (Debtors' Exhibit 3 is received into evidence.)

5 BY MR. HYNES:

6 Q Mr. Niemann, could you please turn to Tab 4 in Exhibit  
7 Book 1?

8 A Yes.

9 Q Do you see the document behind that tab? It's dated  
10 December 18, 2009, and the first Bates number on that document  
11 is ERC 08558.

12 A Yes, I do.

13 Q Okay. Can you explain to the Court what this document is?

14 A This was the modification that we received from Redwood  
15 just prior to the auction. Redwood submitted sort of a Door 1  
16 or 2, if you will, Door 1 being, as they did in November, or  
17 in the November master purchase agreement and term sheets, a  
18 reinstated debt alternative, and then Door 2 was an outright  
19 buyout of the debt, more like a 363 transaction.

20 And so we had pushed Redwood all along on, you know,  
21 "What's your all-in cash number?" to try to get it as apples-  
22 to-apples. And it's also easier to sort of transact with the  
23 lenders when they know exactly what they're getting, as  
24 opposing to have to reinstate part and part cash. So Redwood  
25 ultimately, just prior to the auction, submitted this letter

1 with modified term sheets that memorialized both their  
2 reinstated debt alternative or their cash option alternative.

3 Q And this document also breaks the assets into Corporate  
4 and by campus. Is that correct?

5 A Yes, it does.

6 MR. HYNES: Okay. Your Honor, we respectfully move  
7 to admit into evidence the document located behind Tab #4 of  
8 Exhibit Book 1.

9 THE COURT: Any objection?

10 (No response.)

11 THE COURT: D-4 is admitted.

12 (Debtors' Exhibit 4 is received into evidence.)

13 BY MR. HYNES:

14 Q Mr. Niemann, can you please turn to the document behind  
15 Tab 5 of Exhibit Book 1?

16 A Yes.

17 Q This document is a redlined -- excuse me, a blacklined  
18 draft. And the Bates number on the first page is ERC 08858.  
19 Do you see that?

20 A Yes, I do.

21 Q Okay. Do you recognize this document?

22 A I do. This is a markup -- and it says up at the top, K&E,  
23 Kirkland & Ellis -- that we received from Coastwood KKR, the  
24 competing bidder. And as per the auction instructions, all  
25 competing bids had to mark up the master purchase and sale

1 agreement of Redwood. So this is that markup, and I would  
2 consider this tab effectively to be the competing bid we  
3 received from Coastwood KKR.

4 Q So, this was the second bid referenced in Exhibit 2?

5 A That's correct.

6 Q Could you please turn to the document Bates-stamped within  
7 this number ERC 09323?

8 MR. HYNES: Your Honor, if you can flip to the first  
9 blue sheet, then to the second blue sheet, behind the, I  
10 think, the third blue sheet, you'll see the document. And it  
11 has "Exhibit C" on the top.

12 THE WITNESS: He was kind enough to tab mine for me,  
13 Judge. It's hard to find these.

14 MR. HYNES: I was hoping you weren't going to point  
15 that out.

16 THE COURT: Thanks a lot. Okay.

17 MR. HYNES: Sorry, Your Honor.

18 THE COURT: 9323 at the bottom?

19 MR. HYNES: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. HYNES: It says "Exhibit C" at the top.

22 BY MR. HYNES:

23 Q Do you see this, Mr. Niemann?

24 A I see it.

25 Q Okay. Can you describe briefly for the Court what this

1 is?

2 A Yes. This is a summary of the allocation by Coastwood of  
3 their, what I consider their initial bid, which was the  
4 opening bid for the auction.

5 Q So, Coastwood also applied transaction values to the  
6 various campuses and Corporate?

7 A Yes, they did.

8 Q Okay.

9 MR. HYNES: Your Honor, we would respectfully move  
10 into evidence the document behind Tab 5 of Exhibit Book 1.

11 THE COURT: Any objection?

12 (No response.)

13 THE COURT: Exhibit 5 is admitted.

14 (Debtors' Exhibit 5 is received into evidence.)

15 BY MR. HYNES:

16 Q Mr. Niemann, could you please turn to the document located  
17 behind Tab 6 of Exhibit Book 1?

18 A Yes, I'm there.

19 Q Do you recognize this document?

20 A Yes. This is the transcript of the auction that we  
21 conducted on December 22nd with respect to Erickson.

22 Q Did you preside over this auction?

23 A Yes, I and Mr. Califano presided over the auction.

24 Q Mr. Califano appreciates that. Could you briefly describe  
25 what took place at the auction?

1 A Yes. I think we were set to commence at 10:00 a.m., if  
2 memory serves. There was some delay in getting started, you  
3 know, some posturing by bidders and so forth. We ultimately  
4 got started and went on the record briefly. Indicated --  
5 again, I'm going by recollection as opposed to this record,  
6 but I think we indicated briefly that we believed Coastwood  
7 KKR was deemed a competing bid. Here's how we're valuing that  
8 bid, and here are kind of the rules of the road and how we're  
9 going to go about the auction.

10 Then we broke. And I don't know how long we broke at any  
11 particular time, but we spent more time out of the auction  
12 room than we did in the auction room. And again, the approach  
13 -- and again, it's my typical approach -- is that you make a  
14 record of everything that's going on outside the auction room,  
15 but you know, the sausage-making, if you will -- and a lot of  
16 it had to do with dealing with the National Senior Campuses,  
17 the NSC, who is the counterparty to the management agreements,  
18 which are a big part of the value that the bidders both are  
19 bidding on here. So, we spent a lot of time in conference  
20 with the NSC.

21 And I can't remember exactly who was where, but by and  
22 large we would have representatives, in particular of the  
23 secured lenders. I think the Committee got a little antsy  
24 that we weren't dealing with them on a regular basis, as well  
25 as some of the sub debt holders. We did want to make sure



1 that there was enough visibility on what was going on. You  
2 can't have 30 people go into every room. So, we kind of had a  
3 contingent from the secured lenders, and we went back and  
4 forth. Ultimately, we came back on the record, then took  
5 another long break, came back on the record.

6 At some point, we finally start getting it to where it was  
7 pretty much apples-to-apples, so we could bid up price. And  
8 during the auction, both parties converted to a pure-cash bid,  
9 as opposed to a reinstated-debt bid, so then we truly were  
10 apples-to-apples. And a big part of what happened outside the  
11 room, which again is all reflected in this record, when we  
12 came back and made a record of it, was we locked in ten-year  
13 management agreements with the NSC, because their --  
14 initially, at the commencement of the auction, the best we  
15 could do with the NSC was a three-year with a two-year renewal  
16 right, as opposed to a ten-year, which is going to be much  
17 more value for these investors.

18 And I'm oversimplifying it, but that's a lot of what  
19 happened outside the room.

20 And so, then when we came back on the record, ultimately,  
21 got it to apples-to-apples, cash-versus-cash, we pretty much  
22 just bid up price at that point.

23 There were some other nuances that happened. For  
24 instance, Coastwood KKR at some point threw out that they --  
25 you know, for them to continue bidding, they want a piece of

1 the action, if you will. So, since they had -- in some  
2 respects, they weren't getting a breakup fee, where Redwood  
3 was, because they were the stalking horse, but Coastwood had  
4 come in, competing, drove up value from the initial start  
5 point of the auction to where we ended up. So we and the  
6 lenders caucused and agreed to provide them some incentive  
7 fee. And then ultimately it just became a straight bidding  
8 war. And I think it ended sometime, you know, at 3:00 or 4:00  
9 in the morning.

10 Q Mr. Niemann, could I direct your attention to the second-  
11 to-last page of this document? It says Page 127 at the very  
12 bottom under the word "Certificate."

13 A Yes.

14 Q Okay. Could I ask you just to read into the record Lines  
15 7 through 21? These are statements attributed to you.

16 A I said, "So, to just close the record, we congratulate  
17 Redwood, the Debtors, and their business judgment, and we will  
18 be recommending Redwood as the prevailing bidder at their  
19 prevailing bid of 365. At this point we want to ensure that  
20 there is no creditor that intends to make a credit bid at the  
21 auction." And I think I paused. "Having heard no creditor, we  
22 will deem the auction closed at 365, no credit bids received.  
23 Congratulations to Redwood." And the time noted is 4:00 a.m.  
24 So, that's probably why the grammar is a little butchered.  
25 But it was --

1 (Laughter.)

2 THE WITNESS: It was a long day.

3 BY MR. HYNES:

4 Q "365" reflects the proposed purchase price of \$365  
5 million. Is that correct?

6 A That's correct.

7 Q Okay. How confident are you that you got the best price  
8 as a result of the marketing and auction processes that you  
9 went through here?

10 A I'm actually absolutely certain in this particular case  
11 that we got the best price. And the reason for that, unlike  
12 any other case I've had -- and I've run a lot of auctions over  
13 the last, really, 14 years now as an investment banker -- you  
14 never know whether you got the best price, because all you do  
15 is top out one of the bidders. So, for instance, in this  
16 case, Redwood bid \$365 [million] and Coastwood said, "We're  
17 done." Well, if those were all the facts I had, I'd say,  
18 "Well, I don't know. Redwood could have gone another 10, 15,  
19 20. I don't know." That's how most auctions end.

20 What was unique in this auction, the experience, we were  
21 sitting at the head of the table, and Jim Davis from Redwood  
22 is to our left and Matt Zilkha from KKR, who are the primary  
23 spokespeople, to our right. And at \$360 [million], we looked  
24 over to Coastwood and said -- Coastwood KKR and said,  
25 "The bid is \$360 [million] to you. How do you bid?" And just

1 before they bid, Mr. Davis, Redwood, started to get up to  
2 reach across the table. And they said \$363 [million], and he  
3 sat back down. Then the bid was to Redwood. I said, "The bid  
4 is \$363 [million] to Redwood. How do you bid?" Redwood then  
5 said \$365 [million]. With that, Mr. Zilkha stood up from  
6 Coastwood KKR and shook Mr. Davis' hand and said,  
7 "Congratulations. It's yours."

8 I asked Mr. Davis as we were walking out of the auction  
9 room, I said, "What were you doing? You were standing up at  
10 \$360 [million] before they spoke." He said, "If they said  
11 \$365 [million], I was done." He said, "I had already went  
12 beyond my top. You know, my guys talked me into going a  
13 couple of rounds more." I said, "So, if they had said \$365  
14 [million], you wouldn't have countered them?" He said, "No,  
15 they would have had it."

16 So, it's the only time I've ever seen this happen where  
17 you know -- and we call it like getting the lint out of the  
18 bidder's pocket -- we know we got the top value out of  
19 Coastwood, because they didn't counter. And we know, because  
20 Jim Davis told us as we walked out of that auction room, that  
21 he was not going to bid any higher. So, we got his top bid  
22 and we got Coastwood's. It, by definition. And that's why I  
23 can say with absolute certainty we got the highest bid we  
24 could get for these assets.

25 MR. HYNES: Your Honor, at this point, we'd

1 respectfully move into evidence Exhibit 6.

2 THE COURT: Any objection?

3 (No response.)

4 THE COURT: It's admitted.

5 MR. HYNES: Thank you, Your Honor.

6 (Debtors' Exhibit 6 is received into evidence.)

7 BY MR. HYNES:

8 Q Mr. Niemann, could you please close Exhibit Binder 1 and  
9 turn to Exhibit Binder 2?

10 A I'll try.

11 (Laughter.)

12 A Okay.

13 Q Could you please take a look at the document behind Tab 7  
14 of Exhibit Book 2?

15 A Yes. Tab 7 is a two-page exhibit. The first page is a  
16 summary of the allocation of the Redwood purchase price at the  
17 final close of the auction, the \$365 million. And Page 2 of  
18 Tab 7 is the Redwood allocation of the purchase price at the  
19 commencement of the auction, their \$241 million bid.

20 Q Mr. Niemann, in your opinion, is the \$365 million bid for  
21 the assets a fair reflection of fair market value?

22 A Yes. And again, by definition -- first of all, I know  
23 it's the best value we could get for the reason I just  
24 described, which you can't say -- I've never been able to say  
25 in any other case. So, that gives me total confidence. And

1 then the other reason is the process that we walked through  
2 earlier, we cleared the market. The market had been cleared  
3 in some respects before we got there.

4 I mean, the definition of fair market value is essentially  
5 what a ready, willing and able buyer is paying to a ready,  
6 willing and able seller without duress. And this price  
7 reflects that, especially with a full market test. We cleared  
8 the market and the \$365 [million] reflects it as to the pool  
9 of assets. And I point that out because then you say, okay,  
10 well, that's interesting as to the entirety, but what about as  
11 to each individual asset? So, as to the pool of assets, which  
12 is Corporate and each of the campuses, \$365 million, I  
13 believe, is fair market value.

14 Q Is there a better measure of value other than fair market  
15 value, in your opinion?

16 A No, there's not. And my only footnote to that would be  
17 there's no better measure of value than a true, full market  
18 test of value. I mean, the market speaks.

19 Q Could you briefly walk us through Page 2 of the document  
20 behind Tab 7 in Exhibit Book 2?

21 A Yes. This is -- and if you'll notice, they're both dated  
22 12/22. Page 2 is Redwood's allocation as of the outset of the  
23 auction. So, when Redwood showed up to begin bidding against  
24 Coastwood, and Coastwood was the opening bid at the auction  
25 because they were the counterbid, this is Redwood's allocation

1 of value by campus. You'll recall, throughout the process we  
2 asked for bids in bulk or by campus. Ultimately, Redwood  
3 allocated their value by campus, as did Coastwood. And that's  
4 what this page reflects, again, at the outset of the auction,  
5 and then Page 1 is at the close of the auction, \$365  
6 [million], how that was allocated.

7 Q Do you know who prepared these two pages?

8 A We, Houlihan, prepared them, and they're based on our  
9 discussions with and materials received from Redwood.

10 MR. HYNES: Your Honor, at this point, we would  
11 respectfully move into evidence the document behind Tab 7 in  
12 Exhibit Book 2.

13 THE COURT: Any objection?

14 (No response.)

15 THE COURT: 7 is admitted.

16 (Debtors' Exhibit 7 is received into evidence.)

17 BY MR. HYNES:

18 Q And can we move to the next document, Mr. Niemann, Tab 8?

19 A Yes.

20 Q And do you recognize this document?

21 A Yes, I do.

22 Q Can you explain to the Court what it is?

23 A Yes. It's probably best to explain 8, 9 and 10 together,  
24 because they all work together, if I may.

25 Q Sure.

1 A 8 is a summary in absolute terms -- by that, I mean in  
2 dollars -- of -- there's a lot of bars here, so -- the Redwood  
3 initial bid, you'll recall, I don't remember what exhibit it  
4 was, but the master purchase and sale agreement where they  
5 were reinstating debt. So the blue, the first bar is that bid  
6 and how that bid got allocated as between Corporate and each  
7 of the campuses. With respect to that allocation, that's our,  
8 Houlihan Lokey's, valuation of the reinstated debt. Because  
9 there, they'd say -- you know, pick a campus. And I'm just  
10 trying out numbers for discussion's sake. These aren't the  
11 real numbers. But say they were reinstating, you know, \$50  
12 million worth of debt on Concord. Based on the terms of that  
13 debt, it might be that debt is only worth \$45 million, just  
14 because of, you know, how it's being structured. So they're  
15 putting a face amount on it, but it's not really worth that  
16 amount, or the junior piece of it is maybe not worth the face  
17 amount. So we performed a valuation of the reinstated debt,  
18 and that's what this blue bar shows.

19 Now, it became irrelevant later because they converted to  
20 a cash offer. So this is just our hypothetical, what I call  
21 illustrative valuation of Redwood's initial reinstated debt  
22 proposal.

23 Q And that is based on the bid package submitted by Redwood  
24 on November 13, 2009?

25 A That's correct. It was submitted prior to November 13th,



1 but it's the master purchase and sale agreement we submitted  
2 to the Court, I believe, at that time.

3 Q I'm sorry. You're correct.

4 A Right.

5 Q I misspoke.

6 A Right.

7 Q It's November 11th, is the date on the document.

8 A Okay.

9 Q Okay. Could you take us to the green bar?

10 A The green bar is the Redwood cash proposal with respect to  
11 the allocation across each of the Corporate and each of the  
12 campuses. And again, you'll recall they sent in that  
13 modification letter just before the auction that said, Door 1  
14 or 2. So this is a summary of that 'Door 2' proposal, if you  
15 will.

16 Another way to look at it, I believe, is that it was the  
17 Redwood initial, at the start of the auction, valuation, which  
18 should tie to the second page of Tab 7.

19 Q And this, the data reflected in the green bar is based on  
20 the December 18, 2009 bid package submitted by Redwood?

21 A Right. That revised, modified bid package.

22 Q And that's found behind Tab 4 of Exhibit Book 1?

23 A I think that's right. I went through that earlier. Yes.

24 Q Okay. And then can you take us to the light blue bar?

25 A The light blue bar is Coastwood's initial allocation of

1 value. I indicated earlier that Coastwood also allocated  
2 their entire purchase price campus-by-campus and Corporate.  
3 And so this summarizes their allocation as of the outset of  
4 the auction.

5 Q And that's based on the bid package we reviewed behind  
6 Exhibit 5 of Witness Binder 1?

7 A Yes. That was at Exhibit C, way back in the back of that  
8 thick exhibit, yes.

9 Q And can you explain to us what the yellow bar is?

10 A The yellow bar is our, Houlihan Lokey's, call it again  
11 hypothetical valuation and allocation. And this was discussed  
12 at the last hearing, that we attempted to kind of broker  
13 settlements when we didn't have all the support we were hoping  
14 to get. And so we took our valuations that we had done,  
15 really, over the last year, you know, updated it, and then  
16 based on that valuation allocated the value campus-to-campus.  
17 So we literally valued each campus and then Corporate. And  
18 then, based on those relative values, said, okay, if that \$365  
19 [million] went into that waterfall, this is how it would be  
20 allocated. So it's purely for, really, hypothetical purposes  
21 and an attempt to try to broker a settlement based on our  
22 hypothetical valuation.

23 Q And is it fair to say that's the only bar that's not based  
24 on an actual proposal or bid?

25 A Yes. That's true.

1 Q Okay. And can you explain to us what the red bar is?

2 A The red bar is the Redwood final allocation, which is the  
3 first page of Tab 7. As I indicated, the green bar is where  
4 Redwood started the auction. The red bar is where they ended  
5 the auction.

6 These bars, by the way, you'll notice -- I want to make  
7 sure this is the case -- yes, on Tab 9, this shows everything  
8 in percentages, as opposed to dollar amounts, which is perhaps  
9 the more relevant way to look at it. So you'll notice the  
10 green and red bars match percentage-wise. They don't match  
11 dollar-wise. So, in other words, Redwood's allocation held  
12 from the start of the auction through the end of the auction.  
13 As they bid up, they allocated the same way.

14 Q Just to make sure I understand, the first document is  
15 "Transaction Proceeds - Allocation in Dollars"?

16 A That's right.

17 Q And then if we look at the next page, which also has the  
18 same bars, but that's organized by "Proceeds Allocation -  
19 Percentage"?

20 A That's right.

21 Q And from where did you -- or, on what did you base the  
22 percentage allocations?

23 A The percentage allocations are -- probably the best way to  
24 look at it is go back to Tab 7 in Redwood's case. And if you  
25 look at the far right side, there's a percentage of the total

1 consideration, total consideration being \$365 million, and  
2 then how much is allocated by each campus. For instance,  
3 Ashburn is 19.3 percent, Concord is 16.8 percent, and so on,  
4 for 73.1 percent across all the campuses, the balance going to  
5 Corporate and the NSC allocation. Typo.

6 Q So you relied on the proposal presented by Redwood, which  
7 divided the proposal by Corporate and campus?

8 A Yes. That's what this Tab -- Tabs 8 and 9 summarize. The  
9 green and red bar is the Redwood proposal allocation, and the  
10 light blue bar is the Coastwood proposal allocation.

11 Q Okay. And there's a note on the bottom, an identical note  
12 on the bottom of Exhibits 7 and 8. Do you see that note?

13 THE COURT: 8 and 9?

14 THE WITNESS: Do you mean 8 and 9? Right.

15 BY MR. HYNES:

16 Q I'm sorry. That's correct. 8 and 9.

17 A Right. Yes.

18 Q Can you explain that note?

19 A Yes. As I indicated, on Tab 7, there's \$9 million  
20 allocated to the NSC. So we took that out of the denominator,  
21 if you will. Then also Kansas, as I explained earlier,  
22 there's roughly 4.3 or 2.7, however you want to look at it,  
23 net of cost, that's going to lenders. That's not in kind of  
24 the denominator here, either. And then Warminster is actually  
25 -- the debt was reinstated there, and so that's not included,

1 either.

2       So this really is an attempt to take the pure cash  
3 proceeds going to Corporate and going to each of the campuses,  
4 and show the relative allocation of those cash proceeds by  
5 campus and Corporate, and taking out of it, you know, the NSC  
6 piece, the Kansas piece, and the Warminster reinstated debt,  
7 because that's not cash.

8 Q   And were any adjustments made following that?

9 A   Yes. In fact, we debated this morning putting another bar  
10 on this graph, but I think Mr. Califano convinced us that it  
11 was already complicated enough. The one more bar we would put  
12 is what I'd call the TIP bar, T-I-P, which is Mr. Smith's  
13 fancy acronym for what it took to kind of settle and true up  
14 amongst all the campuses. And that's actually reflected on  
15 Tab 10. And by the way, we actually did run that analysis  
16 this morning. It would be very close to the red bar, just  
17 with some minor variance with respect to campuses that are  
18 TIP'ing in or TIP'ing out of the settlement.

19 Q   Well, could you walk us through the document behind Tab 10  
20 of Exhibit Book 2?

21 A   Yes. Tab 10 is, by and large, the detail that feeds into  
22 Tabs 8 and 9. And then, if you'll notice, about six lines  
23 down, TIP Funding, TIP Uses. I think we talked about this --  
24 in fact, I know we did -- at the last hearing. And by the  
25 way, this exhibit, I believe the Judge received at the last

1 hearing, at least the top part of it all the way down through  
2 Total Value Available for Distribution. And then we added to  
3 it all the debt balances and some of the allocated costs, just  
4 to show, which we weren't doing last time, to show, you know,  
5 how some of the costs were allocated, like the DIP Usage and  
6 just costs of the Chapter 11 and everything else. So that's  
7 new.

8       The only other change this exhibit has on it from what the  
9 Court received a few weeks ago is, if you'll notice, in  
10 Concord, which is the third column over under Debtor Entities,  
11 and you go down to the TIP section, TIP Funding of -1.8 and  
12 TIP Uses of \$1 million. The \$1 million is what it took to  
13 resolve the Kennedy objection. So that's the only change to  
14 at least the top part of this exhibit, that Kennedy is now  
15 receiving \$1 million in settlement of their claims.  
16 Otherwise, I think this exhibit is identical to what we walked  
17 the Court through before. And it summarizes all the  
18 transaction proceeds, any available IEDs and other cash on  
19 hand and retained cash, and tries to, on a consolidated basis,  
20 show by entity what value is available for distribution, and  
21 then, by entity, below, what the debt claims are, how we  
22 allocated the DIP borrowings and the wind-down costs, which  
23 there's a lot more detail that backs all of this up, but  
24 effectively they're allocated in the same manner as the  
25 Redwood allocation, for consistency purposes.

1 Q Okay. Mr. Niemann, if I could direct your attention back  
2 to Exhibit 8. Could you explain to us the significance of the  
3 exhibit and the comparison of the bars to one another?

4 A Yes. And again, I'll try to be -- keep this short and  
5 tight, if I can. Again, 8 and 9 really tie together. I  
6 think, if you look at 8, one of the things that stands out is  
7 our yellow bar, you'd say, "Well, heck. On some of these, you  
8 valued things a lot higher or a lot lower than the bidders."  
9 Which is true. I mean, all we can do is take the information  
10 we have and come up with an opinion of value, but we're not --  
11 we, Houlihan Lokey, are not the investors, so we're giving a  
12 hypothetical assessment of value.

13 And what's particularly challenging about these assets is,  
14 by definition, every one of these campuses are in development,  
15 so they're not mature campuses.

16 What's interesting, we don't show this, but if you  
17 actually took our entire valuation and then put a different  
18 discount rate on it -- because this ended up being a 100  
19 percent equity investment. There was no debt. So Redwood  
20 Capital literally is writing a check for the entire purchase  
21 price. They're not -- you know, they may re-leverage these  
22 assets later. But, so instead of using the Weighted Average  
23 Cost of Capital that we used on our valuation, you'd use a  
24 much higher cost of capital, like 30 percent, for equity. If  
25 you actually went through all that, our valuation would come

1 out very close to the Redwood final valuation. So the only --  
2 the primary difference in valuation is cost of capital. We  
3 used a lower WACC because we were assuming, you know, debt  
4 capital as opposed to just pure equity capital. So that  
5 explains one of the primary differences.

6 And the other is, in these developing campuses, we,  
7 Houlihan, had a different view than the bidders of the risk  
8 associated with the asset. So, for instance, on Ashburn, the  
9 -- and I think this is equally true of Littleton -- these  
10 campuses, we believed had more risk than the investor  
11 believed. So when we looked at Ashburn and Littleton, and  
12 you'll notice our yellow bar versus Redwood's red bar, there's  
13 a fair discrepancy. On those two campuses, relative to other  
14 campuses, they're earlier-stage development, so we believe  
15 there's more risk in the development. The investor, on the  
16 other hand, believes there's more upside in the development,  
17 so they put more relative value on those two campuses.

18 Then a good contrast to that would be Concord and Novi.  
19 On Concord, you'll notice our yellow bar is a little higher  
20 than the red bar, and there's a more pronounced difference on  
21 Novi. Novi in particular is probably a good one to speak to.  
22 Novi -- and we've talked about Scenario 1 being mothball, no  
23 new development; Scenario 2 being build to demand; and then  
24 Scenario 3 being kind of more of a *Field of Dreams*, you know,  
25 build and they will come. So we did a valuation based on



1 Scenario 2, what we, based on the company and A&M and all of  
2 our work, what we thought the demand should be and would be.  
3 On Novi, first of all, Novi is located in a suburb of Detroit.  
4 So, you know, Detroit is undergoing real issues. Also, just  
5 in the last couple of months, we have had to lower the IED,  
6 the entrance deposit amounts, just to continue to attract  
7 residents and to maintain occupancy. So, Novi, there's some  
8 dynamics with respect to the particular asset which, candidly,  
9 our valuation was probably a little high. But the real  
10 difference is our valuation assumed we were going to build  
11 three more buildings in Phase 2 of their development over the  
12 next three years. Redwood and Coastwood both, when we  
13 consulted with them on Novi, said, "You know what? We're  
14 going to be much more deliberate on development. We maybe are  
15 going to build one, best case, two, over those three years."  
16 If you run our valuation on a one- to two-buildings versus  
17 three, that yellow bar would be much more in line with the red  
18 bar.

19 And again, I'm wildly oversimplifying stuff, but I think  
20 it's helpful to understand how we can come up with a valuation  
21 that, in aggregate, is really, you know, within a matter of a  
22 couple of percentage points when you apply the same Weighted  
23 Average Cost of Capital, but by campus is different, because  
24 you have to take -- you know, you've got a portfolio  
25 valuation, which is the entirety, and then you have to look by

1 individual asset. That asset valuation is relative to the  
2 risk perceived by the actual investor who's actually investing  
3 capital. We, Houlihan, aren't investing capital. So, we're  
4 hypothetical. And we haven't shown all that here, but that's  
5 the primary explanation for why, for instance, Novi and  
6 Concord are different.

7 Dallas and Houston, I have to tell you, the investors just  
8 thought those were going to be a little more challenging asset  
9 than we thought and the company thought in our valuation.

10 So that's an explanation for the primary differences.

11 Q And which is the better evidence of fair market value,  
12 Houlihan Lokey's hypothetical valuation or the allocations  
13 provided by the two bidders?

14 A In fact, I've got a poster on my wall at the office that  
15 says, "Behind every market perception, there's an economic  
16 reality." The market spoke here. The economic reality is  
17 what Redwood is willing to pay for each of these assets  
18 individually and collectively, and what the lenders are  
19 willing to transact at. So, here, I believe -- and I'd always  
20 believe this. I'm a big believer in market tests, for this  
21 very reason, especially when you're dealing with in-  
22 development assets. They're just tougher to value. I mean,  
23 we had a portfolio of 500-some-odd assets at ResCap, and, you  
24 know, a lot of these are in development. It's really hard to  
25 value these assets on a hypothetical basis. So the market

1 speaks. And Redwood, their proposal and their allocation with  
2 respect to each individual asset is what a ready, willing and  
3 able buyer is willing to transact at. And when you factor the  
4 TIP in, the allocation by each campus is what a ready, willing  
5 and able seller -- in this case, the lenders -- equity is out  
6 of the money, so the lenders are really selling their  
7 position. No duress. The lenders, you know, could choose not  
8 to. They had a right to credit-bid. They chose not to. So,  
9 in the end, I believe, by campus, we have defined fair market  
10 value between market clearing, the transaction allocation,  
11 which is the value at which the lenders were willing to part  
12 with their claims and their rights, objections and everything  
13 else. So, by definition, here, I think we've established fair  
14 market value by asset and in aggregate.

15 Q Just so I understand your testimony, is it your opinion  
16 that there's fair market value evidence in the valuation and  
17 allocation proposed in the plan?

18 A Yes. Among other data points, if you will. But, yes.

19 Q And does that evidence come from the auction results?

20 A The auction results, the Coastwood allocation, the Redwood  
21 allocation, the fact that 100 percent of the lenders support  
22 it, the data points we've run. I mean, we've run valuation on  
23 all this, and directionally, it's all on top of itself. And  
24 if we applied the same investment thesis, if you will, that  
25 the investors did, our valuation would be more comparable. We

1 took -- you know, on the riskier assets, we were more  
2 conservative. On the more developed assets, we were less  
3 conservative. So all of those data points, I think, combine  
4 to give you greater confidence in the fair market value. But  
5 again, I'd stand by "The market spoke."

6 Q And what about the availability of credit bids?

7 A That as well. In fact, per the transcript we read, there  
8 was no credit bid.

9 Q Is that also evidence of fair market value?

10 A Yes. If the lenders believed they weren't achieving fair  
11 value for their asset, they can protect their assets and their  
12 investment by bidding, and, you know, either bidding it up  
13 with Redwood or Coastwood, or bidding to own it on their own.  
14 We didn't receive any of those types of bids.

15 Q And that's what's being proposed in the plan?

16 A I'm sorry?

17 Q And this is what's being proposed in the plan, this  
18 allocation?

19 A Yes.

20 MR. HYNES: Your Honor, may I take one moment?

21 THE COURT: You may.

22 MR. HYNES: Thank you.

23 (Pause.)

24 BY MR. HYNES:

25 Q Mr. Niemann, are you familiar with the so-called avoidance

1 actions?

2 A Yes, I am.

3 Q Can you just briefly explain what those are for the Court?

4 A Avoidance actions generally -- I think they're in Chapter  
5 5 of the Bankruptcy Code, and under state law as well -- are  
6 claims that an estate has to sort of unwind transactions,  
7 whether it be preferences or fraudulent conveyances or  
8 otherwise.

9 Q To your knowledge, did Redwood assign any value to the  
10 avoidance claims?

11 A I'm not aware of any specific allocation. I'd consider it  
12 part of the Corporate allocation.

13 Q Okay.

14 A I do know they were important to them, though.

15 Q Mr. Niemann, could I direct your attention to the document  
16 behind Tab 12 of Exhibit Book 2?

17 MR. HYNES: And Your Honor, just for the record, the  
18 document behind Tab 11 is the liquidation analysis that was  
19 prepared by Mr. Rundell and has been previously admitted into  
20 evidence by the Court, and it's just being provided here to  
21 remind the Court that a liquidation analysis did not produce a  
22 better result than the auction.

23 BY MR. HYNES:

24 Q Mr. Niemann, can you identify the document behind Tab 12?

25 A This is, I guess, the corrected pages for the disclosure

1 statement. And I'm trying to find when this was filed. Yes,  
2 this was filed March 9th.

3 Q Can you turn to Page 118?

4 A Yes.

5 Q Can you identify the analysis at the top of Page 118?

6 THE WITNESS: Are you there, Judge? Are you on Page  
7 -- are we on Page 118?

8 THE COURT: I'm there.

9 THE WITNESS: Okay. I was just --

10 THE COURT: Thank you.

11 THE WITNESS: The -- this is a summary of the final  
12 allocation. I'd consider this sort of a summary level of  
13 everything we just talked about with respect to the final  
14 Redwood bid of \$365 million, by campus and Corporate and NSC,  
15 and it also has Warminster on here, as far as the reinstated  
16 debt.

17 THE COURT: Okay. I'm on 118, but it's not what he's  
18 describing.

19 MR. HYNES: May I approach, Your Honor?

20 THE COURT: Yes. Hang on a minute. Wait a minute.  
21 I was behind your blue tab. Maybe you'd better approach.

22 MR. HYNES: Sorry, Your Honor.

23 THE COURT: Okay.

24 (Pause.)

25 BY MR. HYNES:

1 Q So, Mr. Niemann, just to summarize, did you prepare or did  
2 someone under your supervision prepare the analysis reflected  
3 at the top of Page 110 of the Notice of Filing of Corrected  
4 Pages to Disclosure Statement for Debtors' Fourth Amended  
5 Joint Plan of Reorganization and Debtors' Fourth Amended Joint  
6 Plan of Reorganization?

7 A Do you mean 118 or 110?

8 Q 118.

9 A 118? Yes.

10 THE COURT: We're talking about the 118 on the bottom  
11 of the page, --

12 MR. HYNES: Uh-huh.

13 THE WITNESS: Right.

14 THE COURT: -- instead of the numbers at the top of  
15 the page?

16 THE WITNESS: I think that's where we're --

17 THE COURT: That's why I'm --

18 THE WITNESS: That's where we're -- yes.

19 MR. HYNES: Yes.

20 THE WITNESS: Yes. The top's a different number.

21 THE COURT: Right.

22 MR. HYNES: Oh, sorry.

23 THE WITNESS: Yes, we did prepare that, --

24 BY MR. HYNES:

25 Q Okay.

1 A -- and I believe counsel incorporated it into the  
2 disclosure statement.

3 Q Okay. And could you turn to Exhibit F, Tab F, behind the  
4 same Tab 12?

5 A Yes, I'm there.

6 Q Okay. And do you recognize this?

7 A Yes, I do. It's a recovery analysis by Corporate and then  
8 by campus.

9 Q Was this prepared under your supervision as well?

10 A Yes, it was.

11 Q Can we move to Tab 13? And can you move to the tab behind  
12 -- the page behind Tab 13 that I tabbed for you? It says  
13 Exhibit B to the plan.

14 MR. HYNES: Your Honor, it would be hopeless to flip  
15 through it. May I had up a copy for Your Honor?

16 THE COURT: You may.

17 MR. HYNES: Thank you.

18 THE COURT: Okay.

19 THE WITNESS: I think I'm there. Yes. Sources of  
20 Funding of TIP and Total Cash Available for Distribution.

21 BY MR. HYNES:

22 Q Does that look familiar to you?

23 A Yes, it does.

24 Q Was that prepared by you or under your supervision?

25 A Yes. I believe it's --



1 MR. STRICKLIN: Your Honor, I got lost. Where are we  
2 now?

3 THE COURT: We're on Exhibit B to the plan.

4 THE WITNESS: It's about 12 pages from the very back  
5 of the book.

6 BY MR. HYNES:

7 Q Mr. Niemann, can you explain to us what that is?

8 A Yes. I think, and I'd have to go back and compare it to  
9 the exhibit we shared with the Court last time, but I think  
10 this is the same exhibit I was referring to earlier,  
11 effectively, which is the sources by entity and the allocation  
12 of the purchase price and the sources of funding of the TIP  
13 before the settlement on Concord, because, as I look at this,  
14 I don't see the \$1 million of TIP Uses for Concord. Other  
15 than that, I think it's the same as what we walked through  
16 earlier.

17 Q Behind -- the analysis that's located behind Tab 10?

18 A Yes. That's right.

19 MR. HYNES: Your Honor, at this point, we would  
20 respectfully ask that the Court accept into evidence the  
21 documents behind Tabs 8, 9, 10, 12 and 13.

22 THE COURT: All right. Any objection?

23 (No response.)

24 THE COURT: Those are admitted.

25 (Debtors' Exhibits 8, 9, 10, 12 and 13 are received into

1 evidence.)

2 THE COURT: And on 11, you basically were asking me  
3 to take judicial notice? You said it was admitted at a prior  
4 hearing?

5 MR. HYNES: I believe it was October 29th or 30th,  
6 during the direct examination of Paul Rundell.

7 THE COURT: Okay.

8 MR. HYNES: And it's entitled "Liquidation Analysis."  
9 We could bring Mr. Rundell up to authenticate it.

10 THE WITNESS: He loves to testify.

11 THE COURT: More than you?

12 (Laughter.)

13 THE WITNESS: I love to talk. I don't love to  
14 testify.

15 THE COURT: Sorry. You do love to talk.

16 All right. No, I'll take judicial notice. I will take  
17 your word for that.

18 (Debtors' Exhibit 11 is to be judicially noticed.)

19 MR. HYNES: Okay. Your Honor, we would pass the  
20 witness.

21 THE COURT: All right. Let's see. Was it Ms. Epps  
22 who retained her right to cross-examine?

23 MS. EPPS: Your Honor, we had requested copies of  
24 Debtors' exhibits, and received some of those but did not  
25 receive all of them. So I was hoping that we might have an

1 opportunity to review those exhibits for about 10 or 15  
2 minutes and then -- if we could take a quick break to do that,  
3 and then I could come back and ask Mr. Niemann a couple of  
4 questions.

5 THE COURT: Okay. Is anyone else going to ask  
6 questions? Ms. Epps is the only one who specifically  
7 referenced that.

8 MS. TANCREDI: Your Honor, I have a very few just  
9 clarifying questions.

10 THE COURT: Okay. Why don't --

11 MR. STRICKLIN: I might have a question.

12 THE COURT: You might have a question?

13 (Laughter.)

14 THE WITNESS: They can't help themselves.

15 THE COURT: That's true. Everyone loves to hear Mr.  
16 Niemann talk. It's very interesting. You can --

17 MR. STRICKLIN: I can go fast.

18 THE COURT: You can go fast? Why don't we let Ms.  
19 Epps get started looking at the exhibits? We'll have the  
20 questions from Mr. Stricklin and Ms. Tancredi, and then we'll  
21 take a 10-minute break and finish up.

22 MR. STRICKLIN: I'll tell him what my question is  
23 during the break so he can formulate a brief answer.

24 THE COURT: Oh, you want to take a break now?

25 MR. STRICKLIN: Oh, you want me to do it now? I can

1 do it now.

2 THE COURT: Well, you said you'd be quick.

3 MR. STRICKLIN: I will be quick.

4 THE COURT: Okay.

5 CROSS-EXAMINATION

6 BY MR. STRICKLIN:

7 Q Just back to Exhibit 10, Mr. Niemann, --

8 A Yes?

9 Q -- the 2.5 to the Creditors' Trust, I didn't see it in  
10 here as a line item in particular. Is it included within one  
11 of the other line items?

12 THE COURT: Mr. Stricklin, which one are you on?

13 MR. STRICKLIN: Exhibit 10. Sources and Uses of the  
14 TIP.

15 THE COURT: Okay.

16 THE WITNESS: I don't know if it's included there, or  
17 perhaps in the Administrative. But I can get you an answer to  
18 that.

19 BY MR. STRICKLIN:

20 Q But it's --

21 A I don't know as I sit here right now.

22 Q It's somewhere? It's going to get paid, correct?

23 A Yes. Whatever I said your client is getting, they're  
24 getting.

25 Q That's all I wanted to know.

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MS. TANCREDI:

4 Q Good afternoon, Mr. Niemann. Lisa Tancredi for PNC.

5 A Good afternoon.

6 Q Going back to the auction, and I don't want to put words  
7 in your mouth, so I'm going to try to paraphrase what I think  
8 you said and clarify that. I believe that you said that the  
9 Debtors and the lenders caucused about the Coastwood bidding  
10 fee and at that time agreed to provide a bidding fee to  
11 Coastwood. But what I wanted to clarify was, it was the  
12 Debtors that agreed, subject to Court approval? The lenders  
13 did not agree to provide a bidding fee?

14 A I think that's a better characterization. I know we  
15 discussed it. I don't think we actually asked the -- I don't  
16 think the lenders formally agreed to it. I think the company  
17 said that they would support it. And we shared what we were  
18 doing with you, but I think it would have been more an  
19 observation, as opposed to an agreement. I think that's a  
20 better characterization.

21 Q Okay. Thank you. And then, when you were talking about  
22 when the market spoke, you said it was a combination of what  
23 Coastwood and Redwood were willing to pay and what the lenders  
24 were willing to transact.

25 A Yes.

1 Q And you understand that the agents don't have authority to  
2 transact. Is that correct?

3 A Yes. I understand that ultimately each lender has their  
4 individual rights, notwithstanding the fact that they're a  
5 participant.

6 Q Correct. You understand that the agents are recommending  
7 that their groups accept the treatment that's set forth in the  
8 plan?

9 A Yes, I understand that.

10 Q Okay.

11 MS. TANCREDI: Thank you.

12 THE COURT: All right. We'll take a 10-minute break.  
13 It's five after 3:00. We'll be back at 3:15.

14 THE CLERK: All rise.

15 (A recess ensued from 3:04 p.m. until 3:20 p.m.)

16 THE COURT: Please be seated. All right. Mr.  
17 Niemann, do you want to take your place at the stand again?

18 THE WITNESS: Do I have to?

19 THE COURT: You have to.

20 MATT NIEMANN, DEBTORS' WITNESS, PREVIOUSLY SWORN

21 THE COURT: All right. We are going back on the  
22 record in Erickson. We took a 10-minute break. Ms. Epps, are  
23 you ready to examine Mr. Niemann?

24 MS. EPPS: I am. Thank you very much, Your Honor.

25 THE COURT: Okay.

1 MS. EPPS: Lisa Epps appearing on behalf of U.S. Bank  
2 National Association as successor trustee for the Sedgwick  
3 bonds.

4 THE COURT: Okay.

5 MS. EPPS: Your Honor, briefly, before I begin my  
6 questioning of Mr. Niemann, I just wanted to make it clear for  
7 the record that U.S. Bank is not a party to this global  
8 agreement that the parties have discussed today and are  
9 certainly not bound by it and reserve all of our rights to  
10 object at confirmation on any bases that we see fit and  
11 appropriate.

12 THE COURT: On any bases? You're not including  
13 valuation, are you?

14 MS. EPPS: We're not a party to --

15 THE COURT: I understand, but this is the hearing on  
16 valuation allocation.

17 MS. EPPS: No, I understand that, Your Honor.

18 THE COURT: Yes. So you're not reserving your right  
19 to put on new, fresh evidence of value at the confirmation  
20 hearing, are you?

21 MS. EPPS: We're not --

22 THE COURT: That's the whole purpose of this  
23 exercise.

24 MS. EPPS: No, I understand that, Your Honor.

25 THE COURT: Okay.

1 MS. EPPS: And we are not objecting to the valuation  
2 or allocation today. We are simply here to ask questions with  
3 respect to that.

4 THE COURT: Okay. Well, it's the Court's intention  
5 to make a finding today on this subject, so I just want to  
6 make sure we're all on the same page. This will be a closed  
7 issue for purposes of the Redwood plan, the valuation  
8 allocation.

9 MS. EPPS: Thank you, Your Honor.

10 THE COURT: Okay.

11 CROSS-EXAMINATION

12 BY MS. EPPS:

13 Q Mr. Niemann, as I understand it from your testimony, you  
14 were engaged by the Debtor and employed in the very beginning  
15 or almost the beginning of the bankruptcy case?

16 A It was well before the bankruptcy case. It was March of  
17 2009, a year ago.

18 Q Okay. And at that time, you indicated that you were  
19 assisting the Debtors in evaluating strategic alternatives?

20 A That's correct.

21 Q And in doing so, one of those strategic alternatives was a  
22 sale of the assets?

23 A It would be among the alternatives we evaluated, yes.

24 Q With respect to determining assets that were available for  
25 sale, can you tell me what analysis Houlihan Lokey performed



1 to determine what assets would be available for sale? I mean,  
2 in the beginning of the case, if a sale were to take place?

3 A I don't understand your question.

4 Q Well, I'm trying -- what assets did -- after the  
5 bankruptcy case was filed, what assets did all of the debtor  
6 entities have to sell?

7 A After the bankruptcy?

8 Q Yes.

9 A Any assets that the Debtors owned. I mean, everything's  
10 effectively at some point sellable, so -- maybe I'm missing  
11 your question.

12 Q Well, no, I mean, I guess what I am wondering, in  
13 determining what assets were available for sale after the  
14 bankruptcy filing, did you include in those assets the  
15 Debtors' Chapter 5 causes of action?

16 A Yes. I think I testified earlier that avoidance actions  
17 were part of the consideration received by Redwood.

18 Q No, and I understand the answer to that. But prior to  
19 engaging -- or, prior to selling to Redwood, did Houlihan  
20 Lokey analyze the Chapter 5 causes of action to determine, you  
21 know, any value with respect to a sale?

22 A No.

23 Q Were you involved with the Debtors in the preparation of  
24 their bankruptcy schedules?

25 A In some respect, yes.

1 Q Were you involved with them in preparation of their  
2 Statement of Financial Affairs?

3 A I'd have to look at the specific statement you're  
4 referring to. And when you say "you," I'm assuming you mean  
5 Houlihan Lokey?

6 Q I'm sorry. I mean Houlihan Lokey, --

7 A Right.

8 Q -- either you or someone under your direction.

9 A That's right. But I'd have to look at whatever specific  
10 schedule you're referring to.

11 Q No, I understand.

12 MS. EPPS: Your Honor, we filed a witness and exhibit  
13 list, and marked as Exhibit 1 were the Statements of Financial  
14 Affairs filed by all of the debtors. It's the big binder.

15 THE COURT: I'm sorry. It's here on my desk?

16 MS. EPPS: Yes. The other set of binders.

17 THE COURT: Okay. You want me to take judicial  
18 notice of those at this time?

19 MS. EPPS: I would like you to take judicial notice.  
20 And Your Honor, we had indicated the docket numbers on the  
21 witness and exhibit list. Would you like me to read those  
22 docket numbers into the record?

23 THE COURT: That's okay. We'll just go ahead and put  
24 a hard copy in the record, --

25 MS. EPPS: Okay.

1 THE COURT: -- since you've got it here in the  
2 notebook.

3 (U.S. Bank's Exhibit 1 is to be judicially noticed.)

4 MS. EPPS: And Your Honor, I won't take up a lot of  
5 time going through the Statement of Financial Affairs, but I  
6 will -- may I approach the witness, Your Honor?

7 THE COURT: You may.

8 BY MS. EPPS:

9 Q Mr. Niemann, I have placed in front of you U.S. Bank's  
10 Exhibit 1. And behind the first tab is the Statement of  
11 Financial Affairs for Debtor Erickson Retirement Communities.  
12 I have turned it to Question 3(b). Can you read into the  
13 record Question 3(b) at the top of the Statement of Financial  
14 Affairs?

15 A It says, "SOFA 3(b), Payments to creditors made within 90  
16 days prior to filing, Erickson Retirement Communities, LLC,  
17 Case No. 09-37010."

18 Q Are you familiar with this document?

19 A I have never seen this document before.

20 Q Okay.

21 A Other than right now.

22 Q Okay. So when you testified that you had input with  
23 respect to Debtors' schedules and Statement of Financial  
24 Affairs, preparation of the answer to Question 3(b) was not  
25 something that you had input, or Houlihan?

1 A It says at the bottom it was prepared by BMC Group on  
2 11/25/2009, so that's not Houlihan.

3 Q No, I understand that, but you had indicated that you had  
4 had input, and I just wondered --

5 A Yes. I'd have to look at all the schedules. And did we  
6 actually prepare any particular schedules? I don't think so.

7 Q Okay.

8 A Did we have input as to information on certain schedules?  
9 I'm certain of that. But I'd have to go to particular  
10 schedules. The schedule you just put in front of me, I've  
11 never seen before and I don't think we had any input into this  
12 schedule.

13 Q Now, the Debtors prepared similar schedules for all of the  
14 debtor entities. Are you aware of Houlihan Lokey having any  
15 input into the answer to that same question, payments made  
16 within 90 days, for any of the other debtor entities?

17 A I'm not aware of any, no.

18 Q Okay. Thank you. I believe it was Debtors' Exhibit #12,  
19 which is the Disclosure Statement for the Fourth Amended Joint  
20 Plan of Reorganization.

21 A Am I done with this, or are you --

22 Q Oh, I'm done with that one, yes.

23 A Okay.

24 Q And I believe you still have Debtors' exhibits?

25 A Yes.

1 Q Thank you.

2 A Let me get out -- 12?

3 Q Exhibit 12, the disclosure statement.

4 A Right. I have it.

5 Q Okay. If you could turn to Page 50, where at the top of  
6 the page it starts with, lower case, "managers of Erickson  
7 Group."

8 A I believe I'm there. Page 50.

9 Q Okay.

10 MS. EPPS: Your Honor, may I approach the witness to  
11 point where I'd like to direct his attention?

12 THE COURT: You may.

13 MS. EPPS: Thank you.

14 (Pause.)

15 THE WITNESS: Read that sentence?

16 BY MS. EPPS:

17 Q Yes. Read that sentence. And then end where it says --

18 (Pause.)

19 A In the middle of the page, you've asked me to read this  
20 sentence: "The Debtors estimate that the value of the  
21 potential preference causes of action is approximately \$7.5  
22 million."

23 Q Are you familiar with -- and I'm sorry. I should have  
24 asked you this prior. But given your prior testimony, are you  
25 familiar with Debtors' -- the Fourth Amended Disclosure

1 Statement related to its plan?

2 A I mean, I lose track of the numbers, but I'm familiar with  
3 the disclosure statement. Whether it's Fourth Amendment or  
4 Third Amendment, you know. But, yes, I'm familiar with the  
5 disclosure statement.

6 Q Did you have input into the information contained in the  
7 plan and disclosure statement?

8 A Yes, I did, and Houlihan Lokey did, yes.

9 Q Did you have any input with respect to the sentence that  
10 you just read, "The Debtors estimate that the value of the  
11 potential preference causes of action is approximately \$7.5  
12 million"?

13 A No.

14 Q Do you know where this number came from?

15 A I mean, I don't. I mean, I could speculate, but I don't.

16 Q Okay. So you're not aware of any conversations that  
17 either you or anyone under your direction at Houlihan Lokey  
18 had regarding this \$7.5 million?

19 A I'm not aware of any, no.

20 Q Okay. At the end of your direct testimony, when Debtors'  
21 counsel was questioning you with respect to the avoidance  
22 actions, are you aware -- and you had testified that you  
23 believed that the -- or, is it correct that you believe that  
24 the causes of action were important to Redwood's purchase of  
25 the Debtors?

1 A Yes. That's accurate, in my opinion.

2 Q And could you explain, could you, you know, go into  
3 further detail with that, what discussions you had with  
4 Redwood with respect to the Chapter 5 -- or, with respect to  
5 these causes of action?

6 A I don't remember specific discussions, but if memory  
7 serves me, and part of this is it's typical of any buyer to  
8 want to make sure, I'd call it kind of on a defensive basis,  
9 that there's not claims being made against vendors that they  
10 are now going to be doing business with and employees that  
11 they are now responsible for. So, in a defensive measure,  
12 it's typical that buyers want to make sure they acquire the  
13 avoidance actions. And so, yes, I recall that being important  
14 to Redwood, as it is with virtually every buyer I've ever  
15 dealt with.

16 Q And do you recall whether it was Houlihan Lokey or the  
17 Debtors that indicated that these causes of action were for  
18 sale, or whether it was Redwood that approached you as part of  
19 its interest in purchasing the assets, that it wanted the  
20 Chapter 5 causes of action?

21 A I'm not sure I understand your question, but I'll answer  
22 it this way. I believe it first came up when Redwood  
23 ultimately made a formal proposal for the acquisition. Did we  
24 advertise, "For Sale: Avoidance Actions"? No.

25 Q If we could turn to the Debtors' Exhibit 9.

1 A Okay.

2 Q The transaction proceeds allocation. As I understand your  
3 testimony, this is a document that either you or someone at  
4 your direction at Houlihan Lokey prepared?

5 A That's correct.

6 Q And as I understand it, the bars, the yellow bar  
7 represents Houlihan Lokey's valuation of the asset?

8 A On Tab 9, it's our allocation of the purchase price on a  
9 percentage basis as per our valuation by asset.

10 Q Okay. Now, with respect to the Corporate allocation, as I  
11 understand from your testimony, Redwood allocated the  
12 preferences to Corporate?

13 A I'm not sure if that was my specific testimony. As I -- I  
14 think the Corporate allocation includes corporate assets,  
15 which include, without limitation, the avoidance actions.

16 Q Are these bankruptcy estates substantively consolidated?

17 A I don't believe so.

18 Q Okay. Are you aware -- and I understand that you did not  
19 prepare the Statements of Financial Affairs, but are you aware  
20 of whether the non-corporate debtors made payments to  
21 creditors within the 90 days prior to the bankruptcy filing?

22 A I mean, my initial inclination is "Of course," but I'd  
23 have to look at the specific -- and how the cash flows through  
24 the system and the centralized disbursement system and  
25 everything else. So, as I sit here right now, I can't really



1 answer your question.

2 Q Okay. So with respect to, on Exhibit 9, Houlihan Lokey's  
3 allocation for Corporate -- well, I guess my first question,  
4 where did Houlihan Lokey allocate the Chapter 5 causes of  
5 action?

6 A I don't understand your question.

7 Q Well, you had indicated in your testimony that Redwood --  
8 you believed Redwood allocated the Chapter 5 causes of action  
9 to Corporate in the proceeds allocation. So, whatever it was  
10 paying for the Chapter 5 causes of action could be included in  
11 that Corporate allocation. Am I understanding --

12 A You know, my view is that within the Corporate assets are  
13 avoidance actions.

14 Q Okay. So did -- when you were preparing -- "you" meaning  
15 Houlihan Lokey -- preparing the yellow bar for the Corporate  
16 transaction proceeds allocation, what percentage included the  
17 Chapter 5 causes of action of that 22.1 percent?

18 A On Tab 8, if you're asking me how much of the 78.7  
19 [percent] is attributable to avoidance actions -- is that your  
20 question?

21 Q Yes.

22 A I'm not aware of any of it being directly attributable.  
23 We didn't allocate it that way.

24 Q Okay. So, while your understanding is that Redwood  
25 allocated monies for the Chapter 5 causes of action, --

1 MR. CALIFANO: Objection, Your Honor.

2 THE WITNESS: That's not --

3 MR. CALIFANO: That was --

4 THE WITNESS: Yeah. Go ahead.

5 THE COURT: I --

6 MS. EPPS: I don't mean to mischaracterize.

7 THE COURT: Okay. I sustain the objection.

8 MS. EPPS: Okay. Okay.

9 BY MS. EPPS:

10 Q Did Houlihan Lokey, in preparing Exhibit 8, did Houlihan  
11 Lokey attribute any amount to Chapter 5 causes of action?

12 A No. I think I just answered it that way. The valuation  
13 allocation for Corporate is for all of the corporate assets,  
14 which include, without limitation, avoidance actions. I'm not  
15 aware of any hard allocation on avoidance actions. In fact, I  
16 think it would be somewhat unusual to even allocate to them  
17 because they're not actions that the buyer intends to pursue.  
18 On the contrary, they bought them as a defensive measure to  
19 protect their vendors and their employees. So I -- that's why  
20 I'm a little confused by some of your questions. I don't see  
21 it as, well, it said \$7.5 [million] in the disclosure  
22 statement; therefore, isn't it \$7.5 [million]? Well, it may  
23 be zero, because it's -- they're not pursuing -- they're not  
24 going to get any value out of it other than, you know, their  
25 vendors aren't going to be harassed by a Creditors' Committee.

1 I mean, you know, I'm being a little flip, but that's why  
2 buyers like to make sure that doesn't happen. And that's no  
3 offense intended to Mr. Stricklin.

4 (Laughter.)

5 MR. STRICKLIN: Wouldn't have it any other way.

6 MS. EPPS: Your Honor, I believe that's all my  
7 questions.

8 THE COURT: Okay. Any other questions for this  
9 witness?

10 THE COURT: Do you want to clarify the avoidance  
11 action thing?

12 (Laughter.)

13 MR. STRICKLIN: Speaking of harassing.

14 THE COURT: Speaking of harassing.

15 MS. EPPS: Is he going to throw me out of the way?

16 THE COURT: Well, were you going to go down the trail  
17 of the avoidance actions?

18 MR. STRICKLIN: A little bit.

19 THE COURT: Okay. Because I want to make sure I  
20 understand. I think I understand, but --

21 MR. STRICKLIN: Well, I hope he's the guy that can  
22 help clarify this a little bit. He may not be, but --

23 RECCROSS-EXAMINATION

24 BY MR. STRICKLIN:

25 Q Mr. Niemann, is your understanding and knowledge that the

1 avoidance actions, as part of the global settlement with the  
2 Committee, Redwood is giving those to the Creditors' Trust,  
3 subject to certain exceptions? Is that your understanding?

4 A That's right.

5 Q Okay.

6 A So they -- as I said, it's a defensive mechanism so that  
7 they can ensure that those vendors and employees aren't --

8 Q Well, actually, no vendors, I think, are being released.  
9 Some of the employees, as long as they stay there for 90 days,  
10 with limitations. Some people are excluded out. There's --  
11 it's all laid out within the plan.

12 A Right.

13 Q But the avoidance actions are going to the Creditors'  
14 Trust?

15 A By virtue of the transaction with Redwood.

16 Q Except for the ones that are specifically set forth to be  
17 released in the plan?

18 A Right. But as part of the global settlement.

19 Q So, creditors will receive the benefit of the avoidance  
20 actions, except for the ones that are being released?

21 A I think that's -- yes, I think that's accurate.

22 Q And as far as allocation, is it your understanding that  
23 what the plan says is that we are not seeking to sort out  
24 which estate is donating which avoidance action; we'll deal  
25 with that post-confirmation, as collections occur? Is that

1 your understanding of the plan?

2 A That is. I can't say that I have any deeper understanding  
3 than that, but yes.

4 MR. STRICKLIN: Does that clarify it a little bit?

5 THE COURT: I think so. I mean, it just was they  
6 bought them and then assigned them back to the Creditors'  
7 Committee, with certain exceptions, --

8 MR. STRICKLIN: That's correct.

9 THE COURT: -- the main one being employees who are  
10 retained?

11 MR. STRICKLIN: Employees that are going to be there  
12 for 90 days. And I believe there are exceptions to that  
13 exception, as well.

14 THE COURT: Okay. And the Creditors' Trust will have  
15 standing to evaluate and decide what to pursue and what not?

16 MR. STRICKLIN: And we're not trying to sort out  
17 right now which estate owns what. We can't sort out  
18 everything right now.

19 THE COURT: All right. Okay.

20 MR. STRICKLIN: I mean, there could be money flowing  
21 from one of the subsidiaries to the corporate parent. I might  
22 note that in the chart, he lists Corporate --

23 BY MR. STRICKLIN:

24 Q You list Corporate, but you don't show a separate item for  
25 Erickson Construction?

1 A Right.

2 Q I'm assuming that's lumped into Corporate. Is that right?

3 A That's right.

4 Q Okay.

5 MR. STRICKLIN: So we're going to sort that out post-  
6 confirmation.

7 THE COURT: Okay. Understood. Any other questions?

8 (No response.)

9 THE COURT: Mr. Hynes, did you have any redirect?

10 MR. HYNES: No, Your Honor.

11 THE COURT: All right. Thank you, Mr. Niemann.

12 THE WITNESS: Thank you.

13 THE COURT: You're excused.

14 THE WITNESS: Thank you.

15 (The witness steps down.)

16 THE COURT: All right. Do we have any other  
17 evidence?

18 MR. CALIFANO: No, Your Honor.

19 THE COURT: All right. Well, the Court finds that,  
20 based on the evidence presented here today, and subject to the  
21 stipulation of the parties that if the Debtors' plan with  
22 Redwood does not get confirmed they may put on more evidence  
23 of value, subject to that stipulation, the Court finds, based  
24 on all the evidence presented, that the valuation allocation  
25 proposed for the Redwood consideration is fair and reasonable,

1 and appears to be reasonably equivalent to what is being  
2 purchased.

3       The evidence, of course, was that there has been extensive  
4 analyses of the Debtors' business and assets by the Debtors'  
5 professionals, Houlihan and Alvarez and others, for  
6 approximately one year, including exploring different  
7 restructuring alternatives. There have been extensive  
8 marketing efforts for many, many months among potential  
9 strategic buyers and potential financial buyers. The assets  
10 were marketed both as a whole as well as separately, by  
11 campus.

12       There did end up being a competitive auction among two  
13 competing bidders with substantial financial wherewithal,  
14 which bidders appeared from the evidence to have been ready,  
15 willing and able to buy without duress. The auction process  
16 resulted in a transition of the bids from essentially debt-  
17 reinstatement bids to all-cash bids, mostly-cash bids. The  
18 auction resulted in, of course, a substantially-enhanced bid,  
19 at the end of the day. The auction also resulted in an  
20 extended management agreement with NSC, at the end of the day,  
21 which was a valuable thing.

22       The Court believes that this extensive and fulsome auction  
23 process did yield a fair price for the assets, which, as Mr.  
24 Niemann said, are assets that are hard to value, given that  
25 they are not fully developed. Mr. Niemann said something that

1 has sort of been the bane of this Court's existence for many  
2 months now: "In-development assets are really hard to value."  
3 And we see that a lot, it seems like, in the current financial  
4 crisis. We've had in this Court half-built buildings. Right,  
5 Mr. Chevallier? Are you still here? The shell, the infamous  
6 shell in Oak Lawn that we had auction attempts on? I've had a  
7 90-percent-complete ethanol plant that we had auction attempts  
8 on. We have half-developed malls, half-developed office  
9 buildings flooding the bankruptcy courts right now. And here,  
10 of course, we have a different sort of "in development" assets  
11 involved. They are, it proves time and time again, hard to  
12 value.

13 But here, again, as Mr. Niemann very credibly testified,  
14 the market perception and the auction results seem to be the  
15 best indicator one could obtain here, and the Court believes  
16 that, in sum, the allocation proposed here appears to be  
17 reasonable and fair based on not just the data points which  
18 Houlihan analyzed and presented, but based on the independent  
19 bids of Coastwood and Redwood and the auction overall, as well  
20 as the lender support.

21 The Court would specifically note that all the places  
22 where Houlihan's original hypothetical value -- the yellow  
23 lines on their Exhibits 8 and 9 -- differed materially from  
24 Redwood's ultimate allocation have been explained adequately,  
25 such as in the case of the Novi allocation, which was the



1 Detroit property, as well as, to a lesser extent, Concord and  
2 Dallas and Houston.

3 The Court reserves the right to supplement. But again,  
4 pursuant to this Court's authority under Rule 3012, the Court  
5 does find this value allocation proposed in the plan to be  
6 fair and reasonable, and reasonably consistent with what  
7 appear to be the values of these assets. And so that will be  
8 the ruling of the Court.

9 Mr. Califano, were you going to upload an order with  
10 regard to this?

11 MR. CALIFANO: Yes. Yes, Your Honor.

12 THE COURT: And then we also have the stipulation,  
13 which is in order format, right, --

14 MR. CALIFANO: Yes, Your Honor.

15 THE COURT: -- that you will want signed as well?

16 MR. CALIFANO: Yes.

17 THE COURT: So we will get those promptly signed, as  
18 well as the other orders on exclusivity and the rejected lease  
19 and the lift stay.

20 Is there any other housekeeping matter?

21 MR. CALIFANO: No, Your Honor.

22 MR. WEAVER: Your Honor?

23 THE COURT: Yes?

24 MR. WEAVER: Robert Weaver, former employee.

25 THE COURT: Yes?

1           MR. WEAVER:  If I may, Mr. Califano had suggested I  
2 call in to this hearing to make a very brief update and  
3 request.  I only need about one minute, two minutes, maybe.

4           THE COURT:  Okay.  Does this concern the severance  
5 issues?

6           MR. WEAVER:  Yes, it does.

7           THE COURT:  Okay.  Briefly, you may proceed.

8           MR. WEAVER:  Thank you.

9           After the last hearing, Mr. Califano had graciously  
10 offered to help us by trying to pursue some banks to step  
11 forward to help broker the severance.  There obviously weren't  
12 any guarantees.  He asked what we would accept to settle.  
13 Would we accept \$.50 on the dollar for our non-priority  
14 claims?  Our group said we would, and also, if there was any  
15 way, could the one percent of us who didn't get paid their  
16 accrued vacation receive that payment?

17           If you'll recall, at the last hearing, Mr. Califano had  
18 said that Erickson had intended to pay severance and accrued  
19 vacation in full prior to bankruptcy, but they had an  
20 emergency filing because the banks were suddenly freezing  
21 their assets.  And look, I'm sure the banks didn't freeze  
22 Erickson's assets keep Erickson from paying us promised  
23 severance.  There were much larger issues at play.  
24 Unfortunately, we were the collateral damage in this larger  
25 struggle.

1           So we are here in the home stretch of the bankruptcy, and  
2 after all the negotiations, the banks finally know what dollar  
3 amounts they're getting, and we're hoping and asking that some  
4 of the banks would be willing to step forward and use a very  
5 small percentage of their proceeds to help undo the hardship  
6 that's been caused by these unintended consequences. And I  
7 really would appreciate everyone's consideration of the  
8 matter.

9           THE COURT: All right. Mr. Califano, do you wish to  
10 respond?

11           MR. CALIFANO: Only to say, Your Honor, is Mr. Weaver  
12 is correct. I did speak to him after the hearing. He did  
13 make that proposal. We've been in discussions with the  
14 lenders. I don't think it's going to be fruitful. You know,  
15 the lenders are taking a big hit here, and the priority  
16 payments are being made.

17           The Debtor did make an attempt to find the money, \$.50 on  
18 the dollar. We just -- we don't have a source for it, Your  
19 Honor, I'm sorry to say.

20           THE COURT: Okay. So the folks will get the \$10,950  
21 --

22           MR. CALIFANO: Yes, Your Honor.

23           THE COURT: -- in the plan?

24           MR. CALIFANO: Yes.

25           THE COURT: And if they want to make an argument for

1 more, then they can --

2 MR. CALIFANO: Yes, at confirmation.

3 THE COURT: -- file an objection to the plan?

4 All right, Mr. Weaver. Did you hear all that?

5 MR. WEAVER: It was a little soft. Could you, I'm  
6 sorry, just repeat? I couldn't hear it in the microphone.

7 THE COURT: At this juncture, it would appear as  
8 though the plan that's going to be put forward will provide  
9 for priority claims for employees who assert severance,  
10 vacation, other type employee claims in the Bankruptcy Code-  
11 capped amount of \$10,950. And to the extent that you want to  
12 argue for anything more than that, you're going to have to  
13 either further negotiate or press issues at the confirmation  
14 hearing. But that is what is on the table right now.

15 MR. WEAVER: Okay.

16 THE COURT: All right. Anything further?

17 MR. CALIFANO: There is one matter, Your Honor, that  
18 Mr. Slusher just reminded me. We will be bringing to the  
19 Court either later on today or first thing tomorrow morning an  
20 adversary proceeding and TRO to stay an action that was  
21 commenced in New Jersey, the Superior Court of New Jersey,  
22 that impacts of some of the plan payments.

23 THE COURT: Oh.

24 MR. CALIFANO: So we'll be bringing that on. That  
25 action was --

1 THE COURT: Okay. Well, we'll be on the lookout for  
2 that.

3 MR. CALIFANO: Thank you, Your Honor.

4 THE COURT: All right. Well, thank you. We stand  
5 adjourned.

6 (Proceedings concluded at 3:52 p.m.)

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CERTIFICATE

20 I certify that the foregoing is a correct transcript from  
21 the electronic sound recording of the proceedings in the above-  
22 entitled matter.

23

24 \_\_\_\_\_  
Kathy Rehling  
Certified Electronic Court Transcriber  
25 CET\*\*D-444

\_\_\_\_\_  
Date

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